



## HIGH COURT OF AUSTRALIA

9 March 2022

HOBART INTERNATIONAL AIRPORT PTY LTD v CLARENCE CITY COUNCIL & ANOR;  
AUSTRALIA PACIFIC AIRPORTS (LAUNCESTON) PTY LTD v NORTHERN MIDLANDS  
COUNCIL & ANOR  
[2022] HCA 5

Today the High Court, by majority, dismissed two appeals from a judgment of the Full Court of the Federal Court of Australia. The principal question was whether a dispute sought to be agitated by the Clarence City Council and the Northern Midlands Council ("the Councils") concerning the meaning of a contractual term in leases to which the Councils were not parties involves a "matter" for the purposes of Ch III of the *Constitution*.

In 1998, as part of a project to privatise Australia's federal airports, the Commonwealth entered into leases pursuant to s 22 of the *Airports (Transitional) Act 1996* (Cth) ("the Leases") with the operators of the Hobart Airport and Launceston Airport ("the Lessees") for the Hobart Airport site and the Launceston Airport site ("the Airports") respectively. The Airports are not amenable to council rates or State land tax because they are on Commonwealth land. Clause 26.2(a) of the Leases requires that, in lieu of paying rates, the Lessees pay the Councils an amount equivalent to the amount that would have been payable if the Airports were not on Commonwealth land, but relevantly only in respect of parts of the Airports on which "trading or financial operations are undertaken". The Lessees are required to use "all reasonable endeavours" to enter into agreements with the Councils to make such payments. The Councils have never been parties to the Leases.

The Councils sought declaratory relief regarding the proper construction of cl 26.2(a) and the Lessees' obligations to make payments in circumstances where the Commonwealth and the Lessees were not in dispute about the operation of cl 26.2(a) or the Lessees' compliance with it. The primary judge dismissed the applications on the basis that the Councils lacked standing. The Full Court of the Federal Court allowed the Councils' appeals, holding that they had standing, and that the Councils' claims raised a "matter".

A majority of the High Court reasoned that the rights, duties and liabilities in dispute are private law rights, duties and liabilities of the Commonwealth and the Lessees under the Leases (although they might have a "public" dimension or complexion). They owe their existence to, and therefore "arise under", a Commonwealth law within s 76(ii) of the *Constitution*. Whether there is a justiciable controversy turned on whether the Councils have standing. An outsider to a contract seeking declaratory relief in relation to private rights may, for reasons other than having legally enforceable rights – in "exceptional circumstances" – have a "sufficient" or "real" interest to seek declaratory relief as to the meaning and effect of a contract between contracting parties. On this basis, three Justices held that, in this case, the Councils have a "sufficient" or "real" interest in seeking declaratory relief about the proper construction of cl 26.2(a) and, therefore, the dispute involves a "matter" for the purposes of Ch III of the *Constitution*. Two Justices reached the same conclusion on the basis that the Councils' interests in the relief sought are distinctive, substantial and squarely within the scope of those third party interests that were sought in the public interest to be advanced through entering into the Leases in the exercise of statutory authority.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*