HIGH COURT OF AUSTRALIA

Queensland Nickel Pty Limited

Vs.

Commonwealth of Australia

[2015] HCA 12

(French CJ., Hayne, Kiefel, Bell, Gageler, Keane and Nettle JJ.)

08.04.2015

ORDER

French CJ.

1. I agree with the answers given by Nettle J to the questions posed in the Special Case for the reasons which his Honour gives.

2 HAYNE J. I agree with Nettle J.

3 KIEFEL J. I agree with Nettle J.

4 BELL J. I agree with Nettle J.

5 GAGELER J. I agree with Nettle J.

6 KEANE J. I agree with the judgment of Nettle J.

7 NETTLE J. This is a special case to determine whether Div 48 of Pt 3 of Sched 1 to the Clean Energy Regulations 2011 (Cth) ("the Regulations") was invalid in its application to Queensland Nickel Pty Limited ("the plaintiff") as the result of giving preference to one State over another contrary to s 99 of the Constitution.

8. The questions posed in the special case are:

"Question 1: Was Division 48 of Part 3 of Schedule 1 to the Regulations invalid in its application to the plaintiff on the ground that it gave preference to one State, or any part thereof, over another State, or any part thereof, contrary to s 99 of the Constitution?

Question 2: Should any or all of the following provisions:

i. Division 48 of Part 3 of Schedule 1 to the Regulations;
ii. clauses 501 to 506, 701, 804, 901 to 913 of Schedule 1 to the Regulations;
iii. sections 122 to 134, 145 and 312 of the Act[ ]; and
iv. Part 3 of the Clean Energy (Charges – Excise) Act 2011 (Cth), Part 3 of the Clean Energy (Charges – Customs) Act 2011 (Cth) and the Clean Energy (Unit Shortfall Charge – General) Act 2011 (Cth); be read down, in their application to the plaintiff, so as to avoid contravening s 99 of the Constitution and, if so, how?

Question 3: Upon their proper construction, and to the extent any or all of the following provisions were capable of operating consistently with s 99 of the Constitution, did any or all of the following provisions:

i. Division 48 of Part 3 of Schedule 1 to the Regulations;
ii. clauses 501 to 506, 701, 804, 901 to 913 of Schedule 1 to the Regulations;
iii. sections 122 to 134, 145 and 312 of the Act; and
iv. Part 3 of the Clean Energy (Charges – Excise) Act 2011 (Cth), Part 3 of the Clean Energy (Charges – Customs) Act 2011 (Cth) and the Clean Energy (Unit Shortfall Charge – General) Act 2011 (Cth);

impose upon the plaintiff any liability for any 'unit shortfall charge' in respect of the production of nickel?

Question 4: Who should pay the costs of the proceedings?"

Introduction

9. The Clean Energy Act 2011 (Cth) ("the Act") was enacted with the object of imposing a tax on entities responsible for the emission of greenhouse gases. Until its repeal , it applied to any "liable entity" operating a facility in Australia which emitted a volume of "covered emissions" of greenhouse gases in excess of a specified threshold volume. The tax was exigible on the excess.

10. In order to alleviate the burden of the tax on liable entities operating certain types of emissions-intensive trade-exposed activities ("eligible persons") , the Act provided for the creation by regulation of a Jobs and Competitiveness Program ("JCP") . The JCP was set out in Sched 1 to the Regulations. It enabled the issue of free "units" to each eligible person and thereby allowed the eligible person to set off its free units in reduction of the volume of its covered emissions on which tax was charged .

11. Section 99 of the Constitution prohibits the Commonwealth, by any law or regulation of trade, commerce or revenue, giving preference to one State or any part thereof over another State or any part thereof.

12. In brief substance, the issue raised by the special case is whether the Regulations contravened s 99 because they provided that the number of free units which could be issued under the JCP to each nickel producer in Australia was to be calculated by reference to an industry average volume of greenhouse gases emitted per unit volume of nickel production and, therefore, made no allowance for differences between producers in greenhouse gas emissions which were said to be due to differences between the States in which the producers respectively carried on production.

Nickel production

13. Nickel and cobalt are valuable naturally occurring minerals predominantly found in sulphide and laterite ore deposits. Nickel-bearing deposits of sulphide ore typically contain greater concentrations of nickel than nickel-bearing deposits of laterite ore. Although there are significant nickel-bearing sulphide and laterite ore bodies distributed throughout Australia, the bulk are comprised in a small number of ore bodies situated in Western Australia and Queensland.

14. Nickel and cobalt products are made by extracting the sulphide or laterite nickel- and cobalt-bearing ores from the earth and subjecting them to chemical and other processes to extract the nickel and cobalt from the ores.

15. At relevant times there were a number of entities in Australia producing "primary nickel products", "intermediate nickel products" and "cobalt products" as defined by the JCP . They included the plaintiff, BHP Billiton Nickel West Pty Limited ("Nickel West"), FQM Australia Nickel Pty Ltd ("First Quantum") and Murrin Murrin Operations Pty Limited ("Murrin Murrin").

Different inputs

16. The plaintiff owned and operated a nickel and cobalt refinery at Yabulu near Townsville in North Queensland from the time of the refinery's establishment in 1974. It selected the location of the plant in the 1970s for a number of reasons. They included Yabulu's relative physical proximity to a deposit of dry nickel laterite ore at Greenvale in North Queensland, construction and plant operating costs near to Townsville being lower than inland or closer to Greenvale, and the long term prospect that, after the Greenvale deposit had been exhausted, it would be necessary to bring in ore from other places.

17. Between 1974 and 1992, the plaintiff refined dry nickel laterite ore sourced from the Greenvale ore body. By the end of that period, the Greenvale ore body was effectively exhausted. Between 1992 and 1995, the plaintiff brought in small quantities of dry nickel laterite ore from the Brolga mine near Marlborough in Central Queensland and later, from 2007 to 2009, the plaintiff increased the production capacity of the plant to enable processing

of a mixed nickel-cobalt hydroxide precipitate sourced from Ravensthorpe in Western Australia. From about 1986, however, the plaintiff also imported wet laterite ore from Indonesia, New Caledonia and the Philippines and, during the two-year period to which the Act applied, the plaintiff refined only wet nickel laterite ore imported from those sources.

18. Beginning in 1970, Nickel West undertook the "production of nickel" at a refinery at Kwinana in Western Australia from nickel sulphide ore extracted from deposits near Kalgoorlie in Western Australia. From 1972, production was also undertaken at a smelter at Kalgoorlie.

19. Beginning in about 1999, Murrin Murrin undertook the production of nickel from dry laterite ore extracted from the Murrin Murrin deposit at a refinery in the North Eastern Goldfields region of Western Australia.

20. Beginning in 2007, First Quantum undertook the production of nickel from dry laterite ore at a refinery at Ravensthorpe in Western Australia.

21. The refineries operated by Nickel West, Murrin Murrin and First Quantum were geographically close to the deposits of ore which they processed.
Different production processes

22. The geographic location of each refinery affected input costs (including chemicals, energy, labour and transport costs), the design of production processes and the ability to store, treat and dispose of wastes.

23. At relevant times, there were at least four nickel ore processing systems in commercial practice: Caron ammonia leaching, acid and pressurised acid leaching, ferronickel smelting, and the Sherritt process. Of those four, the Caron process required the greatest input of carbon fuels and produced the greatest number of tonnes of carbon dioxide equivalence per unit volume of nickel products.

24. The plaintiff used the Caron process. Nickel West used smelting followed by the Sherritt process. Murrin Murrin used a combination of the acid leaching process and a modified Sherritt process. First Quantum used an acid leaching process.

25. The plaintiff's decision to adopt the Caron process was made before the 1973 international oil price shock. It was based on a number of considerations including the nickel mineralisation and chemistry of the Greenvale dry nickel laterite ore body, technological developments in the production of nickel and cobalt products at that time and the then expected costs of energy inputs under available production processes. Metallurgical investigations led the plaintiff to conclude that the Caron process would be the most economically feasible for the production of nickel from the Greenvale dry laterite ore deposit.
26. Although the plaintiff chose the Caron process to process the Greenvale dry laterite ore deposit, the ore lithology best suited to the Caron process was limonite ore. The wet nickel

laterite ore which the plaintiff later imported from Indonesia, New Caledonia and the Philippines contained greater than 80 per cent limonite, and the subjection of that ore to the Caron process typically resulted in 85 per cent nickel recovery.

27. The production processes used by each of Nickel West, Murrin Murrin and First Quantum were tailored to the kinds of ore which they processed and were selected as the most suitable for those types of ore following metallurgical testing of samples of the main nickel ore lithologies. Different outputs

28. During the relevant period, Nickel West primarily produced London Metal Exchange ("LME") grade nickel briquettes and also nickel metal powder, nickel matte, nickel concentrate and nickel-cobalt sulphide intermediate products. Murrin Murrin primarily produced LME-grade nickel briquettes and also nickel metal powder, mixed sulphide/hydroxide precipitate and cobalt metal briquettes. First Quantum primarily produced nickel-cobalt hydroxide intermediate products. The plaintiff primarily produced non LME grade nickel compacts and also nickel oxide (in granular and powder forms), basic nickel carbonate and cobalt oxy-hydroxide.

29. Nickel West, First Quantum and Murrin Murrin did not produce nickel compacts, nickel oxide, basic nickel carbonate or cobalt oxy-hydroxide. The plaintiff did not produce LME-grade nickel briquette products or nickel powder of the kind made by Nickel West and Murrin Murrin, nickel-cobalt hydroxide intermediate products of the kind produced by First Quantum, or cobalt briquettes of the kind produced by Murrin Murrin.
The market for nickel products

30. At relevant times, the plaintiff competed with laterite- and non laterite ore based refineries and smelters located throughout the world. Its only Australian competitors, however, were First Quantum's laterite ore refinery at Ravensthorpe, Western Australia; Murrin Murrin's laterite ore refinery at Murrin Murrin, Western Australia; and Nickel West's sulphide ore smelters at Mt Keith, Leinster, Kalgoorlie and Kwinana, Western Australia.

31. Although the nickel compacts produced by the plaintiff were not of LME quality, they were typically of 99 per cent or greater purity and consequently were categorised as "Primary Nickel Products – Class I" according to both international custom and usage and the JCP . The LME grade nickel briquettes produced by Nickel West and Murrin Murrin were also categorised as Primary Nickel Products – Class I. To the extent that the plaintiff produced nickel compacts or customised nickel products of less than 99 per cent purity, they were categorised as "Primary Nickel Products – Class II" according to international custom and usage and the JCP.

32. The plaintiff's nickel compacts were substitutable for, and sold for similar prices to, LME grade nickel briquettes sold by Nickel West and Murrin Murrin.
The taxing legislation

33. Until repealed, the Act applied inter alia to liable entities operating facilities in Australia which produced covered emissions of greenhouse gases in excess of a specified threshold volume.

34. The Act required that the number of tonnes of covered emissions produced from the operation of a facility in a financial year be calculated in units of measurement denoted as tonnes of "carbon dioxide equivalence" . As so calculated, the number of tonnes of covered emissions was expressed as a "provisional emissions number" .

35. An "eligible emissions unit" was defined as including "a carbon unit", "an eligible international emissions unit" and "an eligible Australian carbon credit unit" . This case is concerned with carbon units.

36. Carbon units could be issued by the Clean Energy Regulator in several circumstances . They included an application for issue of units at a fixed price during the financial years beginning 2012 and 2013 , an auction conducted by the Regulator , and issue of units for free under the JCP. Each carbon unit had a unique "identification number" and a "vintage year" and, subject to some restrictions, could be "surrendered" by notice to the Regulator during the financial year coinciding with the unit's vintage year .

37. In "fixed charge years" , the Act provided for the tax payable by a liable entity in respect of a financial year to be calculated, provisionally, according to the entity's "provisional unit shortfall" for the financial year and, finally, according to the entity's "unit shortfall charge" for the financial year .

38. The provisional unit shortfall for the liable entity was the difference between the total of the interim emissions numbers for the liable entity for the financial year and the number of eligible emissions units surrendered by the liable entity on or before 15 June of that financial year . The unit shortfall charge was the product of the provisional unit shortfall and a "prescribed amount" .

39. During the two fixed charge years in which the Act was in operation, the prescribed amount was 130 per cent of the per unit charge applicable under s 100 of the Act for the issue of a carbon unit of which the vintage year was the relevant fixed charge year.

The JCP and its application to nickel producers

40. The JCP was designed to reduce the tax exigible under the Act on businesses that were exposed to international competition and which produced relatively high amounts of greenhouse gas emissions .

41. The JCP enabled an eligible person which had operational control of a facility at which it carried on a prescribed emissions-intensive trade-exposed ("EITE") activity to reduce the unit shortfall charge in respect of the facility by providing for the issue of free carbon units to the eligible person. The JCP specified 51 EITE activities, of which the "production of nickel"

was one. Division 48 of Pt 3 of the JCP defined "production of nickel" as the chemical and physical transformation of either or both of "nickel bearing inputs" into "intermediate nickel products", "primary nickel products" or "cobalt products", or "intermediate nickel products" into "primary nickel products" or "cobalt products".

42. Each of the plaintiff and its Western Australian competitors produced primary nickel products and intermediate nickel products as defined in Div 48 .

43. "Intermediate nickel products" were defined as such of the following outputs of saleable quality from a nickel production process as were suitable for further refining, namely:
(a) nickel matte having a concentration of nickel of at least 64 per cent with respect to mass, measured on a dry weight basis;

(b) mixed nickel-cobalt hydroxide precipitate with a concentration of nickel of between 35 per cent and 47 per cent with respect to mass, measured on a dry weight basis;
(c) basic nickel carbonate with a concentration of nickel of between 40 per cent and 45 per cent with respect to mass, measured on a dry weight basis; and
(d) nickel sulphide concentrate with a concentration of nickel of between 6.5 per cent and 29 per cent with respect to mass, measured on a dry weight basis.

44. "Nickel bearing inputs" were defined as mineralised nickel ores and low-grade nickel waste products that required equivalent processing to mineralised nickel ores to produce intermediate or primary nickel products.

45. "Primary nickel products" were defined as:
(a) basic nickel carbonate with a concentration of nickel of at least 50 per cent with respect to mass, measured on a dry weight basis;
(b) nickel oxide with a concentration of nickel of at least 78 per cent with respect to mass, measured on a dry weight basis; and
(c) nickel with a concentration of nickel of at least 98 per cent with respect to mass, measured on a dry weight basis.

46. The JCP provided that the number of free carbon units which could be issued to an eligible person in relation to any of the four categories of production of nickel at a particular facility was fixed according to a statutory formula incorporating three "allocative baselines" and the adjusted "production" of the facility . The three allocative baselines were:
(a) the baseline level of direct emissions per unit of production of the relevant product from the facility, including emissions associated with the use of steam ;
(b) the baseline level of electricity consumed per unit of production of the relevant product from the facility ; and
(c) the baseline level of natural gas (or its components) feedstock used per unit of production of the relevant product from the facility .

The allocative baseline for each category of production of nickel was a fixed number set by reference to industry average levels for the production of that category of nickel during the period 2006 to 2008 .

47. Item 2.14 of cl 401(1) of the JCP set the allocative baselines for the production of nickel according to whether the production of nickel was constituted of the production of primary nickel products produced from nickel-bearing inputs, intermediate nickel products produced from nickel-bearing inputs, primary nickel products produced from intermediate nickel products, or cobalt products.

48. Consequently, the number of free carbon units which could be issued under the JCP to an eligible person in relation to the production of any one of the four specified categories of production of nickel was the same per unit volume of production of that category of product regardless of the place of the facility at which the product was produced, the nature of the ore from which the product was produced, the process of production employed in processing the product or, therefore, the amount of carbon emissions emitted per unit volume of nickel produced.

49. In the result, the more environmentally inefficient an eligible person's production facility (in the sense of the greater the number of tonnes of covered emissions emitted from the facility per unit volume of nickel produced by the facility), the greater was the difference between the total of the interim emissions numbers for the facility and the number of free carbon units which could be issued under the JCP in respect of the facility; the greater were the emissions units equating to the number of tonnes of greenhouse gases produced by the eligible person in a specified period for that facility; and the greater was the unit shortfall charge payable by the eligible person per unit volume of production.

The plaintiff's contentions

50. In essence, the plaintiff contended that, because the three allocative baselines prescribed by the JCP were fixed by reference to industry averages and, therefore, resulted in the same number of free carbon units per unit volume of production regardless of differences between producers' inputs, production processes and outputs, the JCP contravened s 99 of the Constitution.

51. More particularly, it was said that, as between the plaintiff, Murrin Murrin, First Quantum and Nickel West, there were differences in inputs, production processes and outputs; those differences were at least to some extent caused by differences in natural, business or other circumstances as between the places and thus States in which each of the producers carried on its processing operations; and, because the JCP classified each of the four categories of the "production of nickel" in a manner which made no allowance for those differences, the JCP in effect treated as alike activities which were not alike and thereby mandated a different or unequal taxation outcome for nickel producers according to whether their processing operations were located in Queensland or Western Australia. This was said

to result in a "preference" being given to Western Australia within the meaning of s 99 of the Constitution.

Preference and discrimination

52. For the purposes of s 99 of the Constitution, the Commonwealth does not give a "preference" by law or regulation to one State over another unless the law or regulation discriminates between those States .

53. In some earlier judgments in this Court, it was considered that the question of whether a law or regulation discriminates in the relevant sense was to be determined solely by reference to the legal form of the law or regulation or perhaps by reference to whether the law or regulation had a discriminatory purpose as well as drawing a formal legal distinction . Later, it came to be accepted that, generally speaking, the practical effect of the law or regulation may also bear on the question . Nonetheless, the view consistently taken in relation to taxation laws has been that it is not enough, in order to demonstrate discrimination in the relevant sense, to show only that a taxation law may have different effects in different States because of differences between circumstances in those States . Thus, in R v Barger, Griffith CJ observed :

> "The fact that taxation may produce indirect consequences was fully recognized by the framers of the Constitution. They recognized, moreover, that those consequences would not, in the nature of things, be uniform throughout the vast area of the Commonwealth, extending over 32 parallels of latitude and 40 degrees of longitude."

54. More recently, in Fortescue Metals Group Ltd v The Commonwealth, French CJ summarised the position as follows :

> "[T]he constraints imposed by ss 51(ii) and 99 of the Constitution serve a federal purpose – the economic unity of the Commonwealth and the formal equality in the Federation of the States inter se and their people. Those high purposes are not defeated by uniform Commonwealth laws with respect to taxation or laws of trade, commerce or revenue which have different effects between one State and another because of their application to different circumstances or their interactions with different State legal regimes. Nor are those purposes defeated merely because a Commonwealth law includes provisions of general application allowing for different outcomes according to the existence or operation of a particular class of State law."

55 To the same effect, the plurality observed that :

> "It may be accepted that consideration of whether a law discriminates between States or parts of States is not to be resolved by consideration only of the form of the law. The legal and practical operation of the law will bear upon the question. It by no

> means follows, however, that the law is shown to discriminate by demonstrating only that the law will have different effects on different taxpayers according to the State in which the taxpayer conducts the relevant activity or receives the relevant income or profit. In particular, a law is not shown to discriminate between States by demonstrating only that it will have a different practical operation in different States because those States have created different circumstances to which the federal Act will apply by enacting different State legislation."

56. Construed accordingly, it is apparent that the JCP did not discriminate between States. In terms, it applied equally to eligible persons carrying on the production of nickel regardless of the State of production and, in terms of practical effect, the plaintiff did not suggest that the differences in inputs, production processes and outputs were due to anything other than differences in natural, business and other circumstances as between the States of production.

Different circumstances in different States

57. Counsel for the plaintiff contended that none of the previous authorities concerning the application of s 99 involved the validity of a Commonwealth taxation law which treats activities of necessity carried out differently in different parts of the Commonwealth as if they were the same activity. Thus, although the Court in Fortescue dealt with the situation where a Commonwealth taxing Act produces different consequences in different States due to differences between States' legislation, their Honours should be taken to have left open for consideration the kind of situation which arises where a Commonwealth law results in different consequences in different States due to differences between States in natural, business or other circumstances. Leastways, it was submitted, none of those authorities should be regarded as controlling, and any a priori rule which placed differential treatment of that kind beyond the reach of s 99 would so denude the section of practical operation that it should not be adopted.

58. The difficulty with that contention, however, is that, even allowing that there might be cases in which s 99 is attracted to a Commonwealth taxing Act because it produces different consequences in different States as the result of differences between States in natural, business or other circumstances, in this case it does not appear that any of the differences between the plaintiff's and the Western Australian nickel producers' inputs, production processes or outputs were due to differences between Queensland and Western Australia in natural, business or other circumstances.

59. As was earlier noticed, at relevant times the plaintiff processed wet laterite ore imported from Asia. There is nothing in the special case which suggests or from which it can be inferred that the plaintiff was precluded by naturally occurring circumstances from obtaining dry laterite ore from another source – such as Brolga or somewhere in Western Australia – and processing that ore, just as it had processed dry laterite ore until the Greenvale deposit was exhausted.

60. What does appear from the special case is that the plaintiff's Caron process production facility was capable of extracting higher volumes of nickel from the wet laterite ore imported from Asia than from dry laterite or sulphide ores available in Australia. Hence, it may be inferred that the plaintiff's choice of wet laterite ore in preference to dry laterite or sulphide ore was based on economic considerations which had nothing to do with the State in which the plaintiff conducted its processing operations.

61. It is true that the plaintiff's 1970s choice of the Caron process was based on the plaintiff's 1970s assessment that the Caron process would be the most economically feasible system for processing the Greenvale deposit. To that extent, the choice of the Caron process was informed by geographic considerations. But, as was previously noticed, the Greenvale deposit was a dry laterite ore deposit – like the dry laterite deposit which Murrin Murrin chose to process using a combination of the acid leaching and modified Sherritt processes and like the Ravensthorpe dry laterite deposit which First Quantum chose to process using a straight acid leaching process.

62. Consequently, it appears that, in terms of geographic considerations, the plaintiff was in essentially the same position in making its decision to employ the Caron process as Murrin Murrin and First Quantum were in when making their decisions to employ acid leaching processes. Assuming that each entity's decision was economically rational and otherwise soundly based, it would seem to follow that the differences between their individual selections of processing system were the consequence of considerations other than any differences between the ore bodies which each of them had in contemplation at the time of selection.

63. Of course, circumstances could have changed between the 1970s, when the plaintiff made its decision to adopt the Caron process, and the 1990s, when Murrin Murrin and First Quantum made their decisions to employ acid leaching processes. Over the last 40 years, energy prices have altered significantly and the technical efficiency and environmental safety of production processes have increased. Hence, it might be that, if the plaintiff's choice of system for processing the Greenvale deposit had been delayed until, say, the late 1990s, the plaintiff would have chosen an acid leaching processing system like Murrin Murrin or First Quantum.

64. But all that would go to show is that the plaintiff's technological disadvantages relative to Murrin Murrin and First Quantum – and thus the plaintiff's fiscal disadvantage under the JCP relative to Murrin Murrin and First Quantum – were due to the plaintiff having made its choice of processing system when the available technology was not as advanced as by the time Murrin Murrin and First Quantum chose their systems. It would not imply or make any more likely that any such difference in technology was caused by differences between States in natural, business or other circumstances.

65. Evidently, there were some differences between the outputs produced by the plaintiff in Queensland and the outputs produced by Murrin Murrin and First Quantum in Western

Australia. But it is not possible to say whether the differences were significant in terms of each operation's liability to the unit shortfall charge. The special case states that the primary use of nickel compacts and nickel briquettes was in the production of stainless steel products. According to the International Nickel Study Group, at relevant times close to two thirds of first-use nickel (scil nickel produced from extraction and refining rather than from recycled scrap) was used to produce stainless steel. The non LME grade nickel compacts produced by the plaintiff for the production of stainless steel products were substitutable for, inter alia, the LME-grade nickel briquettes which were produced by Nickel West and Murrin Murrin for the production of stainless steel products. Nickel compacts sold by the plaintiff typically sold at very near the price of LME-grade nickel briquettes sold on the LME.

66. Moreover, and more importantly, even if there were any significant differences, they were the necessary consequence either of the differences between the inputs and production processes of each producer or, possibly, of discretionary decisions not necessarily dictated by either inputs or production processes. Since the differences between inputs and production processes are not shown to have been caused by differences between circumstances in different States, it cannot be inferred that the differences in outputs were caused by differences in circumstances between States.

Conclusion

67. So to conclude is sufficient to dispose of the special case.

68. The questions posed in the special case should be answered as follows:

Question 1: No.
Question 2: No.
Question 3: The plaintiff is liable for the "unit shortfall charge" as imposed under Pt 3 of the Clean Energy (Charges – Excise) Act 2011 (Cth), Pt 3 of the Clean Energy (Charges – Customs) Act 2011 (Cth), and the Clean Energy (Unit Shortfall Charge – General) Act 2011 (Cth).
Question 4: The plaintiff.