

**PALMER v MARCUS WILLIAM AYRES, STEPHEN JAMES PARBERY AND
MICHAEL ANDREW OWEN IN THEIR CAPACITIES AS LIQUIDATORS OF
QUEENSLAND NICKEL PTY LTD (IN LIQ) & ORS (B52/2016)**

**FERGUSON v MARCUS WILLIAM AYRES, STEPHEN JAMES PARBERY
AND MICHAEL ANDREW OWEN IN THEIR CAPACITIES AS LIQUIDATORS
OF QUEENSLAND NICKEL PTY LTD (IN LIQ) (B55/2016)**

Dates writs of summons issued: 12 September and 27 September 2016

Question reserved for Full Court: 15 September and 12 October 2016

Mr Clive Palmer and Mr Ian Ferguson are former directors of Queensland Nickel Pty Ltd (“Queensland Nickel”), which is in the process of being wound up pursuant to a resolution made by its creditors under s 439C(c) of the *Corporations Act 2001* (Cth) (“the Act”). Upon that resolution, the then administrators of Queensland Nickel became the company’s liquidators (“the General Purpose Liquidators”).

In the winding up of Queensland Nickel, the Federal Court appointed the First Defendants as additional liquidators for particular purposes. On 3 August 2016 summonses for examination were issued to Mr Palmer and Mr Ferguson under s 596A of the Act (“the Examination Summonses”), pursuant to orders made by a Registrar of the Federal Court upon an application by the First Defendants. The Examination Summonses require Mr Palmer and Mr Ferguson to attend the Federal Court, to be publicly examined on oath or affirmation about the affairs of Queensland Nickel. The men are also required to produce various documents.

Mr Palmer and Mr Ferguson (together, “the Plaintiffs”) each commenced proceedings in this Court, challenging the validity of the power conferred on the Federal Court by s 596A of the Act (to the extent that that power is exercised in conjunction with s 511 of the Act). This was after the Plaintiffs had each undergone multiple days of examination before a Registrar of the Federal Court. The Plaintiffs remain subject to further examination in relation to the Examination Summonses, pursuant to an order made by the Federal Court Registrar upon an application by the General Purpose Liquidators. (The General Purpose Liquidators have been joined as defendants to proceeding B52/2016.)

On 15 September 2016, in proceeding B52/2016, Justice Kiefel reserved the following question for the consideration of a Full Court:

- Is s 596A of the *Corporations Act 2001* (Cth) invalid as contrary to Chapter III of the Constitution in that it confers non-judicial power on federal courts and on courts exercising federal jurisdiction?

On 12 October 2016 Justice Kiefel ordered by consent that the same question be reserved for the consideration of a Full Court in proceeding B55/2016.

The Plaintiffs have each filed a notice of a constitutional matter. Notices of intervention have been filed in proceedings B52/2016 and B55/2016 by the Attorneys-General of the Commonwealth of Australia, Queensland, Victoria and South Australia.