

PALMER & ANOR v THE STATE OF WESTERN AUSTRALIA & ANOR
(B26/2020)

Date writ of summons filed: 25 May 2020

Date special case referred to Full Court: 4 September 2020

On 15 March 2020, in the face of the COVID-19 pandemic, a state of emergency was declared in Western Australia under s 56 of the *Emergency Management Act 2005* (WA) (“the Act”). On 5 April 2020 the *Quarantine (Closing the Border) Directions* (WA) (“the Directions”) were issued by the Second Defendant, Police Commissioner Christopher Dawson, in his role as State Emergency Coordinator. The Directions were expressed as being given pursuant to powers under ss 61, 67, 70 and 72A the Act. The Directions (which have frequently been amended) prohibit any person who is not an “exempt traveller” from entering Western Australia.

The First Plaintiff, Mr Clive Palmer, is a resident of Queensland who wishes to resume frequent travel to Western Australia for business, social, charitable and political purposes. Mr Palmer is the chairman and managing director of the Second Plaintiff, Mineralogy Pty Ltd, which has lucrative interests in iron ore projects in Western Australia. Senior staff and advisers of Mineralogy Pty Ltd are accustomed to travelling between Brisbane and Perth, where the company maintains office premises and holds important documents.

On 25 May 2020, following an unsuccessful application by Mr Palmer to obtain “exempt traveller” status, the Plaintiffs commenced proceedings in this Court, seeking declarations that the Directions and/or relevant provisions of the Act were invalid. (The Plaintiffs’ claim was subsequently amended such that declarations of invalidity were sought in respect of the Act and/or the Directions wholly or in part.) This was on the bases that the Directions and/or the statutory provisions infringed s 92 of the *Constitution* by impermissibly burdening the freedom of intercourse and/or the freedom of trade and commerce among the States.

On 16 June 2020 Chief Justice Kiefel remitted a part of the matter to the Federal Court for hearing and determination. The remitted part was a claim by the Defendants that the community isolation measures contained in the Directions were effective and reasonably necessary. Following the delivery of judgment on 25 August 2020 by Justice Rangiah of the Federal Court (*Palmer v State of Western Australia (No 4)* [2020] FCA 1221), the matter resumed in this Court.

The parties agreed upon a special case, which Chief Justice Kiefel referred for consideration by the Full Court. The questions stated in the special case are:

- Are the *Quarantine (Closing the Border) Directions* (WA) and/or the authorising *Emergency Management Act 2005* (WA) invalid (in whole or in part, and if in part, to what extent) because they impermissibly infringe s 92 of the *Constitution*?
- Who should pay the costs of the special case?

A Notice of a Constitutional Matter was filed by the Plaintiffs. The Attorneys - General of Victoria, Queensland, South Australia, Tasmania, the Northern Territory and the Australian Capital Territory are intervening in the proceeding. (The Attorney-General of the Commonwealth intervened for a time before withdrawing.)