

Clarence City Council v Commonwealth of Australia [2019] FCA 1568

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Facts

- Two Tasmanian councils (the Clarence City Council and the Northern Midlands Council) sought declarations that they were each owed the benefit of contracts to which they were not parties.
- The operator of Hobart airport, Hobart International Airport Pty Ltd ("**HIAPL**") and Launceston airport's operator, Australia Pacific Airports (Launceston) Pty Ltd ("**APAL**"), entered into respective contracts to lease land from the Commonwealth. This was during the 1990's privatisation of airports.
- Each lease stated that the airport operator would pay rates to the government authority for the parts of the airport sites on which "*trading or financial operations*" are undertaken. There was no statutory obligation on the airport operators to pay rates because the land was exempt due to being Commonwealth land. The only reason the councils were required to pay rates was under the leases and the lease terms described such payments as "*ex gratia*".
- There was no dispute between the Commonwealth and the airport operators. The airport operators had been paying the ex gratia rates. The parties to the leases and the councils disagreed about how much of the airport sites were being used for "*trading or financial operations*" and about how to calculate the ex gratia rates to be paid. The councils believed that a greater area of the airport sites was "rateable".
- The Commonwealth required the airport operators to pay the ex gratia rates because in 1995 it had entered into the "*Competition Principles Agreement*" with the States and Territories. Under this agreement, the Commonwealth had agreed to adopt the principle of "*competitive neutrality*" so that "*contestable*" businesses would be required to pay "*fictional*" rates equivalent to their competitors not located on Commonwealth land. In the case of the airports, not all the land was used for "*contestable*" services or facilities because the activities were not subject to competition.
- The councils argued that the doctrine of privity did not apply: the councils argued that they were directly and financially concerned with the interpretation of the leases and had standing to seek relief.

Issues

- Did the councils have standing to seek relief under the leases?

Held

- The Federal Court held that the councils lacked any standing to bring the proceedings because they were not parties to the lease.

- The doctrine of privity of contract prevented the councils from enforcing the terms of the leases.
- The councils had no standing to dispute the terms the leases because they were not parties to them.

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