

**X & ORS v AUSTRALIAN PRUDENTIAL REGULATORY AUTHORITY & ANOR (S284/2006)**

Court appealed from: Full Court of the Federal Court of Australia

Date of judgment: 22 March 2006

Date of grant of special leave: 4 August 2006

Both X (1st appellant) and Y (3rd appellant) are senior managers of Z (2nd appellant), a foreign general insurer within the meaning of section 3 of the *Insurance Act 1973* (Cth) ("the Act"). Neither Appellant has ever worked for Z in Australia, nor are they Australian citizens. In 2002 both X and Y came to Australia and gave evidence before a Royal Commission into the collapse of P.

Relevantly, section 25A of the Act gives the Australian Prudential Regulation Authority ("APRA") the power to disqualify a person from acting as a senior manager or agent of a foreign general insurer. Section 24 of the Act then prevents a disqualified person from so acting.

On 18 February 2005 Mr Mark Godfrey (a senior manager of APRA and the 2nd respondent) sent both X and Y a Notice to Show Cause ("Notice"). Each Notice stated that neither Appellant was a fit or proper person and that each should be disqualified from holding a senior insurance role pursuant to section 25A of the Act. Each Notice also stated that that view was based on their involvement in, knowledge of, and responsibility for certain arrangements entered into between Z and a general insurer, P.

The Appellants commenced proceedings in the Federal Court seeking, inter alia, declarations that APRA lacked the power to disqualify them under section 25A of the Act. They also submitted that APRA's use of their evidence to the Royal Commission contravened sections 6DD or 6M of the *Royal Commissions Act 1902* (Cth) ("the RC Act"). Relevantly, section 6M of the RC Act prohibits harm or punishment being inflicted on a person as a result of them having given evidence to a Royal Commission.

On 16 September 2005 Justice Lindgren held that APRA had the power to disqualify X and Y under section 25A of the Act. This is because they had a connection with the Australian general business of a foreign general insurer in the past and there was a risk they would do so in the future. There was also a possibility that they would be, or act as, someone referred to in section 24(1)(a)-(c) of the Act. His Honour further held that APRA's use of their evidence before the Royal Commission did not contravene sections 6DD or 6M of the RC Act. Justice Lindgren held that the prohibition in the RC Act related to the act of giving evidence on a particular matter. It did not relate to the underlying facts on which evidence was given.

On 22 March 2006 the Full Federal Court (Emmett, Allsop & Graham JJ) held that there was no jurisdictional limit to the power of section 25A of the Act. In relation to the Royal Commission point, their Honours came to a conclusion similar to Justice Lindgren.

The grounds of appeal are:

- The Full Court erred in construing section 6M(b) of the RC Act, as not having the effect of preventing the First and Second Respondents from relying upon evidence given by a person to a Royal Commission, in exercising the power conferred by section 25A of the Act.
- The Full Court erred in finding that the Second Respondent's proposal to recommend to the appropriate delegate of the First Respondent that X and Y be disqualified pursuant to section 25A of the Act was not prevented by section 6M(b) of the RC Act.