

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 6/05/2016 8:53:49 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

|                            |  |
|----------------------------|--|
| Document Lodged:           | Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2                         |
| File Number:               | QUD283/2016  |
| File Title:                | The Commonwealth of Australia & Ors v Queensland Nickel Pty Ltd (In Liquidation) ACN 009 842 068 & Ors |
| Registry:                  | QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA   |
| Reason for Listing:        | Hearing  |
| Time and date for hearing: | 18/05/2016, 10:15 AM   |
| Place:                     | Court No. 1, Level 7, Harry Gibbs Commonwealth Law Courts Building Level 6, 119 North Quay, Brisbane   |



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 6/05/2016 9:18:52 AM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



## Form 2 Amended Originating process

(rules 2.2 and 15A.3)

Federal Court of Australia

QUD 283 of 2016

District Registry: Queensland

Division: General

IN THE MATTER OF QUEENSLAND NICKEL PTY LTD (IN LIQUIDATION)

ACN, ABN or ARBN: 009 842 068

### THE COMMONWEALTH OF AUSTRALIA and others named in the schedule

Plaintiffs

### QUEENSLAND NICKEL PTY LTD (IN LIQUIDATION) ACN 009 842 068 and others named in the schedule

Defendants

#### A. DETAILS OF AMENDED APPLICATION

This application is made under sections 472(1), 473(8), 477(2B), 506(1A), 511 of the Corporations Act 2001 (Cth).

The First and Second Plaintiffs apply to have the Third, Fourth and Fifth Plaintiffs appointed as special purpose liquidators of the First Defendant. If the application of the First and Second Plaintiffs is successful, the Third, Fourth and Fifth Plaintiffs apply for leave to enter into the Funding Agreement (as defined below).

On the facts stated in the supporting affidavit of David Paul Cowling ~~to be~~ sworn on 3 May 2016, the First and Second Plaintiffs claim:

- 1 An order pursuant to sections 511 and 472(1) of the Corporations Act 2001 (Cth) that the Third, Fourth and Fifth Plaintiffs be appointed as additional liquidators to the First Defendant (**Company**) for the limited purposes specified in paragraph 2 below (**Special Purpose Liquidators**).
- 2 Pursuant to sections 511 and 473(8) of the Corporations Act, an order that:
  - (a) the appointment of the Special Purpose Liquidators is limited to the matters set out in paragraphs 2(b) to (d) below;
  - (b) the following things may be done by the Special Purpose Liquidators on behalf of the Company:
    - (i) conducting investigations into any of the matters set out in the Schedule to identified in the affidavit material to be filed in support of this application (**Special Purpose Liquidator's Tasks**), including by:
      - (A) inspecting the books and records of the Company;



- (B) conducting examinations pursuant to sections 596A or 596B of the Corporations Act or obtaining orders for production pursuant to section 597(9) of the Corporations Act; and
  - (C) requiring statements to be provided pursuant to section 475(2) of the Corporations Act; and
- (ii) pursuing any claim, including by commencing legal proceedings, that may be available to the Company or the Special Purpose Liquidators in relation to any of the matters identified in the Special Purpose Liquidator's Tasks, including considering and obtaining legal advice in respect of pursuing any such claim;
- (c) in relation to only those matters set out in the Special Purpose Liquidator's Tasks, the Special Purpose Liquidators may take steps, including by commencing legal proceedings, to preserve or protect the assets of the Company, whether or not in the possession of the Company;
  - (d) in relation to only those matters set out in the Special Purpose Liquidator's Tasks, the Special Purpose Liquidators, as additional liquidators of the Company, are entitled to exercise solely for the purposes specified in paragraphs 2(b) and (c) above, all powers conferred on a liquidator by section 506 of the Corporations Act, except for the powers contained in section 477(1)(a);
  - (e) the Second to Fifth Defendants must not do any of the things specified in paragraphs 2(b) to (d) above in relation to the matters set out in the Special Purpose Liquidator's Tasks, other than with the prior written consent of the Special Purpose Liquidator or further order of the Court;
  - (f) the Second to Fifth Defendants use their reasonable endeavours to assist the Special Purpose Liquidators:
    - (i) by, no later than 4:00pm on ~~13~~25 May 2016 or such later date as agreed in writing by the Special Purpose Liquidators:
      - (A) providing any documents or information previously prepared or obtained by them in investigating or pursuing any claim in relation to any of the matters set out in the Special Purpose Liquidator's Tasks; and
      - (B) providing an image of the server, including an extract of the email and drive data, which stores and hosts the soft copy of the Company's books and records; and
    - (ii) by allowing the Special Purpose Liquidators to access and copy any of the books and records of the Company not provided to the Special Purpose Liquidator in accordance with (i) above.



- (g) the Special Purpose Liquidators shall in accordance with the requirements of the Corporations Act report to creditors of the Company initially on the terms of their appointment and subsequently during the course of their appointment; and
- (h) the Second to Fifth Defendants otherwise do all things required or authorised by the Corporations Act as liquidators of the Company.

3 Leave to apply in these proceedings to extend the purposes for which the Special Purpose Liquidators are appointed and generally.

If the application of the First and Second Applicants is successful, the Third, Fourth and Fifth Applicants seek:

- 4 An order that pursuant to section 511 of the Corporations Act that the Third, Fourth and Fifth Applicants would be justified in executing, on their own behalf as the Special Purpose Liquidators and on behalf of the Company, a funding agreement in substantially the same form as the document annexed as "SJP-1" to the confidential affidavit of Stephen Parbery (**Funding Agreement**).
- 5 Leave be granted pursuant to sections 506(1A) and 477(2B) of the Corporations Act for the Third, Fourth and Fifth Applicants to enter into the Funding Agreement on behalf of the Company.

Date: ~~5 May~~<sup>29 April</sup> 2016

.....  
 David Cowling  
 Lawyer for the Plaintiffs  
 King & Wood Mallesons

This application will be heard by the Federal Court of Australia at Commonwealth Law Courts, 119 North Quay Brisbane at .....am/pm on .....

#### **B. NOTICE TO DEFENDANT(S)**

TO: Queensland Nickel Pty Ltd (In Liquidation), c/- HWL Ebsworth Lawyers, Level 19 480 Queen Street Brisbane QLD 4000

AND TO: John Park, in his capacity as joint and several liquidator of Queensland Nickel Pty Ltd (In Liquidation) , c/- HWL Ebsworth Lawyers, Level 19 480 Queen Street Brisbane QLD 4000

AND TO: Kelly-Anne Trenfield, in her capacity as joint and several liquidator of Queensland Nickel Pty Ltd (In Liquidation) , c/- HWL Ebsworth Lawyers, Level 19 480 Queen Street Brisbane QLD 4000

AND TO: Stefan Dopking, in his capacity as joint and several liquidator of Queensland Nickel Pty Ltd (In Liquidation) , c/- HWL Ebsworth Lawyers, Level 19 480 Queen Street Brisbane QLD 4000



AND TO: Quentin Olde, in his capacity as joint and several liquidator of Queensland Nickel Pty Ltd (In Liquidation) , c/- HWL Ebsworth Lawyers, Level 19 480 Queen Street Brisbane QLD 4000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

*Note* Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

**C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY**

NOT APPLICABLE

**D. FILING**

Date of filing:

.....  
Registrar

This originating process is filed by David Cowling for the Plaintiffs.

**E. SERVICE**

The address for service is:

Lawyer: David Cowling  
King & Wood Mallesons  
Place: Level 61 Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Email: Natalie.tatasciore@au.kwm.com  
(Ref: DPC/NMT/602-0012568)

It is intended to serve a copy of this originating process on all Defendants.

The Court ordered that the time for serving this originating process be abridged to

**Schedule**

Federal Court of Australia

[QUD 283](#) of 2016

District Registry: Queensland

Division: General

IN THE MATTER OF Queensland Nickel Pty Ltd (In Liquidation)

ACN, ABN or ARBN: 009 842 068

**COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA**

Second Plaintiff

**STEPHEN PARBERY**

Third Plaintiff

**MARCUS WILLIAM AYRES**

Fourth Plaintiff

**MICHAEL ANDREW OWEN**

Fifth Plaintiff

**JOHN PARK, IN HIS CAPACITY AS JOINT AND SEVERAL LIQUIDATOR OF QUEENSLAND NICKEL PTY LTD (IN LIQUIDATION)**

Second Defendant

**KELLY-ANNE TRENFIELD, IN HER CAPACITY AS JOINT AND SEVERAL LIQUIDATOR OF QUEENSLAND NICKEL PTY LTD (IN LIQUIDATION)**

Third Defendant

**STEFAN DOPKING, IN HIS CAPACITY AS JOINT AND SEVERAL LIQUIDATOR OF QUEENSLAND NICKEL PTY LTD (IN LIQUIDATION)**

Fourth Defendant

**QUENTIN OLDE, IN HIS CAPACITY AS JOINT AND SEVERAL LIQUIDATOR OF QUEENSLAND NICKEL PTY LTD (IN LIQUIDATION)**

Fifth Defendant

**Date:** [5 May](#) ~~29 April~~ 2016



## Schedule

- 1 All dealings or transactions between the First Respondent, its directors and officers and any of:
  - (a) QNI Metals Pty Ltd ACN 066 656 175 (**QNI Metals**);
  - (b) QNI Resources Pty Ltd ACN 054 117 921 (**QNI Resources**); and/or
  - (c) the directors or officers of QNI Metals and QNI Resources,  
including but not limited to dealings or transactions arising under the Joint Venture Agreement dated 17 September 1992 (**Joint Venture Agreement**).
  
- 2 All potential claims or claims arising against:
  - (a) QNI Metals;
  - (b) QNI Resources; and/or
  - (c) the directors or officers of QNI Metals and QNI Resources,  
including but not limited to potential claims or claims arising under the Joint Venture Agreement.
  
- 3 Any potential claims or claims for insolvent trading under sections 588G and 588M of the *Corporations Act 2001 (Cth)*.
  
- 4 All dealings or transactions between the First Respondent, its directors and officers and any of:
  - (a) Palmer Aviation Pty Ltd (**Palmer Aviation**); and/or
  - (b) the directors or officers of Palmer Aviation,  
including but not limited to dealings or transactions referred to in section 6.6.4 of the report to creditors dated 11 April 2016.
  
- 5 All potential claims or claims arising against:
  - (a) Palmer Aviation; and/or
  - (b) the directors or officers of Palmer Aviation,  
including but not limited to dealings or transactions referred to in section 6.6.4 of the report to creditors dated 11 April 2016.