

# SUPREME COURT OF QUEENSLAND

CITATION: *Parbery & Anor v QNI Metals Pty Ltd & Ors* [2018] QSC 83

PARTIES: **STEPHEN JAMES PARBERY AND MICHAEL ANDREW OWEN IN THEIR CAPACITIES AS LIQUIDATORS OF QUEENSLAND NICKEL PTY LTD (IN LIQ)**

ACN 009 842 068  
(first plaintiff)

**QUEENSLAND NICKEL PTY LTD (IN LIQ)**

ACN 009 842 068  
(second plaintiff)

**JOHN RICHARD PARK, KELLY-ANNE LAVINA TRENFIELD & QUENTIN JAMES OLDE AS LIQUIDATORS OF QUEENSLAND NICKEL PTY LTD (IN LIQUIDATION)**

ACN 009 842 068  
(third plaintiff)

**v**

**QNI METALS PTY LTD**

ACN 066 656 175  
(first defendant)

**QNI RESOURCES PTY LTD**

ACN 054 117 921  
(second defendant)

**QUEENSLAND NICKEL SALES PTY LTD**

ACN 009 872 566  
(third defendant)

**CLIVE FREDERICK PALMER**

(fourth defendant)

**CLIVE THEODORE MENSINK**

(fifth defendant)

**IAN MAURICE FERGUSON**

(sixth defendant)

**MINERALOGY PTY LTD**

ACN 010 582 680  
(seventh defendant)

**PALMER LEISURE AUSTRALIA PTY LTD**

ACN 152 386 617  
(eighth defendant)

**PALMER LEISURE COOLUM PTY LTD**

ACN 146 828 122  
(ninth defendant)

**FAIRWAY COAL PTY LTD**

ACN 127 220 642  
(tenth defendant)

**CART PROVIDER PTY LTD**

ACN 119 455 837  
(eleventh defendant)

**COEUR DE LION INVESTMENTS PTY LTD**

ACN 006 334 872  
(twelfth defendant)

**COEUR DE LION HOLDINGS PTY LTD**

ACN 003 209 934  
(thirteenth defendant)

**CLOSERIDGE PTY LTD**

ACN 010 560 157  
(fourteenth defendant)

**WARATAH COAL PTY LTD**

ACN 114 165 669  
(fifteenth defendant)

**CHINA FIRST PTY LTD**

ACN 135 588 411  
(sixteenth defendant)

**COLD MOUNTAIN STUD PTY LTD**

ACN 119 455 248  
(seventeenth defendant)

**EVGENIA BEDNOVA**

(eighteenth defendant)

**ALEXANDER GUEORGUIEV SOKOLOV**

(nineteenth defendant)

**ZHENGHONG ZHANG**

(twentieth defendant)

**SCI LE COEUR DE L'OCEAN**

(twenty-first defendant)

**DOMENIC MARTINO**

(twenty-second defendant)

FILE NO/S: SC No 6593 of 2017  
DIVISION: Trial Division  
PROCEEDING: Miscellaneous Application – Civil  
DELIVERED ON: 26 April 2018  
DELIVERED AT: Brisbane  
HEARING DATE: 18 April 2018  
JUDGE: Bond J  
ORDER: **The orders of the Court are:**

**1. In this order the terms used have the meanings**

**identified in the glossary which is schedule 1 to the order made in the consolidated proceeding on 19 April 2018.**

- 2. Subject to any further order of the Court, and on the condition that the QN parties are to be represented by the same counsel (at any one time) at all future steps in the consolidated proceeding, Queensland Nickel has leave to be represented by two solicitors on the record being the solicitors presently on the record for the General Purpose Liquidators and the Special Purpose Liquidators.**

**CATCHWORDS:** PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PARTIES AND REPRESENTATION – LEGAL REPRESENTATION – GENERALLY – where there are two sets of liquidators appointed to a company being wound up in insolvency – where each set of liquidators has a separate solicitors’ firm on the record – whether the company should have leave to be represented by two solicitors on the record, being the two solicitors on the record for each set of liquidators

*Canberra Residential Developments Pty Ltd v Brendas*  
[2010] FCAFC 125, applied

*Cart Provider Pty Ltd v Park* [2016] QSC 277, cited  
*Johnson Tiles Pty Ltd v Esso Australia Ltd* [1999] FCA 56, applied

*Re Queensland Nickel (in liq)* [2017] QSC 258, cited  
*QGC Pty Limited v Bygrave* [2010] FCA 659, cited

**COUNSEL:** T Sullivan QC for the first and second plaintiffs and Mr Ayres (defendant added by counterclaim)

G Gibson QC, with C Curtis, for the second and third plaintiffs and Mr Dopking (defendant added by counterclaim)

D O’Sullivan QC, with T March, for the first to third defendants and seventh to seventeenth defendants

The fourth defendant appeared on his own behalf

S Iskander (*sol*) of Alexander Law for the fifth defendant

E Robinson for the sixth, eighteenth and nineteenth defendants

**SOLICITORS:** King & Wood Mallesons for the first and second plaintiffs

HWL Ebsworth for the second and third plaintiffs

Alexander Law for the first to third defendants, fifth defendant and seventh to seventeenth defendants

The fourth defendant appeared on his own behalf

Hassler Law for the sixth and nineteenth defendant

Robinson Neilson for the eighteenth defendant

- [1] **Bond J:** Queensland Nickel Pty Ltd is a company being wound up in insolvency. It has two sets of liquidators appointed to it. First, general purpose liquidators, being the persons who had been its administrators and who became its liquidators when it became subject to a creditors' voluntary winding up. Second, special purpose liquidators, being the persons appointed as such by order of the Federal Court. In *Re Queensland Nickel (in liq)* [2017] QSC 258 at [8] to [18] I explained the relevant course of events including how the winding up was converted from a creditors' voluntary winding up to a winding up in insolvency.
- [2] In that judgment I dealt with an application for consolidation and ancillary orders in relation to a number of proceedings being managed by me on the Commercial List. The protagonists to the application were, on the one hand, Queensland Nickel and its two sets of liquidators, and, on the other hand, various corporations and natural persons who were defendants to proceedings commenced by Queensland Nickel and its two sets of liquidators.
- [3] Queensland Nickel, its general purpose liquidators and its special purpose liquidators had all opposed consolidation. I was critical of what I then saw as the failure by the general purpose liquidators and special purpose liquidators to engage constructively with the obvious problem created by the existence of multiple proceedings involving overlapping issues against various combinations of the same cohort of defendants. I thought that, subject to two potential qualifications, it was appropriate that a consolidation order be made and that it be made as soon as possible.
- [4] I expressed the two qualifications in this way:
- [143] The potential qualification to which I have referred arises from these two issues:
- (a) the existing regime of division of responsibility as between the special purpose liquidators and general purpose liquidators may be interfered with by a consolidation order; and
  - (b) the fact that the Commonwealth has given [an undertaking in an application for a Mareva order which was expressed in a way which referred to one only of the proceedings which would be consolidated].
- [144] The answer to the former issue is, I think, to note that the allocation of responsibility is not immutable and can be changed by Court order. Indeed, that is contemplated by the terms of the order of Dowsett J. If consolidation forces the two sets of liquidators to re-assess how, consistently with their duty, the allocation of responsibility should be altered, then so be it. A problem which may at some stage have to be grappled with is the general rule that co-plaintiffs should generally be jointly represented by one set of solicitors and counsel: see *Cart Provider Pty Ltd v Park* [2016] QSC 277. If the issues which need to be explored in any reassessment of the regime created by the order of Dowsett J are such that they should not be explored before the judge who may be the trial judge, then arrangements can be made for directions to be obtained from another judge, including with appropriate confidentiality orders. It would be preferable for all this to be done before any consolidation order is made and in the light of a proper appreciation of how the issues which exist between the parties may best be resolved.
- [145] The latter issue is more difficult. Making a consolidation order now might obfuscate the operation of the undertaking in the period during which my decision on the *Mareva* application is reserved. That could operate to the disadvantage of any party which might need to take advantage of the undertaking. No doubt the undertaking could be altered and replaced with one which adverted to the consolidated proceeding in some way. But I do not presently know whether the Commonwealth would be willing to do that. It might also be possible that imposing a consolidation in advance of some form of alteration of the undertaking could adversely affect the Commonwealth. Whilst it might be that, if necessary, the Commonwealth could seek relief from the undertaking (cf *Alford v Ebbage* [2003] 1 Qd R 343), it would be preferable to avoid that risk. Again, it would be preferable that a resolution on these matters occur before any consolidation order is made and in the light of a proper appreciation of how the issues which exist between the parties may best be resolved.

- [5] I made orders which reflected what I then described as a hybrid and somewhat unsatisfactory course. In effect, my orders created a faux consolidation by requiring the filing and service of a consolidated statement of claim and a consolidated defence and counterclaim in respect of claims which were made in four separate but related proceedings but nevertheless preserving the separate status of those four proceedings, at least for a time. I postponed for consideration at a directions hearing to take place after the consolidated pleadings had been delivered, the question of the proper manner of disposition of the four separate proceedings, including:
- (a) whether there should be a consolidation order;
  - (b) whether any separate questions could be identified for separate resolution, and if not, when and in what manner the requisite trials should occur;
  - (c) how, if the regime of two sets of liquidators continued, the question of who should be permitted to speak for Queensland Nickel was to be resolved.
- [6] The directions hearing to which I referred took place on 18 April 2018.
- [7] By that time –
- (a) the special purpose liquidators, Queensland Nickel and the general purpose liquidators (who I will refer to, collectively, as “the QN parties”) had filed and served a consolidated statement of claim in which –
    - (i) they were identified as the first, second and third plaintiffs respectively; and
    - (ii) the persons who had been the defendants to the four separate proceedings were identified as the first to the twenty-second defendants; and
  - (b) twenty out of the twenty-two defendants had co-operated to the extent that they had engaged one solicitors’ firm to file and serve one consolidated defence and counterclaim, in which, amongst other things, they advanced the contention that two of their number were entitled to recover loss and damage from Queensland Nickel, the general purpose liquidators and/or the special purpose liquidators in an amount in excess of \$1.8 billion.
- [8] Further, the attitude of the QN parties to consolidation had changed. They no longer opposed the making of a consolidation order. And as to the matters which were the subject of the qualifications to which I have earlier adverted, they proposed –
- (a) that the issue of representation in the consolidated proceeding would be dealt with in this way:
    - (i) the general purpose liquidators and the special purpose liquidators would continue to have as their respective solicitors on the record the separate solicitors’ firms who had been acting for them since the commencement;
    - (ii) Queensland Nickel would be given leave, as a procedural matter, to have both of those firms as its solicitors on the record (although they would nominate a common address for service);
    - (iii) the same group of counsel would be instructed jointly by the two sets of solicitors on behalf of Queensland Nickel and separately by the respective solicitors on the record for the general purpose liquidators and the special purpose liquidators; and
    - (iv) the QN parties would be represented by the same counsel (at any one time) at all future steps in the consolidated proceeding; and

- (b) that the issue of the undertaking which had been offered in the *Mareva* application would be dealt with by an order which would, in effect, continue the Commonwealth's existing undertaking but as an undertaking in the proposed consolidated proceeding.
- [9] At the directions hearing I indicated that I would make the consolidation order. Senior Counsel confirmed the Commonwealth in fact offered the undertaking the terms of which would be recorded in the order I made. No defendant raised any concerns with that proposal. Accordingly I indicated that I would make the order proposed in relation to the undertaking. Orders were formalized on 19 April 2018 and are reproduced as appendix A to these reasons.
- [10] The principal contested issue at the directions hearing was whether I should make orders granting the leave sought in relation to the representation of Queensland Nickel. As to this, I observe:
- (a) With one exception, no defendant sought to alter the existing regime in which Queensland Nickel had two sets of liquidators.
  - (b) The exception was the fourth defendant, Mr Palmer. Mr Palmer represented himself at the directions hearing. He had filed an application returnable on the day of the directions hearing in which he sought an order removing the special purpose liquidators. Senior Counsel appeared on behalf of the special purpose liquidators to oppose the order. However Mr Palmer had mistakenly thought he would not have to argue his application on that day and advised me that he contemplated he would need further evidence before he proceeded. I granted the adjournment which he sought but required him to pay costs assessed on the indemnity basis.
  - (c) The result was that the issue in contest was argued against the background of the continuation of the status quo in relation to the existence of two sets of liquidators appointed to Queensland Nickel.
  - (d) I received written and oral submissions from Senior Counsel for the QN parties in support of their proposal. Senior Counsel for the corporate defendants made oral submissions opposing the proposed course, which were adopted by all other defendants represented before me.
  - (e) At their request I permitted the corporate defendants and Mr Palmer time to deliver further written submissions on the question if they were so advised. A timetable to that effect was incorporated in the orders made on 19 April 2018: see order 4 of appendix A.
- [11] No further submissions have been received. Accordingly, it is now appropriate to rule upon the application made by the QN parties.
- [12] There was no controversy as to the relevant principles.
- [13] In *Cart Provider Pty Ltd v Park* [2016] QSC 277, I addressed a submission that a group of co-applicants all be represented by the same solicitors and counsel. I observed as follows:
- [18] There is a rule of practice that co-plaintiffs be jointly represented by solicitor and counsel, unless the Court orders otherwise: see *MDA National Ltd v Medical Defence Australia Ltd* [2014] FCA 954 per Yates J commencing at [55]. His Honour examined a long line of authorities which justified the proposition on which the respondents rely.
  - [19] The matter was put rather more strongly by Norris J in *Goold and Porter Pty Ltd v Housing Commission* [1974] VR 102, which is one of the cases to which Yates J referred. Norris J observed (citations omitted):

There seems to be a long line of authority to the effect that plaintiffs, where there is more than one plaintiff in an action, must appear by the same counsel. The cases seem very largely to be equity cases, but the matter is stated categorically in the authorities ...

In *Lewis v Daily Telegraph* there is a dictum of Russell, LJ, which does indicate his Lordship's view that where there are a number of plaintiffs in an action, whether that action is a consolidated action or not, there is a discretion to allow separate representation to the plaintiffs. But that appears, on a review of the authorities by counsel, to be the only reference to the possibility in an action of this kind, which is not a consolidated action, of plaintiffs appearing by separate counsel. The condition of the plaintiffs so doing is stated to be to avoid injustice, and his Lordship indicates that it must be rare.

- [20] I note that *Lewis v Daily Telegraph (No 2)* was cited with approval by Master Weld in *Blatch v Australian Solar Information Pty Ltd* (unreported, No. 59 of 1986, 25 July 1986).
- [21] The observation of Russell LJ, to which Norris J referred, was his Lordship's statement that:
- Prima facie, co-plaintiffs, whether in one original action or in an action consisting of consolidated actions, must be jointly represented by solicitor and counsel. In a proper case, an order may be made authorising severance in point of representation, but this must be, I think, rare, and should only be done to avoid injustice.
- [14] The QN parties submitted that the present case was a case in which it was appropriate that I exercise the discretion in favour of their proposal. They had evidently modelled that proposal on the exemplar of *Johnson Tiles Pty Ltd v Esso Australia Ltd* [1999] FCA 56. In that case, Merkel J permitted a party to have two solicitors on the record in the context of a consolidation of two class action proceedings, reasoning:
- [70] ... Although in the usual course the Rules provide for only one solicitor to appear on the record (see O4 r 4(1)(c)), I am satisfied that there is no reason why two solicitors cannot be solicitors on the record in a proceeding if that course is warranted. Whilst separate representation at trial should not be permitted where there are co-plaintiffs (see *Lewis v Daily Telegraph Ltd (No 2)* (1964) 2 QB 601 at 612) having two solicitors on the record in the present case will not have that result as there is agreement that they are to jointly engage one set of counsel to represent all applicants and group members. In these circumstances, the consequence of both solicitors appearing on the record as a result of consolidation is not a factor which warrants refusing to order consolidation of the two proceedings. If, in the future, a question arises as to separate representation by reason of the fact that there are two solicitors on the record then that question will be able to be resolved by the Court in a manner which avoids injustice or unfairness to Esso or the represented persons. At the present time the fact that such a problem may theoretically arise is not sufficient reason to refuse the application for consolidation.
- [71] Senior counsel for Esso submitted that if I made an order for consolidation there should only be one address for service. I accept that that should be so and propose to direct that the two solicitors nominate one address for service.
- [15] For the reasons which follow, I form the view that the proposal advanced by the QN parties should be adopted to avoid injustice in the particular circumstances of the present case.
- [16] **First**, each of the QN parties will continue to be involved in the consolidated proceeding as each of them is a defendant to a \$1.8 billion counterclaim advanced in the consolidated defence and counterclaim. In principle, they should be entitled to have the solicitors of their choice assist them in their defence of the counterclaim. I would infer by their conduct to date that the solicitors the subject of the proposal are their respective solicitors of choice. Given the obvious relationship between the issues advanced in the consolidated statement of claim, and the issues advanced in the counterclaim, it would be inappropriate to exclude the solicitors respectively chosen by the special purpose liquidators and the general purpose liquidators from involvement in advancing Queensland Nickel's case. And, if they were to be so involved, there are good reasons of public policy to impose on them the accountability of being solicitors on the record: cf *QGC Pty Limited v Bygrave* [2010] FCA 659 per Reeves J at [52] to [57].

- [17] **Second**, each of the solicitors' firms has already had extensive involvement in the proceedings which have been consolidated. That much is clear to me from my involvement in the management of the relevant proceedings on the Commercial List. The QN parties submitted, and I am prepared to infer, that if one firm was not to continue, that would inevitably necessitate wasted time and costs. The avoidance of such waste favours acceptance of the proposal. A countervailing consideration is that there is potential for unreasonable expenditure of resources on the QN parties' side of the record, at the least in terms of unreasonable double handling. My approval of the proposal should not be taken as an authorization of unreasonable expenditure of resources. As to that I make these observations. First, to some extent a risk of double handling is a natural consequence of the regime created by the appointment of special purpose liquidators in the first place. No one presently seeks to persuade me that there are good grounds to change the status quo, despite the observations I made in *Re Queensland Nickel (in liq)* at [144] quoted above. (As I have already mentioned, Mr Palmer did not seek to pursue his application at this time.) Second, the choices which liquidators make in relation to the performance of their office must be consistent with their duties. Sanctions may attend demonstrated breach of duty: see Part 2 Registering and Disciplining Practitioners of Schedule 2 Insolvency Practice Schedule (Corporations) of the *Corporations Act 2001* (Cth). Moreover, there are procedural avenues under that schedule which permit scrutinization of fees and expenses incurred by liquidators and of the remuneration which they claim: see Divisions 60 and 90 of Schedule 2. Third, if any of the defendants is ever made the subject of a costs order in favour of the QN parties, the costs assessment processes provided under the UCPR provide avenues for similar scrutiny.
- [18] **Third**, in light of the proposal for only one group of counsel to be briefed and to appear at any one time, the conduct of the trial (or indeed of any step in the consolidated proceeding) can be managed to ensure no prejudice to the defendants. Although there would likely be a division of tasks between counsel such that particular counsel might have carriage of different parts of the proceeding, necessitating different counsel to speak on different issues, that is not uncommon in large and complex proceedings such as the present. As was observed in *Canberra Residential Developments Pty Ltd v Brendas* [2010] FCAFC 125 per Finkelstein, Siopis and Katzmann JJ at [45]:
- ... A common feature of modern commercial litigation is for counsel on one side of the record to split their trial preparation on a topic by topic basis. The conduct of the trial often follows this split with the judge permitting both cross-examination and submissions to be divided so that counsel can deal with his/her assigned topic: see for eg *Eva Pty Ltd v Charles Davis Ltd* [1982] VR 515. This can be an extremely efficient way in which to conduct complex litigation. All the judge need do in such circumstances is ensure there is no unfairness to the witness: *GPI Leisure Corp Ltd v Herdsman Investments Pty Ltd (No 3)* (1990) 20 NSWLR 15 at 22-23.
- [19] It is possible that circumstances may change in a way which requires reconsideration of the representation issue. Thus if Mr Palmer prosecutes to success his adjourned application for removal of the special purpose liquidators as liquidators of Queensland Nickel, it may be necessary to revisit the question of representation. Similarly, if any conflict ever arises between the QN parties. Any future issue can be dealt with in light of the exigencies which then apply to ensure that it is resolved in a manner which avoids injustice to the parties to the consolidated proceeding.
- [20] I order as follows:
1. In this order the terms used have the meanings identified in the glossary which is schedule 1 to the order made in the consolidated proceeding on 19 April 2018.
  2. Subject to any further order of the Court, and on the condition that the QN parties are to be represented by the same counsel (at any one time) at all future steps in the



consolidated proceeding, Queensland Nickel has leave to be represented by two solicitors on the record being the solicitors presently on the record for the General Purpose Liquidators and the Special Purpose Liquidators.

**Appendix A****ORDER**

Before: Justice Bond  
Date: 19 April 2018  
Originating documents: Order of 9 November 2017

**THE COURT ORDERS THAT:**

1. In this order the terms used have the meanings identified in the glossary which is schedule 1 to this order.
2. Pursuant to rule 78 of the *Uniform Civil Procedure Rules 1999* (“UCPR”), the following proceedings are to be consolidated:
  - (a) the SPL proceeding;
  - (b) the Mineralogy proceeding;
  - (c) the Voidable transactions proceeding; and
  - (d) the Martino (s. 418A) proceeding.
3. Further –
  - (a) The consolidated proceeding is to be placed on the Commercial List and case managed by Bond J.
  - (b) The consolidated statement of claim filed in the SPL proceeding on 19 December 2017 (“the consolidated statement of claim”) is to stand as the statement of claim in the consolidated proceeding.
  - (c) The defence and counterclaim to the consolidated statement of claim filed in the SPL proceeding on 12 April 2018 (“the consolidated defence and counterclaim”) is to stand as the defence and counterclaim in the consolidated proceeding by the parties that filed it.
  - (d) After the date of this order the court file number for the SPL proceeding will stand as the court file number for the consolidated proceeding and documents filed in the consolidated proceeding are to be filed on that court file using that court file number but otherwise using the court heading adopted in the consolidated statement of claim.
  - (e) The plaintiffs in the consolidated proceeding have leave to file a claim in the consolidated proceeding claiming the relief set out in paragraphs 502 to 525 of the consolidated statement of claim.
4. In the consolidated proceeding, the following directions are made in relation to the application by the QN parties for a direction that Queensland Nickel have leave to be represented by two solicitors on the record being the solicitors for the General Purpose Liquidators and the Special Purpose Liquidators, subject to the condition that the QN parties are to be represented by the same counsel (at any one time) at all future steps in the consolidated proceeding:
  - (a) on or before 4:00pm on 20 April 2018 the Corporate Defendants and Mr Palmer respectively deliver such further written submissions as they are advised to deliver to supplement the oral submissions made by them on 18 April 2018 in response to the application;
  - (b) on or before 4:00pm on 24 April 2018, the QN parties deliver any further written submission in reply;
  - (c) pending the determination of the application, Queensland Nickel have the leave sought, conditioned as proposed.

5. Until otherwise ordered by the Court, the undertaking to the Court given by the Commonwealth of Australia on 22 August 2017 and 2 March 2018, continues in the consolidated proceeding in respect of those claims made by the Special Purpose Liquidators and Queensland Nickel in proceeding BS6593/17 which had been made by the Special Purpose Liquidators and Queensland Nickel in proceeding BS6593/17, but does not extend to any order for costs that may be made against:
  - (a) any of John Park, Stefan Dopking, Kelly-Anne Trenfield and Quentin Olde in their capacity as joint and several liquidators of Queensland Nickel; or
  - (b) Queensland Nickel,
 in respect of any claims which had been made by the GPLs on Queensland Nickel's behalf or in their capacities as joint and several liquidators of Queensland Nickel in the other proceedings which are being consolidated with proceeding BS6593/17 by these orders.
6. In relation to the application by Mr Palmer filed 12 April 2018:
  - (a) as to the affidavit of Mr Palmer sworn 17 April 2018:
    - (i) paragraph 46 be struck out;
    - (ii) the affidavit be removed from the court file and by 4:00pm on 20 April 2018 Mr Palmer is to file a copy of the affidavit with paragraph 46 covered up so that it cannot be read;
  - (b) the application be adjourned to 27 August 2018 for a 3 day hearing before Bond J;
  - (c) Mr Palmer pay the SPLs costs of and incidental to the application up to and including 18 April 2018, to be assessed on the indemnity basis;
  - (d) any further affidavit or affidavits to be relied upon by Mr Palmer on the hearing of the application be served on the solicitors for the respondents by 4:00pm on 14 July 2018;
  - (e) that affidavit material not be filed in court:
    - (i) for 14 days after the date of service on the solicitors for the Special Purpose Liquidators; and
    - (ii) if within that 14 day period, the solicitors for the Special Purpose Liquidators object to any of the content of the affidavit or affidavits and within a further 3 business days the Special Purpose Liquidators file an application to the Court seeking an order preventing the filing of that affidavit or affidavits, then until that application is heard and determined;
  - (f) any submissions to be relied upon by Mr Palmer on the hearing of the application are to be served but not filed.
7. In relation to the application by Mr Palmer filed 17 April 2018:
  - (a) the application be withdrawn; and
  - (b) Mr Palmer pay the Special Purpose Liquidators' costs of the application to be assessed on the standard basis.
8. The Cessna proceeding and the Palmer Cessna proceeding be removed from the Commercial List and placed on the Civil List.
9. The parties have liberty to apply in relation to the form of this order within 2 business days of the date of the order.
10. The parties' costs of this review be their costs in the respective proceedings.

#### THE COURT DIRECTS THAT:

11. No party is to seek any direction or order unless they have, at least 24 hours prior to the hearing at which the direction or order is sought, circulated to the other parties and the court (by email to the Associate to Bond J) a draft of the orders or directions sought together with written submissions regarding the making of those orders.
12. Steps be taken in the consolidated proceeding (and directions be made and hearing dates be set or

confirmed) as identified in the schedule 2 to this order.

**Schedule 1**  
**Glossary of terms**

<b>Proceeding</b>	
“consolidated proceeding”	The proceeding created by the consolidation of the proceedings BS6593/17, BS3202/17, BS6847/16 & BS4702/17.
"Glencore interpleader proceeding"	Supreme Court of Queensland proceeding BS6216/16
"Queensland Nickel declarations	Supreme Court of Queensland proceeding BS3849/16
"Voidable transactions proceeding"	Supreme Court of Queensland proceeding BS6847/16
"Cessna proceeding"	Supreme Court of Queensland proceeding BS7189/16
"Palmer Cessna	Supreme Court of Queensland proceeding BS7778/16
"Mineralogy	Supreme Court of Queensland proceeding BS3202/17
"Martino (s.418A)	Supreme Court of Queensland proceeding BS4720/17
“Call Notice Proceeding	Supreme Court of Queensland proceeding BS9757/17
"Report required by controller (s.430) proceeding"	Supreme Court of Queensland proceeding BS4902/17
“SPL proceeding”	Supreme Court of Queensland proceeding BS6593/17
<b>Groups of Parties</b>	
"Joint Venture parties"	QNI Resources Pty Ltd & QNI Metals Pty Ltd
"Palmer parties"	QNI Resources Pty Ltd, QNI Metals Pty Ltd, Queensland Nickel Sales Pty Ltd, China First Pty Ltd, Waratah Coal Pty Ltd, Cart Provider Pty Ltd, Mineralogy Pty Ltd, Mr Domenic Martino and Mr Clive Palmer
"General Purpose Liquidators" or “GPLs”	Mr John Park, Ms Kelly-Anne Trenfield and Mr Quentin Olde in their capacity as liquidators of Queensland Nickel Pty Ltd (in liq)
"Special Purpose Liquidators" or “SPLs”	Mr Steven Parbery and Mr Michael Owen in their capacity as special purpose liquidators of Queensland Nickel Pty Ltd (in liq)
“Defendants by Counterclaim”	Mr Stefan Dopking & Mr Marcus Ayres
“QN parties”	Queensland Nickel; the GPLs and the SPLs

Corporate Defendants	All the corporate defendants identified in the consolidated statement of claim other than the 21 <sup>st</sup> defendant, Sci le Coeur de l'Ocean.
<b>Individual parties</b>	
"Queensland Nickel"	Queensland Nickel Pty Ltd (in liq) ACN 009 842 068
"QNI Resources"	QNI Resources Pty Ltd ACN 054 117 921
"QNI Metals"	QNI Metals Pty Ltd ACN 066 656 175
"Queensland Nickel"	Queensland Nickel Sales Pty Ltd ACN 009 872 566
"China First"	China First Pty Ltd ACN 135 588 411
"Waratah Coal"	Waratah Coal Pty Ltd ACN 114 165 669
"Cart Provider"	Cart Provider Pty Ltd ACN 119 455 837
"Mineralogy"	Mineralogy Pty Ltd ACN 010 502 680

**Schedule 2**  
**Case management timetable as at 18 April 2018**

<u>Item</u>	<u>Date</u>	<u>Step or direction</u>	<u>Party responsible</u>
<b><u>Pleadings</u></b>			
1	By 4pm on 25 May 2018	<p>The defendants must write to the QN parties–</p> <p>a) advising whether they intend to advance an application for strike out, stay or summary judgment in relation to all or any part of the QN parties' claim or consolidated statement of claim; and</p> <p>b) identifying –</p> <ul style="list-style-type: none"> <li>• their complaint;</li> <li>• a brief statement of the relevant facts; and</li> <li>• the relief which they intend seeking and the reasons therefor.</li> </ul>	The defendants
2	By 4pm on 25 May 2018	<p>The QN parties must –</p> <p>a) file and serve their reply and answer in respect of the consolidated defence and counterclaim;</p> <p>b) write to the defendants–</p> <p>i) advising whether they intend to advance an application for strike out, stay or summary judgment in relation to all or any part of the consolidated defence and counterclaim; and</p> <p>ii) identifying –</p> <ul style="list-style-type: none"> <li>• their complaint;</li> <li>• a brief statement of the relevant facts; and</li> </ul>	QN Parties

<b><u>Item</u></b>	<b><u>Date</u></b>	<b><u>Step or direction</u></b>	<b><u>Party responsible</u></b>
		<ul style="list-style-type: none"> <li>the relief which they intend seeking and the reasons therefor.</li> </ul>	
3	By 4:00pm on 22 June 2018	<p>The defendants must –</p> <ol style="list-style-type: none"> <li>file and serve any necessary responsive pleading to the pleading filed by the QN parties in response to direction [2]; and</li> <li>write to the QN parties–               <ol style="list-style-type: none"> <li>advising whether they intend to advance an application for strike out, stay or summary judgment in relation to all or any part of that pleading; and</li> <li>identifying –                   <ul style="list-style-type: none"> <li>their complaint;</li> <li>a brief statement of the relevant facts; and</li> <li>the relief which they intend seeking and the reasons therefor.</li> </ul> </li> </ol> </li> </ol>	The defendants
4	By 4:00pm on 29 June 2018	<p>Any party who wishes to bring an application for strike out, stay or summary judgment in relation to all or any part of another party's claim or pleading must file and serve the application and any evidence in support of the application.</p> <p>Unless the Court otherwise directs, the application must be limited to the grounds identified by the written notice sent in compliance with directions [1], [2] and [3] above.</p>	All parties
<b><u>Disclosure</u></b>			
5	By 4:00pm on 25 May 2018	<p>The QN parties must provide the defendants with:</p> <ol style="list-style-type: none"> <li>a proposed list of categories of documents that they are seeking disclosure of from each of the defendants and by which they propose to disclose documents to the defendants;</li> <li>a proposed document plan to address the management of documents at all stages in the proceeding; and</li> <li>a proposed document management protocol which ensures that litigants describe and exchange documents consistently to improve searchability and retrieval and to minimize information management which includes potential technology assisted review (TAR)</li> </ol>	QN Parties

<b><u>Item</u></b>	<b><u>Date</u></b>	<b><u>Step or direction</u></b>	<b><u>Party responsible</u></b>
		protocols.	
6	By 4:00pm on 22 June 2018	<p>The defendants must:</p> <ul style="list-style-type: none"> <li>a) provide comments on the list of categories of documents proposed by the QN parties, and propose any additional categories;</li> <li>b) provide comments on the document plan to address the management of documents at all stages in the proceeding; and</li> <li>c) provide comments on the document management protocol.</li> </ul>	The defendants
7	By 4:00pm on 29 June 2018	<p>The parties are to meet to agree on:</p> <ul style="list-style-type: none"> <li>a) the list of categories of documents to be disclosed;</li> <li>b) the document plan; and</li> <li>c) the document management protocol,</li> </ul> <p>and, in the event that agreement is reached, the parties will sufficiently comply with their duty of disclosure in this proceeding by making disclosure in compliance with the agreement and any subsequent directions made by the Court.</p>	All parties
8	By 4:00pm on 6 July 2018	<p>The parties must either –</p> <ul style="list-style-type: none"> <li>a) notify the Court of the terms of a proposed consent order recording the terms of their agreement reached consequent upon compliance with direction [7] and providing that the parties will sufficiently comply with their duty of disclosure in this proceeding by making disclosure in compliance with those terms ; or</li> <li>b) file an application seeking orders in respect of the disputed aspects of the categories of documents, document plan or document management protocol.</li> </ul>	All parties
<b><u>Separate questions or trial dates</u></b>			
9	By 4:00pm on 13 July 2018	<p>The parties are to meet with each other to discuss -</p> <ul style="list-style-type: none"> <li>a) the directions which should be made in order to order to permit the Court to determine the issues which arise on such applications as are filed in compliance with directions [4] and [8] above;</li> <li>b) whether there are any issues of fact or law that are appropriate for separate and preliminary</li> </ul>	All parties

<b><u>Item</u></b>	<b><u>Date</u></b>	<b><u>Step or direction</u></b>	<b><u>Party responsible</u></b>
		determination; and c) whether the proceeding should be set down for trial for a period commencing in mid-February 2019 (or some subsequent fixed trial date) and, if so, for how long.	
10	By 4:00pm on 20 July 2018	The parties are to submit a joint report to the Court identifying the parties' respective positions about the matters referred to in the previous direction.	All parties
<b><u>Further directions</u></b>			
11	By 4:00pm on 2 May 2018	The Palmer parties must file any application for leave to proceed pursuant to s 471B of the Corporations Act 2001.	
12	On a date to be fixed in the week commencing 23 July 2018.	The consolidated proceeding and the Glencore Interpleader proceeding be listed for further review to consider amongst other things the orders or direction which should be made in relation to the matters dealt with in the joint report filed in compliance with direction [10].	