

## NOTICE OF FILING

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### Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
File Number:	NSD912/2020
File Title:	CLIVE FREDERICK PALMER v MARK MCGOWAN
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Sia Lagos".

Dated: 29/03/2021 12:51:12 PM AEDT

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 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 59  
Rule 29.02(1)

## Affidavit

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

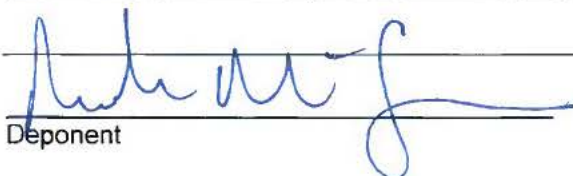
**Mark McGowan**

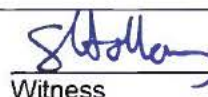
Respondent

**Affidavit of:** Mark McGowan  
**Address:** 13th Floor, Dumas House, 2 Havelock Street West Perth, WA 6005  
**Occupation:** Premier of Western Australia  
**Date:** 26 March 2021

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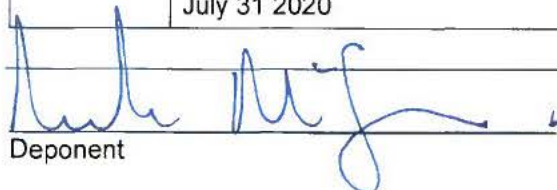
  
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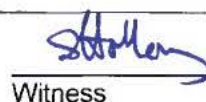
**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

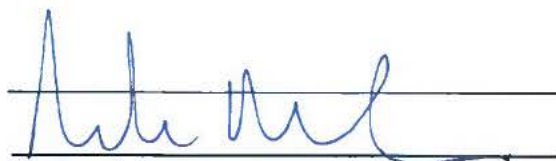


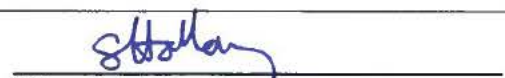
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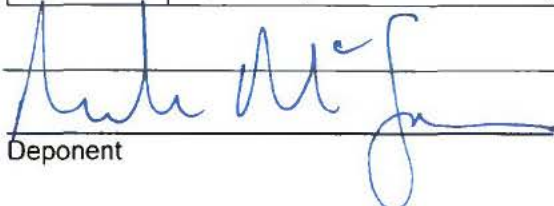
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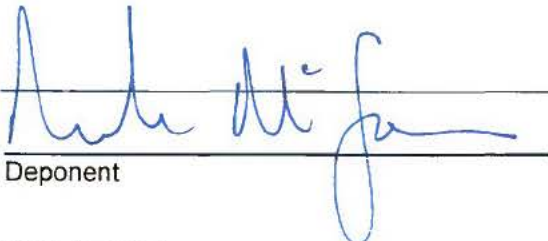


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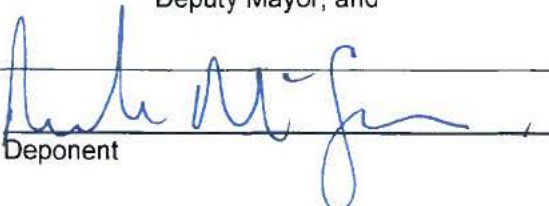
  
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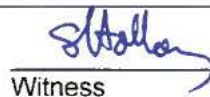
  
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I, **Mark McGowan** of 13th Floor, Dumas House, 2 Havelock Street, West Perth, Premier of Western Australia, say on oath:

1. I am the respondent in this matter, and the cross-claimant in relation to the cross-claim filed on 17 September 2020. Exhibited hereto and shown to me at the time of swearing this affidavit is a USB stick marked "Exhibit MM1", which contains certain documents described in this affidavit.
2. I am currently the Premier of Western Australia and have been Premier since 17 March 2017.
3. I am also the Treasurer of Western Australia, and have been since 19 March 2021. In addition, I currently hold the following ministerships:
  - (a) Public Sector Management; and
  - (b) Federal-State Relations.
4. I am the leader of the State Parliamentary Labor Party in Western Australia, and was elected leader in 2012.
5. I am the member for Rockingham in the Western Australian Legislative Assembly, and have been the member for Rockingham since I was elected to the Legislative Assembly in December 1996.
6. I have previously held the following ministerships in the Western Australian government:
  - (a) State Development;
  - (b) Jobs and Trade;
  - (c) Education and Training;
  - (d) Environment;
  - (e) Racing and Gaming; and
  - (f) Tourism and the South West.
7. Prior to entering State politics in Western Australia I held the following positions:
  - (a) councillor at the City of Rockingham between 1994 and my election to the Western Australian Legislative Assembly in December 1996, during which time I was appointed Deputy Mayor; and

  
Deponent

  
Witness

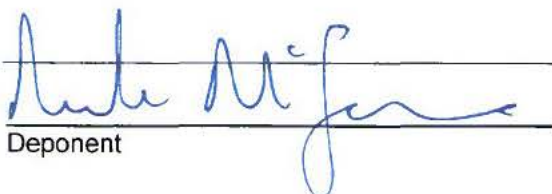
- (b) legal officer in the Royal Australian Navy between 1989 and 1994.
8. I was born on 13 July 1967, and am currently 53 years old.
  9. I grew up in regional NSW and attended the University of Queensland, where I obtained a Bachelor of Arts degree in 1987, and a Bachelor of Laws in 1989.
  10. It was while I was in the Royal Australian Navy that I moved to Western Australia, where I served as a Lieutenant at HMAS Stirling naval base, on Garden Island. I remain a standby member of the Naval Reserves.
  11. In March 1997 I was awarded a Governor General's Commendation for Brave Conduct for rescuing an unconscious driver from a burning car in 1995. A copy of this Commendation is annexed and marked "MM2".
  12. I have been married to my wife, Sarah, since 1996, and we have three children.

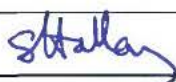
**Matters complained of by Mr Palmer**

13. Where I refer to the matters complained of by Mr Palmer, or Palmer's matters complained of, I am referring to the first to sixth matters complained of by Mr Clive Palmer in his statement of claim filed in this proceeding on 20 August 2020.

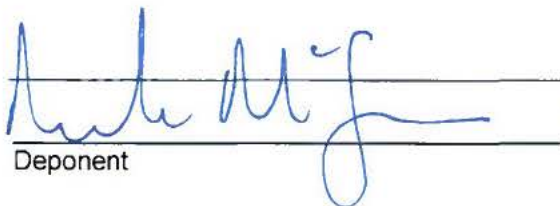
*First and second matters complained of by Mr Palmer*

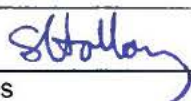
14. The first and second matters complained of are extracts of a press conference I gave on Friday 31 July 2020 at the Australian Marine Complex in Henderson, Western Australia, which was also attended by the then Minister for Defence Issues, the Honourable Paul Papalia. Mr Palmer alleges that this press conference took place on 30 July 2020, however this is incorrect. An audio recording of this press conference is contained in Exhibit MM1 and entitled "Press conference 31 July 2020".
15. The purpose of the press conference on 31 July 2020 was to announce to the Western Australian people some major infrastructure and planning projects including an upgrade of the Australian Marine Complex. This was part of the State Government's roll out of the WA Recovery Plan which is a range of stimulus measures aimed at stimulating WA's economy and jobs in light of the COVID-19 pandemic. A copy of the State Government's press-release dated 31 July 2020 is annexed and marked "MM3".

  
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16. Given that members of the media were present at the press conference, I knew that some or all of what I said could be republished, but I did not intend that only the words comprising the first and second matters complained of could be republished.
17. In the period prior to the press conference, Mr Palmer had been publishing letters and advertisements in *Western Australian* and *Australian* newspapers since about early June 2020, which were critical of me as Premier, and in particular the State's policy on borders. I had become aware of these letters and advertisements from my review of media, in particular *The West Australian* newspaper and *The Australian*. By way of example (and this is not intended to be an exhaustive list), I refer to the following:
- (a) Advertisement entitled "Open Queensland and Western Australia Now" published in *The Australian* newspaper on 3 and 4 June 2020, copies of which are annexed and marked "MM4" and "MM5";
  - (b) Advertisement entitled "Open Western Australia Now" published in *The West Australian* newspaper on 9 June 2020, a copy of which is annexed and marked "MM6";
  - (c) Advertisement entitled "Open Western Australia Now" (which is nearly identical to the advertisement referred to at paragraph 17(b) above), published in *The West Australian* newspaper on 11 June 2020, a copy of which is annexed and marked "MM7".
18. I made the statements comprising the first matter complained of in response to questions from reporters in attendance at the press conference about the proceedings commenced by Mr Palmer and Mineralogy Pty Ltd (**Mineralogy**) on 25 May 2020 in the High Court of Australia numbered B26/2020, against the State of Western Australia (**the State**) and the State Emergency Coordinator and Commissioner of WA Police, Chris Dawson, (**HCA Border Proceedings**). The HCA Border Proceedings challenged the validity of the Western Australian border closures in response to the COVID-19 pandemic, by seeking to challenge the Constitutional validity of the *Quarantine (Closing the Border) Directions* (WA) and/or the *Emergency Management Act 2005* (WA), pursuant to which the Western Australian border closures were implemented. I address the HCA Border Proceedings and the border closures in more detail at paragraphs 69 to 73 below. I recall that by the time of the press conference on 31 July 2020, the Attorney-General of the Commonwealth of Australia had filed a Notice of Intervention on 12 June 2020 supporting the position of Mr Palmer and Mineralogy, a copy of which is annexed and marked "MM8".
19. The question asked of me at the time by the reporter was in the context of discussions about the Commonwealth's intervention in the HCA Border Proceedings and was as follows:

  
Deponent

  
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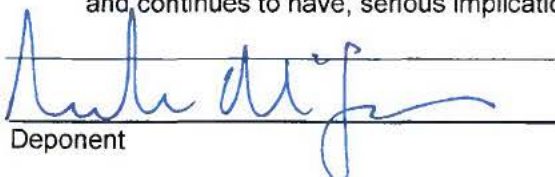


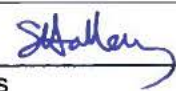
*So the politics of this. Would you say the Federal Government backed the wrong horse, i.e. Palmer, and now they are saddled with it. They've got to try and make an argument, try and sort of, keep some credibility going?*

20. My full response to this question was as follows:

*Well again, I don't want to put words into their mouths. I'll let them make their own explanations. But I just urge them to pull back, there's no need for them to be involved in the High Court action. You don't actually have to be involved, there's no rule that says you have to be involved, there's no law that says you have to be involved. Let Mr Palmer fight his own fights. Let him fight his own fights. I'm happy to have a blue with Mr Palmer. He's the enemy of West Australia. He's the enemy of the State. I think he's the enemy of Australia. But the Commonwealth doesn't have to be in it with him.*

21. My response as set out above, including the statement comprising the first matter complained of, was an urging to the Commonwealth Attorney-General not to intervene in the proceedings, particularly not in support of the plaintiffs, one of whom was Mr Palmer.
22. When I used the words, "*Let Mr Palmer fight his own fights. Let him fight his own fights*", I was referring to Mr Palmer fighting the HCA Border Proceedings without the support of the Commonwealth, and urging the Commonwealth to withdraw their involvement and support of Mr Palmer in the HCA Border Proceedings.
23. When I called Mr Palmer the "*enemy of the state*" ... "*the enemy of West Australia*" ... "*the enemy of Australia*", I was referring to Mr Palmer's role as one of the plaintiffs in the HCA Border Proceedings, which he had brought against the State in an attempt to open Western Australia to other States and Territories in Australia. As the first plaintiff in the HCA Border Proceedings which were against the State, I viewed Mr Palmer as the State's opponent, and in that way, as being an enemy of Western Australia and Australian citizens generally. Further, I strongly believed at the time, and still believe, that closing the borders of Western Australia to other Australian States and Territories to keep Western Australia as free as possible from COVID-19 was the best measure available to the WA Government to attempt to keep the State free from community transmission of COVID-19 and protect the health and safety of Western Australians. By commencing the HCA Border Proceedings and trying to bring down the borders of Western Australia, I believe that Mr Palmer was putting at risk the health and safety of Western Australian people and the Western Australian economy and therefore I considered him to be an opponent of Western Australia.
24. The COVID-19 pandemic was, and remains, an issue of the utmost importance to me and to the WA Government. The COVID-19 pandemic was a once in a hundred year health crisis which had, and continues to have, serious implications globally and in Australia including very significant

  
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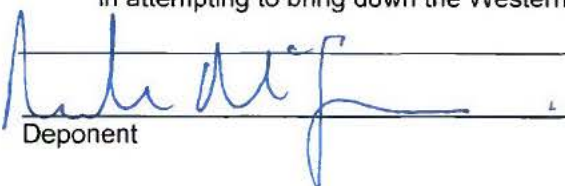


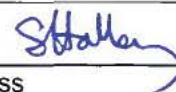
numbers of deaths and infections. At the time I made the statements, I considered (and still consider) my duty to protect the health and safety of Western Australians to be of paramount importance.

25. Further, at the time I made the statements comprising the first and second matters complained of, Victoria was in the midst of its second wave of COVID-19 and was recording hundreds of COVID-19 cases per day. Media releases dated 29, 30 and 31 July 2020 from Victoria's Department of Health and Human Services are annexed and marked "MM9", "MM10" and "MM11" respectively. I did not want Western Australia to experience a similar increase in COVID-19 infections. As a result of the situation in Victoria, I was acutely aware of my responsibility to protect Western Australians from COVID-19 and was conscious of the risks and potential consequences (both health and economic) for the State of having a COVID-19 outbreak. This solidified my belief that the border controls the subject of the HCA Border Proceedings were absolutely necessary for protecting Western Australians from COVID-19, particularly at this time, and contributed to my belief that had Mr Palmer been successful I considered the health and safety of West Australians would be put at risk.
26. At this time I was conscious that the consequence of Mr Palmer succeeding in the HCA Border Proceedings would have been that steps taken by other States and Territories of Australia to close their borders would have also been invalid, resulting in Australians from other States and Territories being at risk of COVID-19. This is why I also considered Mr Palmer to be an enemy of Australia.
27. I made the statements comprising the second matter complained of in response to the following question from a reporter at the press conference:

*Premier, Clive Palmer will publish a letter to all West Australians tomorrow calling for unity for the Nation, what's your reaction to that?*

28. I did not know about the intended publication of the letter by Mr Palmer but given the context and surrounding circumstances of the press conference, as described above, as well as the recent advertisements and letters published by Mr Palmer referred to at paragraph 17 above, I considered that the letter was likely to be a further criticism by Mr Palmer of me, the State and the State's border closures the subject of the HCA Border Proceedings. That is why I made the statement "I'd urge people to take no notice of whatever letters he might publish".
29. As to my statement "He has shown over his time that he is only focused on himself. He is not focused on the health or wellbeing of people in this state", this was a reference to Mr Palmer's attempt to bring down the borders of the State by the HCA Border Proceedings. I considered that in attempting to bring down the Western Australian borders by commencing the HCA Border

  
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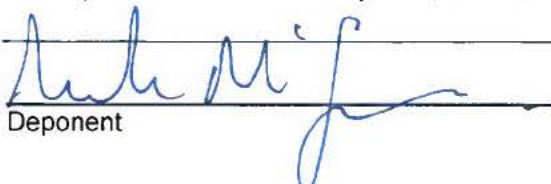
  
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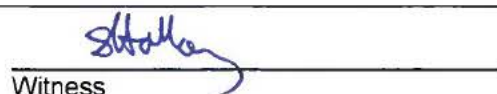
Proceedings, Mr Palmer was willing to risk the health and wellbeing of Western Australians during the COVID-19 pandemic as explained at paragraphs 23 to 25 above.

30. The next day, on Saturday 1 August 2020, an advertisement headed "A Letter to all West Australians", which was signed by Mr Palmer, was published in *The West Australian*. A copy of this letter is annexed and marked "MM12". A similar letter was also published in the *Sunday Times* on 2 August 2020, and again in *The West Australian* on 3 August 2020. Copies of these letters are annexed and marked "MM13" and "MM14".
31. As Premier of Western Australia, as at 31 July 2020, I was also aware of the two arbitral awards made in favour of Mineralogy and International Minerals Pty Ltd (IM) in 2014 and 2019 and the related arbitral proceedings in which Mineralogy and IM were seeking approximately AUD\$30 billion in damages (**Damages Claim**) against the State (**Damages Arbitration**). Although key aspects of the Damages Arbitration and the quantum of the Damages Claim were confidential and not known generally by the Western Australian public as at 31 July 2020, as Premier of Western Australia I was acutely aware of the Damages Claim given the State was a party to the Damages Arbitration and I was very concerned about the potential impact of the Damages Arbitration on Western Australia. I set out a more detailed summary of my understanding of the arbitrations under the heading "the Arbitrations and the Amending Act" commencing at paragraph 74 below.
32. I also knew at the time of giving the press conference that Mr Palmer had commenced the Damages Arbitration in which he made the Damages Claim against the State. This was an additional reason why I considered Mr Palmer to be the "*enemy of the state*"... "*the enemy of West Australia*" at the time I made the statements on 31 July 2020. The view that I held then is that by commencing the Damages Arbitration and seeking what I consider to be a huge quantum of damages which, if awarded to him, would severely and negatively impact the State and its people, made Mr Palmer, in all of the circumstances, an enemy of Western Australia. I believed that Mr Palmer was focused on obtaining a benefit for himself, while being willing to risk the financial wellbeing of Western Australians.

*Palmer's third matter complained of*

33. Subject to the explanation at paragraph 35 below, the third matter complained of is an extract of a press conference I gave on 3 August 2020 at Belmont City College. The press conference was also attended by the Minister for Education and Training, the Honourable Sue Ellery. An audio recording of this press conference is contained in Exhibit MM1 and entitled "Press conference 3 August 2020 - Part 1" and "Press conference 3 August 2020 - Part 2".
34. The purpose of the press conference was to announce to the Western Australian people that as part of the WA Recovery Plan, the State Government was investing into schools, including the

  
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building of new schools and school improvements. A copy of the media statement which related to this press conference is annexed and marked "MM15".

35.

[REDACTED]  
[REDACTED]  
[REDACTED]

36. Given that members of the media were present at the press conference, I knew that some or all of what I said could be republished, but I did not intend that only the words comprising the third matter complained of could be republished.

37.

[REDACTED] I made the statement comprising the third matter complained of in the context of the following discussions and questions from a reporter about Mr Palmer's application for an exemption to enter Western Australia:

*Reporter: His spokesperson said that it wasn't his personal responsibility to fill out the form, is that your understanding of how that system works?*

*Me: No, look if you want to come to Western Australia you put in an application and the police decide whether or not you're exempted, it's not that hard to do. Clearly he didn't do it. He didn't do it right and I think the police made the right decision.*

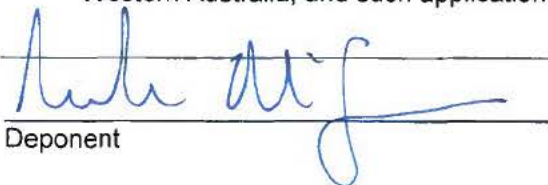
*Reporter: so the fact that his pilot filled it out in the fashion it was filled out, it was, I mean apart from being quite bizarre, would you if you were Palmer be asking the pilot if he was qualified to fly?*

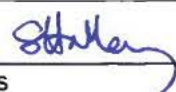
*Me: [laughs] I thought of that, I thought of that too.. yeah...*

*Reporter: it's quite a lot of paperwork to fly..*

*Me: ...if you can't, if you can't fill out a form how can you fly a jet? But in any event, Mr Palmer didn't do it properly, just to pre-empt your question Peter. Look, just so you know, he wanted to come to Western Australia to promote Hydroxychloroquine to the people of the State as some sort of cure for COVID. All the evidence is not only is it not a cure but it's actually dangerous so him coming to Western Australia to promote a dangerous drug I don't think was a good thing for our State, I'm pleased the Police rejected him.*

38. The context for the above discussion, including the matter complained of (save for the first sentence), was that Mr Palmer, his wife and some other members of his family had applied to enter Western Australia, and such applications had been rejected on or about 20 May 2020. I have read

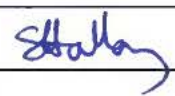
  
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the affidavit of Clive Palmer sworn on 27 January 2021 (**First Palmer Affidavit**) and refer to Annexures "CFP12" and "CFP13" of that affidavit which are the applications purportedly of Mr Palmer and his wife, albeit that they were in the name of Carlos Filingeri, whom I understand to be Mr Palmer's pilot. These are the applications for exemptions to enter Western Australia which were rejected.

39. At the time of making the statements, I believed that Hydroxychloroquine was not a cure or treatment for COVID-19 and was dangerous when used by people with COVID-19 as a purported treatment or cure for COVID-19. The basis for this belief was the oral advice I was receiving from Western Australia's Chief Health Officer, Dr Andrew Robertson (**CHO**) at Emergency Management Team meetings, oral advice from the Director General of the Department of Health, Dr David Russell-Weisz, and media reports as I discuss below.
40. Emergency Management Team meetings to discuss COVID-19 and the State's response to the COVID-19 pandemic were being held almost daily during June, July and August 2020. They were attended by various people including me, the CHO, Police Commissioner & State Emergency Coordinator, Health Minister, Director General of Health, Public Sector Commissioner and usually, several senior members of my staff.
41. I also remember that there were many media reports about the use of Hydroxychloroquine as a treatment or cure for COVID-19 at the time, particularly because the then President of the United States of America, Donald Trump, had been promoting its use in people with COVID-19. However, I recall that by about July 2020, I had seen increasing numbers of negative media reports regarding the use of Hydroxychloroquine, including reports that the United States Food and Drug Administration had recommended against the use of Hydroxychloroquine for COVID-19 patients and reports regarding findings reported in respected medical journals, to the effect that the evidence was that the use of Hydroxychloroquine was harmful for COVID-19 patients. I cannot recall all of the media reports about Hydroxychloroquine that I read at the time, but refer to the following by way of example:
  - (a) Article entitled "Coronavirus crisis: Donald Trump's COVID-19 cure linked to deaths", appearing on *The West Australian* website on 23 May 2020, a copy of which is annexed and marked "MM16".
  - (b) Article entitled "Hydroxychloroquine taken off emergency list to treat COVID-19" appearing on *The Australian* website on 16 June 2020, a copy of which is annexed and marked "MM17".
  - (c) Article entitled "Coronavirus: Anti-malarial drug trials abandoned" appearing on *The Australian* website on 30 July 2020 and a similar article entitled "Anti-malarial drug trials

  
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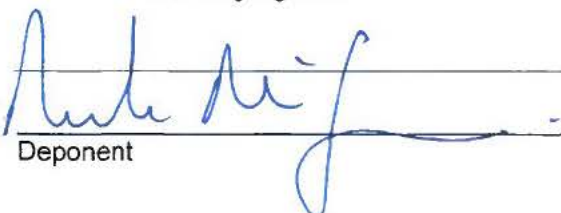
abandoned" published in the hard copy of *The Australian* on 31 July 2020, copies of which are annexed and marked "MM18" and "MM19".

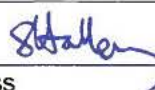
42. Further, on 27 May 2020 and 26 August 2020, Australia's Therapeutic Goods Administration (TGA), part of the Commonwealth Department of Health, published updates to its alerts webpage regarding hydroxychloroquine, in which it noted that it "strongly discouraged" the use of hydroxychloroquine to treat COVID-19, except for in clinical trials. A copy of the TGA's alerts webpage regarding the use of hydroxychloroquine to treat COVID-19 is annexed and marked "MM20".
43. The TGA's alert of 26 August 2020 also referred to the National COVID-19 Clinical Evidence Taskforce's "recommendation against the use of hydroxychloroquine to treat COVID-19 outside of clinical trials". A copy of the hyperlinked media release entitled "Do not use: National Taskforce strengthens its recommendation against the use of hydroxychloroquine as a treatment for COVID-19" dated 7 August 2020 from the National COVID-19 Clinical Evidence Taskforce is annexed and marked "MM21".

*Palmer's fourth matter complained of*

44. The fourth matter complained of by Mr Palmer is an extract of a press conference I gave on 5 August 2020 at the workshop of Hoffman Engineering in Bassendean. The press conference was also attended by the Minister for Transport and Planning, the Honourable Rita Saffioti. Mr Palmer alleges that the statements comprising the fourth matter complained of were made on 6 August 2020, but that is incorrect. An audio recording of this press conference is contained in Exhibit MM1 and entitled "Press conference 5 August 2020".
45. The purpose of the 5 August 2020 press conference was to announce, as part of the WA Recovery Plan, a series of initiatives by the WA Government to boost local manufacturing opportunities and create jobs. The media statement which accompanied this announcement is annexed and marked "MM22".
46. Given that members of the media were present at the press conference, I knew that some or all of what I said could be republished, but I did not intend that only the words comprising the fourth matter complained of could be republished.
47. I made the statement comprising the fourth matter complained of in response to the following question from a reporter:

*Quickly, about the Clive Palmer case, do you have any idea when the Federal Court will hand over its judgment?*

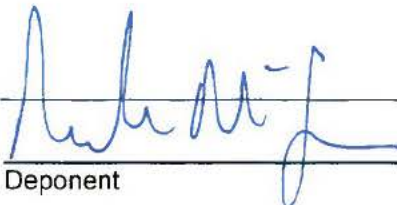
  
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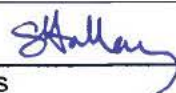
  
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48. I understood this question to be about the HCA Border Proceedings, and more specifically about the proceeding in the Federal Court of Australia pursuant to which the Federal Court was to decide the facts necessary for the determination of the HCA Border Proceedings. I knew that sometime in June 2020, the High Court of Australia ordered that the matter be remitted to the Federal Court so that the relevant facts could be determined by a judge of that Court prior to the High Court hearing the HCA Border Proceedings. The Honourable Justice Rangiah of the Federal Court of Australia heard the matters the subject of the remittal between 27 and 31 July 2020 and reserved his Honour's decision. As at 5 August 2020, this decision was still reserved and I understood the question to be when I expected the Federal Court's decision to be handed down, which would allow the main issue in the HCA Border Proceedings to be heard and determined. The Federal Court's decision was ultimately delivered on 25 August 2020 in *Palmer v State of Western Australia (No 4)* [2020] FCA 1221.
49. On about 3 August 2020 I received a letter from the Prime Minister of Australia advising me that the Attorney-General of the Commonwealth of Australia would be withdrawing the Notice of Intervention filed in the HCA Border Proceedings. This letter was dated 1 August 2020, and was published, in part, in the *Sunday Times* on 2 August 2020 a copy of which is annexed and marked "MM23". A copy of the letter from the Prime Minister is annexed and marked "MM24". The Commonwealth notified the HCA of this decision on 2 August 2020, and notified the Federal Court on 5 August 2020.
50. My full response to the question about the Federal Court proceedings referred to at paragraph 47 above was:

*Ah no I don't, and clearly our view is the Commonwealth withdrawing means the Commonwealth's evidence should be withdrawn and so that's a debate that's now apparently being had in the court or discussion in the court. But considering the Commonwealth has withdrawn, their witness evidence I think should be withdrawn and it should go back to the drawing board. Just on Mr Palmer he's not listening. I mean I was in Kalgoorlie yesterday people there are very worried about the border coming down they just want the protection, the added layer of protection the border provides and Mr Palmer is very selfish to pursue this High Court action. He uses money generated in Western Australia, through West Australian mining projects, to try and bring down our borders and damage the health of West Australians. It's very very selfish.*

51. The reason I said that Mr Palmer was trying to damage the health of West Australians is the same reason set out at paragraphs 23 to 25 above.

  
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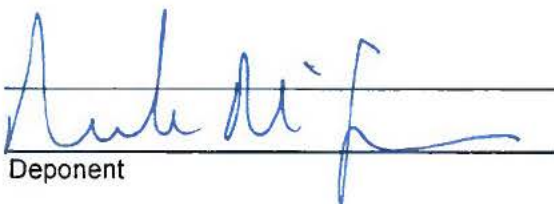
  
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52. When I said that Mr Palmer was using "*money generated in Western Australia, through Western Australian mining projects to try and bring down our borders...*" I was referring to the fact that Mr Palmer is able to fund the HCA Border Proceedings because of his vast wealth, earned in large part from royalties from WA resources. In this regard, I understood from media reports that Mr Palmer's company, Mineralogy, was estimated to make \$1 million per day from CITIC Pacific's Sino Iron project in the Pilbara region of Western Australia. A copy of an article entitled "\$1 Million a day from WA - Chinese cash pays for Palmer's election splurge", published in *The West Australian* newspaper on 6 May 2019 is annexed and marked "MM25". A copy of an article entitled "Palmer strikes a new cash bonanza" published in *The Australian* newspaper on 7 December 2018 is annexed and marked "MM26".
53. When I said that Mr Palmer was "*very selfish*" and "*very very selfish*" I was referring to my belief that the bringing of the HCA Border Proceedings would harm the health and wellbeing of Western Australians, and the fact that I believed Mr Palmer was bringing the HCA Border Proceedings for the benefit of himself and his company Mineralogy, rather than for any altruistic reasons. I consider that Mr Palmer was willing, by his bringing of the HCA Border Proceedings, to risk the health and safety of Western Australians for his own benefit. The basis for my belief is that on 2 August 2020, Mineralogy wrote to the solicitors for the State, outlining a proposal whereby Mr Palmer and Mineralogy might agree to withdraw the HCA Border Proceedings if the State agreed to hold the hearing of the Damages Arbitration in Canberra, so that Mr Palmer and Mineralogy's counsel could attend the hearing. This led me to believe that Mr Palmer's and Mineralogy's counsel's attendance at the hearing of the Damages Arbitration in Western Australia was a primary driver for the bringing of the HCA Border Proceedings. This letter was subsequently tabled in the Western Australian Legislative Assembly on 12 August 2020 by the Western Australian Attorney General, the Honourable John Quigley. An extract from Hansard on 12 August 2020, and a copy of the tabled version of the letter, are at annexed and marked "MM27" and "MM28".

*Palmer's fifth matter complained of*

54. The statement comprising the fifth matter complained of is a statement I made as part of my response to a question from a reporter at a press conference I gave on 7 August 2020 in the media room at the parliamentary offices in Western Australia. A full transcript of the press conference is annexed and marked "MM29".
55. The purpose of the press conference was to provide a COVID-19 update to Western Australians after a National Cabinet Meeting which was held that morning.

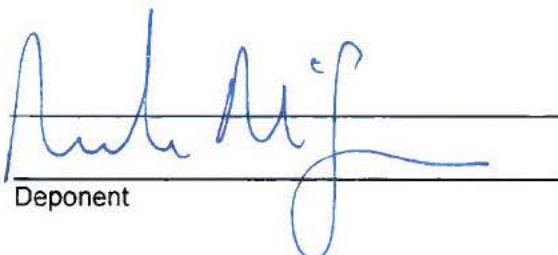
  
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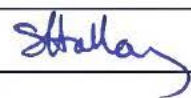
  
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56. Given that members of the media were present at the press conference, I knew that some or all of what I said could be republished, but I did not intend that only the words comprising the fifth matter complained of could be republished.
57. The question asked of me related to the HCA Border Proceedings. When I said "*we're in a war with Clive Palmer, and it's a war we intend to win*", I was referring to the State's intention to successfully defend the HCA Border Proceedings and was urging Mr Palmer to withdraw the HCA Border Proceedings. I also knew about the Damages Arbitration and considered that to be part of Mr Palmer's attack or "war" on Western Australia. At the time of the press conference on 7 August 2020, I also knew that we intended to introduce the bill that became the Amending Act, and that the purpose of this was to defeat the Damages Claim and the Damages Arbitration and protect the State.

*Palmer's sixth matter complained of*

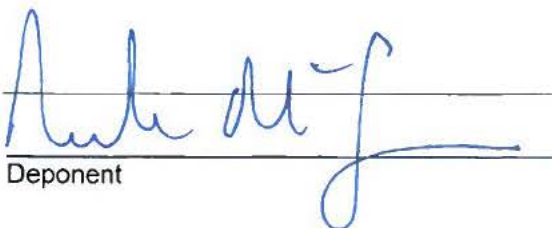
58. The sixth matter complained of is a Facebook post published on my Facebook page at 6.02pm on 14 August 2020 (**Facebook Post**).
59. My Facebook page was created and is maintained for the purpose of informing the Western Australian public about political issues and news which my team consider is relevant to them as Western Australian voters.
60. My media team headed by my Director of Communications, maintain and post content to my Facebook page. I do not personally post content on my Facebook page, but I monitor it regularly to see what has been posted, and usually check it multiple times during the course of each day.
61. The Facebook Post was authored and uploaded by my staff. I did not see the Facebook Post before it was posted, however, I take responsibility for its content.
62. It is apparent to me from the content of the Facebook Post that the purpose of the Facebook Post was to explain the rationale behind the enactment of the *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Act 2020 (Amending Act)* to the Western Australian people, and to respond to the media blitz, by way of print and radio advertising, that Mr Palmer had commenced after the Amending Act was introduced to the Legislative Assembly on the evening of 11 August 2020. I refer to the following advertisements and statements made by Mr Palmer:
- (a) Advertisement headed "History Repeats!" published in *The West Australian* on 14 August 2020, a copy of which is annexed and marked "MM30";

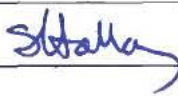
  
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- (b) Advertisement headed "Cover Up" published in *The West Australian* on 14 August 2020, a copy of which is annexed and marked "MM31" (and which is also the fourth defamatory statement and "Attachment 4" of my Amended Statement of Cross Claim);
  - (c) Letter dated 13 August 2020 headed "Cover Up", published on Mr Palmer's twitter account and Facebook page, a copy of which is annexed and marked "MM32";
  - (d) Radio advertisement airing on 6PR on 14 August 2020 at 3.56pm, a transcript of which is annexed and marked "MM33";
  - (e) Radio advertisement airing on 6PR on 14 August 2020 at 7.58am, a transcript of which is annexed and marked "MM34";
  - (f) Radio advertisement airing on 6PR on 14 August 2020 at 8.19am, a transcript of which is annexed and marked "MM35";
  - (g) Radio advertisement airing on 6PR on 14 August 2020 at 7.48am, a transcript of which is annexed and marked "MM36";
  - (h) Radio advertisement airing on 6PR on 14 August 2020, at 7.25am, a transcript of which is annexed and marked "MM37";
  - (i) Interview by Mr Palmer given on the 6PR Breakfast radio show at 7.38am on 12 August 2020, a transcript of which is annexed and marked "MM38";
  - (j) Letter dated 13 August 2020 from Mr Palmer to all Western Australian members of Parliament headed "Mark McGowan cover up and Western Australian Parliament unconstitutional acts", a copy of which is annexed and marked "MM39".
63. I have set out a further explanation of the rationale and context of the enactment of the Amending Act at paragraphs 74 to 79 below.
64. The Facebook Post accurately reflects my views and beliefs at the time, and I consider each of the matters set out in the Facebook Post are true. I have set out my understanding of parts of the Facebook Post below:
- (a) as to paragraph 8 of the Facebook Post (adopting the numbering from Annexure A to the Statement of Claim filed on 20 August 2020): The \$30 billion figure is an approximation of the quantum of damages sought by Mr Palmer's company Mineralogy in the Damages Arbitration;


  
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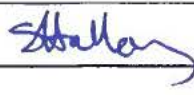
  
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- (b) as to paragraph 11 of the Facebook Post: The figure of \$12,000 was calculated by simply dividing the figure of \$30 billion by 2.5 million, being the approximate population of Western Australia;
- (c) as to paragraph 13 of the Facebook Post: I understood the term "bankrupt" as being used in a colloquial sense to mean financially ruined or impoverished, as a state cannot be legally bankrupt; and
- (d) as to paragraphs 14 and 15 of the Facebook Post: I consider that a claim of about \$30 billion would have serious negative financial consequences for the State and thus be incredibly harmful to the State.

### **The alleged "Attack Plan"**

- 65. I refer to Mr Palmer's Reply filed on 1 October 2020 and the alleged "Attack Plan" as defined in the Reply and set out at paragraphs 51 to 63 of the First Palmer Affidavit.
- 66. I did not develop or participate in the strategy alleged by Mr Palmer and referred to as the "Attack Plan". No such "Attack Plan" existed.
- 67. During the relevant period, I was focused on ensuring that the bill that became the Amending Act was prepared in complete confidence and secrecy until it was introduced to the Legislative Assembly of Western Australia, which ultimately occurred on the evening of Tuesday 11 August 2020. The reason I was concerned to ensure that the preparation of the bill that became the Amending Act was a secret, was because I was intent on protecting the State from the \$30 billion Damages Claim by Mr Palmer and his companies, and did not want anyone, particularly Mr Palmer, to learn of the preparation of the bill so that steps could be taken to defeat it.
- 68. There was no strategy associated with any comments I made about Mr Palmer, and I did not have any discussions with Mr Quigley about any such strategy. The statements made by me prior to the introduction of the bill, comprising the first to fifth matters complained of, were each made in response to a question asked of me by a reporter which related to actions taken by Mr Palmer, namely bringing the HCA Border Proceedings and incorrectly completing forms to enter Western Australia. In this context I consider the suggestion that my comments were made as part of a pre-meditated plan to be absurd.

  
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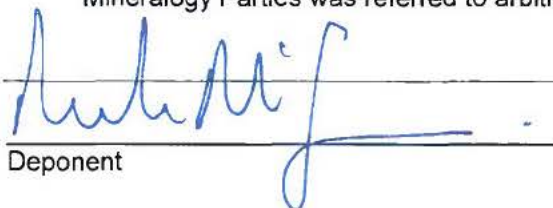


### The Border Closures and the HCA Border Proceedings

69. In early March 2020, the World Health Organisation declared COVID-19 to be a pandemic. In response to the COVID-19 pandemic, on 15 March 2020, the Minister for Emergency Services for Western Australia, the Honourable Fran Logan, declared a state of emergency for Western Australia, effective from 12am on 16 March 2020. On about 16 March 2020, the Minister for Health, the Honourable Roger Cook, first declared a public health state of emergency in Western Australia.
70. On 5 April 2020, the State Emergency Coordinator, Mr Chris Dawson (who is also the Commissioner for Police) issued the *Quarantine (Closing the Border) Directions* (WA) pursuant to the *Emergency Management Act 2005* (WA) in response to the COVID-19 pandemic. These have been amended several times since, but in essence, prohibited entry into Western Australia of persons other than those defined as "exempt travellers".
71. The *Quarantine (Closing the Border) Directions* (WA) directions were subsequently revoked on 14 November 2020, by the *Controlled Border Revocation Directions* (WA).
72. On or about 20 May 2020, Mr Palmer's solicitor, Mr Jonathan Shaw, sent a letter to my office which was addressed to me and the Commissioner for Police for the State of Western Australia. This letter demanded that Mr Palmer, his family and pilot and crew be permitted to enter Western Australia. A copy of this letter and its attachments is annexed and marked "MM40". Subsequently, Mr Edward Fearis of the State Solicitor's Office and Ms Naomi Eagling, Counsel for the Police Commissioner corresponded further with Mr Shaw about Mr Palmer's applications to enter Western Australia (referred to above), a copy of this correspondence is annexed and marked "MM41". On 25 May 2020, Mr Palmer and his company Mineralogy commenced the HCA Border Proceedings.
73. On 6 November 2020 the High Court handed down its findings in the HCA Border Proceedings, finding that the legislation enabling the directions which had the effect of closing the borders as described as paragraph 70 above, was valid and did not impermissibly infringe the Constitution. On 24 February 2021, the High Court of Australia published its reasons in the HCA Border Proceedings, in *Palmer v Western Australia* [2021] HCA 5.

### The Arbitrations and the Amending Act

74. I set out below a brief summary of arbitrations between the State, Mineralogy and IM (together referred to as the **Mineralogy Parties**). The first relevant dispute between the State and the Mineralogy Parties was referred to arbitration in November 2012. The arbitral award was delivered

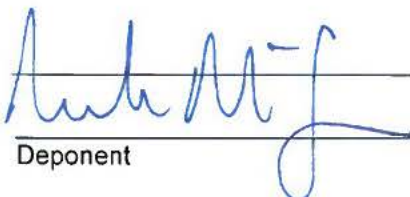
  
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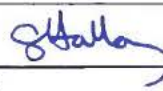
in May 2014 (**2014 Award**). Pursuant to the 2014 Award, the Arbitrator, the Honourable Michael McHugh AC made the following orders:

- (a) declared that the Balmoral South Iron Ore Project Proposal was a proposal submitted pursuant to the State Agreement with which the relevant Minister was required to deal; and
- (b) ordered that the State pay the Arbitrator's costs and expenses.

75. A second dispute between the State and the Mineralogy Parties, by which the Mineralogy Parties claimed damages against the State, was subsequently referred to arbitration, again before Mr McHugh. This was the Damages Arbitration. The Arbitrator delivered a further arbitral award on 11 October 2019 and declared that the Mineralogy Parties' right to recover damages had not been heard and determined in the 2014 Award and that the Mineralogy Parties were not prevented from pursuing further claims for damages against the State. The State applied to the Supreme Court of Western Australia for leave to appeal this decision but the application was dismissed.
76. In March 2020, I became aware that the Mineralogy Parties had notified the State of the quantum of the Damages Claim and that they were seeking approximately AUD\$30 billion.
77. The magnitude of the dollars being claimed by the Mineralogy Parties in the Damages Arbitration caused me great concern. To place this in context, the total net debt of the State of Western Australia at that time was in the order of AUD \$35-\$40 billion, and the total net budget appropriations for 2019-2020 to operate government services throughout the State were in the order of AUD \$7 billion and the total budget was approximately AUD \$30 billion. If the Mineralogy Parties were to succeed in their damages claim anywhere close to the amount sought then this would have had serious financial consequences for the State and its ability to adequately fund critical State service such as health and education.
78. In about July 2020, the Attorney General and I approved the preparation of the bill that would become the Amending Act. This was prepared in secret and very few people were aware of its existence. The purpose of the Amending Act was to terminate any arbitration involving the State and the Mineralogy Parties concerned with the Balmoral South Project, decisions regarding it by the Honourable Colin Barnett, and the conduct of the State connected with those decisions (defined in the Amending Act as a "disputed matter"). The Amending Act also provided that, amongst other things, the State had no liability in respect of the arbitrations or connected with a disputed matter. The bill which would become the Amending Act was introduced by the government into the Legislative Assembly on the evening of 11 August 2020. Subsequently, at approximately 11.10pm Western Australian time on 13 August 2020, the Amending Act received Royal Assent. A copy of the Explanatory Memorandum and the Second Reading Speeches for the



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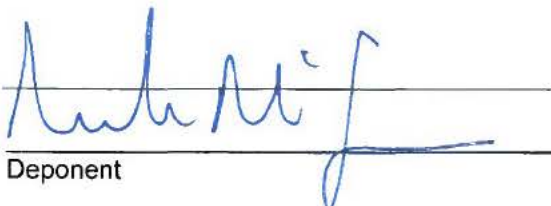
bill which became the Amending Act are annexed and marked "MM42", "MM43" and "MM44" respectively.

79. I deny that the Amending Act was introduced because I feared that an adverse outcome in the Damages Arbitration would become public knowledge only a few weeks prior to the State Election on 13 March 2021. Such a thought did not enter my mind.

**Clive Palmer and Clive Palmer's United Australia Party**

80. I refer to the First Palmer Affidavit in which Mr Palmer claims at paragraph 3 that he is a "former Australian politician".
81. I understand that although Mr Palmer no longer personally holds any seats in any parliament in Australia, he is still the Chairman and Registered Officer of Clive Palmer's United Australia Party (**Clive Palmer's UAP**), which is a registered political party with the Australian Electoral Commission. An extract of the current register of political parties maintained by the Australian Electoral Commission is annexed and marked "MM45". A copy of a media release dated 15 February 2021 headed "AEC confirms Clive Palmer's United Australia Party remained registered" is annexed and marked "MM46".
82. During the course of 2020, I understood that Clive Palmer's UAP was considering running candidates in the Western Australian election, which took place on 13 March 2021. This understanding came in part from media articles quoting Mr Palmer or other spokespeople from Clive Palmer's UAP. I refer to the following articles:
- (a) Article entitled "Premier wants WA a Clive-free zone" published in *The West Australian* on 23 May 2020, a copy of which is annexed and marked "MM47";
  - (b) Article entitled "How Clive Palmer's United Australia Party is set to make its mark on the 2021 WA election", posted on ABC News online on 4 July 2020, a copy of which is annexed and marked "MM48"; and
  - (c) Article entitled "Clive's State Card is marked; Palmer angered WA about border but may still fight election" published in *The West Australian* on 5 August 2020, a copy of which is annexed and marked "MM49".

83. [REDACTED]

  
Deponent

  
Witness

84. I refer to the Amended Statement of Cross Claim filed in these proceedings on my behalf on 20 November 2020 (**Cross Claim Statement**). In this affidavit, where I refer to the defamatory publications by Mr Palmer, I am referring to the words attributed to Mr Palmer in the first to ninth defamatory publications as set out in the Amended Statement of Cross-Claim. I have reviewed each of the first to ninth defamatory publications prior to making this affidavit.

85. I am not aware of Mr Palmer making any attempts to seek my comments prior to making any of the statements attributed to him in the defamatory publications, and made no attempts to seek my response or check the accuracy of his statements.


86. I do not recall precisely when I read or became aware of each of the defamatory publications the subject of my Cross-Claim, however, given my usual practice regarding reviewing media (which I set out at paragraph 87 below), I expect that I became aware of each publication shortly after it was published.

87. I usually become aware of media articles and news relevant to me and the State in one or more of the following ways:

(a) I read *The West Australian* newspaper every day. The hard copy paper is delivered to my house every morning and I generally read it in the car on the way to the office. I also read the online version of the paper, and check *The West* website ([www.thewest.com.au](http://www.thewest.com.au)) during the course of the day while I am in the office, and on my iPhone when I am out of the office.

(b) I read *The Australian* newspaper in hard copy, which is delivered to my office each day.

(b) I read *The Australian* newspaper



Deponent

Witness Stoller



- (c) I also watch the television news and listen to radio news on and off throughout the day.
- (d) I use Twitter and Facebook to follow media and news organisations and check Facebook and Twitter multiple times during the day. Media articles are often linked to tweets or Facebook posts and I will then access the linked articles through Facebook or Twitter.
- (e) My staffers and Director of Communications monitor the media and news throughout the day through the use of media monitoring services, and also through their own review of news websites, Twitter and Facebook. They often bring to my attention articles or media they consider I will be interested in.
- (f) Other Ministers and Members of the Legislative Assembly occasionally bring media articles to my attention, particularly if the articles are critical of the State Government or controversial in any way.

*The first defamatory publication by Palmer*

88. The meanings that I say arise and are conveyed to a reader by the words attributed to Mr Palmer in the first defamatory publication are set out at paragraphs 3(a) and 3(b) of the Cross Claim Statement. Each of these imputations are completely false.

*The second defamatory publication by Palmer*

89. The meanings that I say arise and are conveyed to the viewer by the words spoken by Mr Palmer in the second defamatory publication are set out at paragraphs 5(a) and 5(b) of the Cross Claim Statement. Each of these imputations are entirely false.

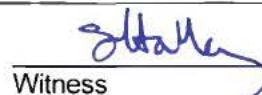
*The third, fourth, fifth, sixth and seventh defamatory publication by Palmer*

90. The meaning that I say arises and is conveyed to the reader of each of the third, fourth, fifth, sixth and seventh defamatory publications is set out at paragraph 7(a) of the Cross Claim Statement. This imputation is entirely false.

*The eighth defamatory publication by Palmer*

91. The meanings that I say arise and are conveyed to the viewer by the words spoken by Mr Palmer in the eighth defamatory publication are set out at paragraphs 9(a) and 9(b) of the Cross Claim Statement. Each of these meanings are entirely false.

  
Deponent

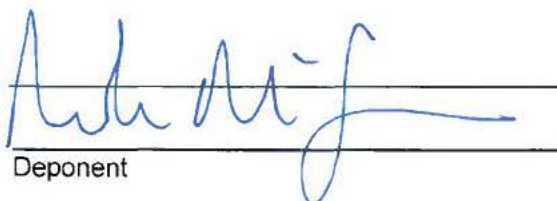
  
Witness

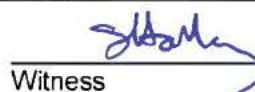
*The ninth defamatory publication by Palmer*

92. The meaning that I say arises and is conveyed to the viewer by the words spoken by Mr Palmer in the ninth defamatory publication is set out at paragraph 11(a) of the Cross Claim Statement. This imputation is entirely false.

*Defamatory publications and statements by Mr Palmer generally*

93. When I learned of the statements made by Mr Palmer in each of the first to ninth defamatory publications, I was hurt, and felt angry, indignant and outraged at times. In particular:
- (a) As to Mr Palmer's claim that I had lied to the people of Western Australia when justifying the closure of the Western Australian border, given my role as Premier, the trust of the citizens of Western Australia is of paramount importance to me, particularly so during the COVID-19 pandemic given the lengths that the State Government had gone to in its efforts to protect the State from COVID-19.
  - (b) As to Mr Palmer's allegations of criminality, I considered that Mr Palmer had gone well beyond criticising the Government's policies in alleging that the State Government, led by me as Premier, had been engaging in criminal conduct. In this regard, I refer to his statements "*what are the criminal acts that the Government wants to do that they need an exemption from criminal liability*" and "*what is it the Western Australian Government has done that would invoke such a claim that they'd feel guilty of ... what have they been up to and how does that affect Australia and how does that affect our national security...*" I found it offensive that he had alleged that the Government and I had been engaging in unspecified criminal conduct over "*six or eight years*" that might be so serious as to affect national security, particularly without any explanation of the type of criminal conduct being alleged. I also considered it highly likely that Mr Palmer would have known that the exemption of liability in the Amending Act related only to specific matters the subject of the Amending Act, and was not a general immunity, and felt that he was purposefully making a public accusation of something which he knew to be false.
  - (c) I was offended by Mr Palmer's suggestion that it was me who caused the potential \$30 billion liability for the State, by the statement "*what did McGowan do to cause....30 billion dollars of liability for the State of Western Australia*". I found the suggestion that the Amending Act was passed to cover up my personal criminality or "*assist a foreign power?*" or that it is "*against Australia's interest*", particularly offensive given that the purpose of the Amending Act was to protect Western Australia from the Damages Claim.

  
Deponent


  
Witness

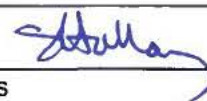


- (d) I was very hurt and deeply offended when I learned of Mr Palmer's suggestions that I was somehow aligned with China and the suggestion I am open to seriously corrupt conduct by being willing to accept bribes from China by the following statement:

*"McGowan's very close to China and you see a lot of... I mean I've heard stories of a lot of heads of state going up to China, being offered a passbook with the Bank of China with fifty or sixty million dollars in it and saying, 'well its available for you only through the Bank of China'..."*

94. It is a very serious thing to allege that a Government or politician is open to accepting bribes, particularly from a foreign power, and for Mr Palmer to have made such a suggestion without any basis or justification whatsoever was highly offensive to me. Given I have dedicated a very significant part of my life to the service of the people of Western Australia I consider this to be one of the most seriously damaging allegations that could be made about me.
95. I consider the comments by Mr Palmer about me in each of the defamatory publications set out in my Cross-Claim to be a personal affront to me, and an attack on the qualities and attributes which I consider to be important in a Premier, such as honesty and integrity, and a genuine desire to act in the best interests of the State and people of Western Australians.
96. I know from previous experience that some people listen to, and believe, what Mr Palmer says and what he alleges by way of advertisements and letters in the media. In this regard, I recall that in the past I have been confronted by members of the public who have read advertisements taken out in the media by Mr Palmer or Clive Palmer's UAP, and believe what he has said or written. By way of example, after the publication of the advertisements set out below, I was approached by members of the public asking me why I allowed China to build an airport in Western Australia, notwithstanding that the claims in the advertisements are completely false:
- (a) Advertisement entitled "Stop the takeover of our country by foreign powers", published in *The West Australian* on 4 May 2019, a copy of which is annexed and marked "MM54"; and
- (b) Advertisement entitled "A Chinese Communist Government-owned company bought Merredin Airport from the Labor Government for just one dollar. Did you know?", published in *The West Australian* on 13 May 2019, a copy of which is annexed and marked "MM55".
97. Whilst it was my hope that no one would listen to or believe what Mr Palmer said about me, I was concerned that some people would, as they had in the past, and this caused me concern and upset, particularly given the extremely serious allegations that I had lied to the people of Western Australia, that I had engaged in criminal conduct, that I was corrupt and that I was open to accepting bribes from foreign powers.

  
Deponent

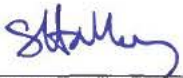
  
Witness

*Mr Palmer's Defence*

98. I am aware that in his Defence to my Cross-Claim Mr Palmer has contended that the imputations I complain of, and further imputations, are substantially true. I am deeply offended by this. Mr Palmer's assertion that the serious allegations he has made about me are true has increased the hurt and anger that was caused by the publications.
99. The medical advice I received in briefings, including from the CHO, was to close the State's borders to protect the State from COVID-19.

**Sworn** by the deponent Mark McGowan at  
Perth in the State of Western Australia  
this 26th day of March 2021

Before me:



Signature of witness

  
Deponent

Simon Christian Ritchie Holloway, a legal  
practitioner who has held a practice certificate for  
2 years and who holds a current practice  
certificate



Rule 29.02

**Annexure Certificate  
MM2**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM2" referred to in the affidavit of Mark McGowan sworn at  
Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper

Law firm: Clayton Utz

**Address for service:**

Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000

Fax: (02) 8220 6700

Contact: Bryony Dewar-Leahy

Email: bdewarleahy@claytonutz.com

Ref: 60020/17189/81011768

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Governor-General of the  
Commonwealth of Australia

*BE IT KNOWN* that, with the authority of Her Majesty Queen Elizabeth  
The Second, Queen of Australia, I have awarded the

## COMMENDATION FOR BRAVE CONDUCT

to

**MARK MCGOWAN**

### CITATION

On 18 September 1995 Lieutenant McGowan rescued the unconscious driver of a crashed and burning vehicle at Upper Swan. Lieutenant McGowan arrived at the scene shortly after the accident had occurred. One of the vehicles had been hit in the rear and the back half was burning fiercely and filling the car with smoke. As he approached Lieutenant McGowan saw that the driver was unconscious and lying with his upper torso in the back seat area. After trying to gain access through the front doors, both of which were jammed, Lieutenant McGowan tried to lift the unconscious man through the rear left hand window but was unable to do so as the driver's legs were tangled in the seat belt. Without regard for his own safety Lieutenant McGowan climbed into the car through the now open passenger front door, and untangled the man's legs as the fire engulfed the whole interior of the car. With the assistance of other motorists Lieutenant McGowan lifted the driver out through the rear window and carried him to a place of safety.

For his actions Lieutenant McGowan is commended for brave conduct.

GIVEN at Government House, Canberra  
this twelfth day of March 1997.

By His Excellency's Command

Official Secretary to the Governor-General



Rule 29.02

**Annexure Certificate  
MM3**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM3" referred to in the affidavit of Mark McGowan sworn at  
Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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## \$330 million investment to drive industry opportunities

Friday, 31 July 2020

- Major infrastructure and planning projects as part of the WA Recovery Plan
- More than \$330 million for industry development works and projects
- \$158.8 million towards port infrastructure upgrades to create WA jobs
- \$87.6 million investment at Henderson's Australian Marine Complex
- Defence boost expected to create up to 600 jobs and new opportunities
- Strengthens WA's capacity to attract multibillion-dollar defence work

The McGowan Government is investing heavily into major infrastructure and planning for big industry projects across Western Australia to prepare for the State's future, create jobs and boost the economy as part of the WA Recovery Plan.

Investments in defence, port and harbour infrastructure, and serviced land to help establish new business and research facilities will deliver a pipeline of jobs for Western Australians as the State recovers from the COVID-19 pandemic.

The McGowan Government will accelerate infrastructure works to expand WA's defence industry capability, increasing the State's already strong footprint in marine repair, maintenance and construction.

This will further support WA's strong commitment to defence industry development and leverage our world-class skills and training.



Hon Mark McGowan BA LLB  
MLA

Premier; Minister for Public Sector Management; State Development, Jobs and Trade; Federal-State Relations



Hon Paul Papalia CSC MLA

Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Interests



Hon Alannah MacTiernan  
MLC

Minister for Regional Development; Agriculture and Food; Ports; Minister Assisting the Minister for State Development, Jobs and Trade



## 32

Premier Mark McGowan and Defence Issues Minister Paul Papalia announced that Henderson's Australian Marine Complex (AMC), the State's major industrial hub, is set for an \$87.6 million upgrade.

It is expected that the upgrade will create up to 600 local jobs, boost opportunities for local industry and grow WA's capacity to undertake future defence work as part of the WA Recovery Plan.

The investment includes a major wharf extension and upgrade, the design of a new finger wharf, a new vessel transfer path, three road intersection upgrades and a new shipbuilding hall.

The extension to AMC Berth 1 will create a new berth and enable the facility to accommodate all Royal Australian Navy Vessels, including Anzac class frigates, Arafura class Offshore Patrol Vessels, and the future Hunter class frigates.

Design work will also include a new finger wharf to support Collins class and Attack class submarines, and the capacity to support larger classes of naval vessels.

The new vessel transfer path will create greater connectivity and resilience across the AMC, between the floating dock and shipbuilding and sustainment facilities, including ASC, BAE and Cvmec.

Upgrades to three road intersections will increase capacity and safety, reduce vehicle congestion and improve access.

The new shipbuilding hall in the northern shipbuilding precinct, will activate underutilised waterfront land to support commercial shipbuilding and sustainment.

This will free up strategic land for naval sustainment activities to support the Navy and ASC West.

Further funding will provide ongoing support to the Henderson planning team, continue implementation of the Strategic Infrastructure and Land Use Plan, and improve management of the precinct's Common User Facility.

## 33

The investment further demonstrates WA's commitment to securing more Federal Defence work, such as Collins class submarine Full Cycle Docking and further opportunities.

Significant investment in WA ports will help drive ongoing trade through regional WA and will support growth through the State, creating jobs and stimulating the economy.

The McGowan Government's investment is expected to complement and encourage private investment across regional WA by increasing import and export capacity.

Western Australian ports and harbours will benefit from \$158.8 million worth of improvements, including:



## 34

- \$20 million for Port Hedland's Inner Harbour for retaining and sea walls;
- \$51.2 million for Pilbara's Nelson Point Tug Haven for retaining and sheet pile walls;
- \$7.6 million to support the development of an LNG bunkering hub in the Pilbara, already announced;
- \$11.6 million towards works at the Geraldton Port and Fishing Boat Harbour to improve amenities and access as well as support export capability in the Main Harbour, already announced;
- \$31.3 million to resurface and upgrade the stockyard area, for structural repairs, electrical upgrades and a new Clinker Storage Facility at the Kwinana Bulk Terminal;
- \$3 million towards a second road hopper to improve loading and logistics, and for fire and safety system upgrades and replacements at Bunbury Port;
- \$3 million towards refurbishments to the underdeck access and protective coating to extensions at the Broome Port Wharf;
- \$15 million for the Turkey Point access bridge at Bunbury Port, already announced;
- \$10.2 million towards priority works at Esperance Port to increase import and export capacity; and
- \$5.9 million to replace critical electrical infrastructure at the Fremantle Fishing Boat Harbour and Commercial precinct.

In addition to works being undertaken across WA ports, \$3.8 million is being committed to prepare a feasibility study for upgrades and new infrastructure at the Port of Bunbury and Kwinana Bulk Terminal to support the possible reopening of the Greenbushes rail line.

In addition, about \$100 million of funding will go towards further industry development initiatives, including:

## 35

- \$20 million towards a Robotics and Automation physical test facility, as part of a 94-hectare precinct north of the current Neerabup industrial estate, to support research facilities;
- \$7.5 million to provide serviced land for businesses, supporting major projects in the Kemerton Strategic Industrial Area;
- \$7.5 million to prepare and refurbish communications infrastructure networks within Bentley Technology Park;
- \$8.4 million towards the implementation of the Murujuga Rock Arts strategy to progress more opportunities to unlock tourism potential and create jobs; and
- \$1 million to upgrade the Newman Wastewater Treatment Plant.

More information is available at  
<http://inthisotogether.wa.gov.au>

**Comments attributed to Premier Mark McGowan:**

"The WA Recovery Plan is focused on creating a pipeline of local jobs to support WA's economic recovery while putting strong foundations in place to strengthen our industries and plan for the jobs of the future.

"Our investment in improvement works and our State's infrastructure will boost a range of industries over the short and longer terms, which is a key part of our recovery journey.

"Importantly, the infrastructure and planning upgrades will pave the way for further growth in commercial and industrial precincts, our defence, manufacturing, resources, exports and marine sectors.

"It's with this strong investment that will give the private industry some confidence that we have a robust recovery plan which we're implementing, and we hope this spurs the private sector into supporting the economic recovery efforts and that they push on with new projects and developments."



**36****Comments attributed to Defence Issues Minister  
Paul Papalia:**

"Defence industry projects offer incredible opportunities for the State, and these investments in the AMC will further strengthen our capacity to secure high-value, job-creating work.

"Defence contracts will provide the kind of long-term stimulus the State will need to support our economy as we manage the impacts of COVID-19.

"The State Government is fast-tracking these projects to ensure we have the infrastructure in place to meet the needs of Defence, and continue to enhance the AMC's reputation as Australia's key defence industry hub."

**Comments attributed to Ports Minister Alannah  
MacTiernan:**

"Investing in our publicly-owned port infrastructure is absolutely critical to maintaining and expanding our critical export industries.

"We are a trading State, and our economic prosperity relies on our ports: iron ore, gas, grains, alumina and woodchips are driving our export opportunities and underpinning employment across the State.

"This \$158.8 million package will upgrade vital infrastructure at ports across WA, driving ongoing trade opportunities while stimulating local economies in the regions."

Premier's office - 6552 5000

Defence Issues Minister's office - 6552 5600

Ports Minister's office - 6552 6200

Rule 29.02

**Annexure Certificate  
MM4**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

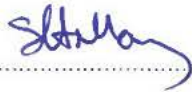
Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM4" referred to in the affidavit of Mark McGowan sworn at  
Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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ALLIES BAULK AT TRUMP'S PUSH FOR RUSSIA RETURN

# PM up for G7, Putin a step too far

DEN PACKHAM  
POLITICS AND  
FOREIGN CORRESPONDENT

Scott Morrison will attend this year's Group of Seven summit in the US as a guest of Donald Trump, but key allies have rejected the President's push to readmit Russia to the elite global club.

The President called the Prime Minister on Tuesday morning to officially invite him to the G7 meeting, scheduled for September, and discuss Mr Trump's plan for Australia to join an expanded grouping that would also include Russia, South Korea and India.

Before his 15-minute call to Mr Morrison, Mr Trump spoke to Russia's President Vladimir Putin about a "possible invitation".

But the British and Canadian governments rejected the US President's bid to have Russia return, after its expulsion in 2014 from the then G8 after its annexation of the Crimean peninsula.

Canadian Prime Minister Justin Trudeau said Russia's "continued disrespect and flouting of international rules and norms is why it remains outside of the G7, and it will continue to remain out".

A spokesman for British Prime Minister Boris Johnson said Britain opposed showing Russia back

because it was "not to see evidence of changed behaviour, which would justify readmission".

A spokesman for Mr Morrison said future membership of the group was "a matter for the existing G7 countries to decide".

"Australia's position and view on Russia are well known and won't change at all due to their involvement in G7," he said.

"It is in Australia's interests to participate regardless and we will continue to provide our views consistent with our values."

It will be the second G7 in a row for Mr Morrison. He attended last year at the invitation of French President Emmanuel Macron.

Mr Morrison's office said the summit would be "another significant opportunity to promote our interests during highly uncertain times in the global economy".

"It's important for Australians that we are there," the Prime Minister told Mr Trump, according to a readout of the call.

Five Eyes intelligence alliance foreign ministers also had talks on Tuesday morning in an hour-long video conference to discuss "support of democratic values" and the need to work together to develop critical technologies and trusted supply chains.

China's security crackdown on Hong Kong was a key agenda

item, along with the Australian-led push for an independent review of the COVID-19 pandemic.

Foreign Ministers Maurice Payne participated in the talks with US Secretary of State Mike Pompeo, British Foreign Secretary Dominic Raab, New Zealand Foreign Minister Winston Peters, and Canadian Foreign Minister François-Philippe Champagne.

The coronavirus crisis has made the handling of key supply chains an urgent priority. There is also growing momentum in democratic countries against Chinese technology companies including Huawei and ZTE participating in 5G networks.

Britain is pushing a new "TBR" grouping that would include the G7 nations plus Australia, South Korea and India, which would cooperate on developing new digital technology to compete with Chinese 5G products.

Australian Strategic Policy Institute defence and national security program director Michael Shoenberger said trust, rather than the lowest price, was now at a premium in the global economy.

"That's what the five eyes are all about — deep trust," Mr Shoenberger said. "It's a really interesting test of the globalised economy. It means trust is now an agreed currency globally."

# Taxpayers' \$12k bill for BRI talks

EXCLUSIVE

RIMY VARGA  
DIANE BRESNAN  
RACHEL BAINDALE

Victoria's China-based trade commissioner spent \$125,000 of taxpayers' funds to take a three-day trade delegation in China run by the Belt and Road Initiative lobby in Beijing.

Victorian Commissioner for China Tim Dillon paid the five-figure fee to participate in the trade and investment mission run by Mr Dong's Australia (China Belt and Road Initiative) Ltd.

Just two weeks after the ACBRI event — which included the reception at the Australian embassy in Beijing — Victorian Premier Daniel Andrews signed a Belt and Road "framework agreement" in China.

Mr Dillon was quoted on ACBRI's website, which has been pulled down since the Australian revealed Ms Dong's role, saying: "I was impressed with the seniority of executives of the Chinese participants. An excellent information-gathering and business networking opportunity."

A self-proclaimed pro-China influencer, Mr Dong, 32, has emerged at the centre of a political row over Mr Andrews' decision to sign up to the controversial global investment pact.

Mr Andrews has said Mr Dong was not present at the signing of the framework agreement with China's National Development and Reform Commission.

An ACBRI spokesman said Ms Dong met Mr Andrews at a public event in Beijing in 2017 that was the only interaction between the pair in China.

# Andrews stands by Beijing-link staffer

Daniel Andrews says he is "very confident" his MP's office has not been infiltrated by Chinese Communist Party operatives.

The Australian revealed that an Andrews government staffer with links to the highest levels of the CCP's United Front Work Department had posted articles and videos on social media suggesting coronavirus was created by China by the US Army. The social media posts from Nancy Yang, an electorate office staffer, came as Victoria defends its decision to sign up to China's Belt and Road Initiative despite opposition from the federal government and Department of Foreign Affairs and Trade.

Asked whether he was comfortable that neither his office nor the offices of his MPs had been infiltrated by CCP operatives, Mr Andrews said: "Yes, I am. I'm very confident of that. I think it's a fair stretch, and if people want to make a more detailed claim they're free to do so. I'm very confident that has not happened."

RACHEL BAINDALE



Dong

former Liberal trade minister Andrew Robb suggested, an ACBRI spokesman said. Ms Dong launched ACBRI in 2015 before receiving Mr Robb and former Labor minister Lindsay Tanner to the organisation. The company "promotes" both ex-MPs as "business" on its website.

Mr Robb declined to comment when contacted by The Australian, saying only: "You know, the way the stick has been taken to this is unbelievable. But anyway, I understand all that too. There's a rush of blood every where, but OK."

Mr Tanner confirmed only that he remained associated with ACBRI, his sole other comment being "I have nothing to say".

Asked how much money Mr Robb and Mr Tanner were paid to sit on ACBRI's advisory board, a company spokesman said the roles were "unpaid".

The Belt and Road deal dominated question time when the Victorian parliament resumed on Tuesday following an extended break due to the pandemic.

Mr Andrews also stood by government staffer Nancy Yang after The Australian revealed the former Chinese consulate employee with links to the highest levels of the Chinese Communist Party's United Front Work Department had posted a series of articles and videos online suggesting the coronavirus was created by the US and transported to China by the US military.

"I don't hold any conspiracy theories. They're not things that I sign up to, but I would say to you that the staffer in question is a fine young person who's working very hard for her community," he said.

# Labor MP 'wrong' on climate warning

GRIG BROWN

A warning by Joel Fitzgibbon that Labor will lose the next election if it adopts more ambitious climate change policies than the Coalition has rejected divisions in the party, as the ALP environmental lobby declared the front-bench "plan wrong".

Mr Fitzgibbon, the opposition agriculture and resources spokesman, used ABC's Q&A program on Monday night to renew his controversial call for Labor to adopt the Coalition's 2030 Paris targets, declaring a bipartisan "settlement" was needed. "We've had a number of elections where the Labor Party has attempted to sell a more meaningful climate change policy to the electorate, and we've lost," Mr Fitzgibbon said.

"We can keep losing and remain in opposition. And guess how much you get to do on climate change policy if you are perpetually in opposition? Zero."

Labor Environment Action Network co-chairman Felicity Wade said ambitious climate change policies were central to the support of hundreds of thousands of ALP supporters.

She referenced a study by the Australian National University, which described former leader Bill Shorten's climate change policies as a vote winner for Labor in the 2019 election.

"Some of the policies were more problematic," Ms Wade said. "To suggest Labor's climate change ambition is responsible for its losses in recent elections is plain wrong. For hundreds of thousands of voters, climate policy is central to their climate faith in us."

LEAN was a driving force behind Labor adopting targets of 45 per cent emissions reduction and 50 per cent renewables by 2030 before the last poll.

However, Ms Wade conceded Mr Fitzgibbon was correct about Labor often getting the language about climate change wrong. "Where Joel is right is that climate change policy has too often focused on the technical — targets, economic instruments, things that sound like mumbo-jumbo," Ms Wade said.

His challenge is to develop policies grounded in outcomes people can see and touch."



Cattle ban litigants Colin Brett, wife Alison and son Hamish, who run the Brett Cattle Co at Waterloo Station in the Northern Territory on Tuesday.

# ALP's live export ban to cost millions

AMUS AIRMAN  
IAN HIGGINS

Taxpayers are expected to have to fork out hundreds of millions of dollars in damages after a judge found former Labor agriculture minister Joe Ludwig's 2011 live cattle export ban was "capricious and unreasonable" and exceeded his legal authority.

In a landmark Federal Court ruling delivered on Tuesday, judge Steven Rares concluded Mr Ludwig committed "misfeasance", a technical term of the wrongful exercise of the law, believed to be the first such finding against a federal minister.

The decision in a lengthy class action case spearheaded by members of the family-owned Brett Cattle Company paved the way for hundreds of primary producers across Northern Australia to receive compensation from the federal government.

The total value of their claims has previously been estimated at about \$600m.

Hamish Brett, who runs Brett Cattle Co, said the court victory — revealed nine years to the day after the first ban on live cattle exports to Indonesia was announced — had been a long time coming. "A lot of people were affected from truck drivers to vets to export yards to feed people to people working on the places," Mr Brett said.

"It's good to finally get a great result, and I hope this goes across the border in Indonesia to show our trading partners that we realise that it was a bad decision by our government, and they're going to pay the price."

Mr Ludwig suspended the live export trade with Indonesia in response to a public outcry over footage collected by activists and broadcast by the ABC showing Australian cattle being brutally mistreated in some foreign

slaughterhouses. While acknowledging the cruelty, Justice Rares decided Mr Ludwig had acted without appropriate advice and knowing it would be costly for the industry.

He also knew that alternative, more humane slaughterhouses

Canberra's former Coalition minister, said the government should "accept this decision and provide some reasonable compensation".

However, Agriculture Minister David Littleproud declined to comment except to say he would "work through" the judgment.

Robi Agustin, an Indonesian cattle industry consultant who at the time of the ban was a key industry figure and head of the Indonesian Animal Science Society, described the ban as "dramatic" but said some good had come of it.

"After it happened, we in the industry started to talk about how to handle animal welfare issues, how to implement it in the feed lots and abattoirs," he said.

There was a lot of effort put into that because we needed the trade to continue. We spent a lot of money and learned a lot. It was a struggle, but now I think animal welfare must be a priority."

Animals Australia's Lyn White

defended activists' role in exposing slaughterhouse practices such as roping, eye-gouging and tail breaking, and attached export industry bodies for allowing them to go unaddressed.

"It should not be forgotten that the brutality Australian cattle faced in Indonesia was well-known to exporters and Meat and Livestock Australia for over a decade," Ms White said. "It was they who let cattle producers down."

Labor agriculture spokesman Joel Fitzgibbon said "we acknowledge and respect the court's decision". "On becoming minister in 2013, I was asked about this issue on a number of occasions, and I expressed deep regret at the economic impact on producers and others in the value chain."

Mr Ludwig, now a barrister in Queensland, did not respond to a request to comment.

ADDITIONAL REPORTING:  
AMANDA HODGE  
CHANDNI VASANDANI

# Indigenous recognition, voice 'must be linked'

A group of leading indigenous figures have warned that any constitutional change which does not include an enshrined "voice to parliament" will be opposed by many Aboriginal people and fail in referendum.

With Indigenous Australian Minister Ken Wyatt saying this week that he remained optimistic of constitutional recognition in this form of parliament, supporters of the Uluru Statement from the Heart urged the government against pursuing a "symbolic" change to the nation's birth certificate.

A statement from Australians for Indigenous Constitutional Recognition, which includes Uluru statement advocates Megan Davis, Noel Pearson and Pat Anderson, urged the government to reconsider its plan to decouple recognition and the creation of a voice.

Under the plan, a voice would be legislated and treated as a separate process from the recognition of indigenous Australians in the Constitution.

"If anyone wants to ensure the success of constitutional recognition and the voice, don't separate the two," the group said.

"Anything other than a constitutional enshrined voice will not be supported. A symbolic change to the Constitution is not supported by Australians and will fail at a referendum."

"Our poll numbers show a majority of Australians support a constitutionally enshrined voice (49 per cent support, 20 per cent oppose)".

The key recommendation in the Uluru Statement from the Heart is for a "voice to parliament" to be enshrined in the Constitution. A constitutionally enshrined voice has been ruled out by Scott Morrison, who called it a "third chamber" of parliament, but is backed by Labor.

GRIG BROWN

# Hero accused in war 'murders'

Continued from Page 1

even in the village at the time, on Tuesday applied to amend its defence and army any reference to either Person 12 or Person 13. Instead, Mr Dawson said Nine would allege that Ali Jan was shot either by Mr Roberts-Smith or a second SAS operator known as Person 11.

"It is true that the details of the particulars have changed but the allegation at its core has not," Mr Dawson said.

Nine said it could produce four Afghan witnesses from Darwan who it said had seen aspects of the alleged incident. Counsel for Mr Roberts-Smith, Bruce McClintock SC, opposed the amendments and took aim at what he said were "major errors" in Nine's account of the incident.

He said the new allegations were nothing more than an attempt by the newspapers to compensate for what he said were serious deficiencies in their original accounts of the incident. "We simply do not know the case that they're now making," Mr McClintock said, referring to Nine's proposed changes.

Mr Roberts-Smith said he had no recollection of what he maintained were false allegations for two years, a fact that had taken a considerable toll.

"Yes, he's a Victoria Cross. Yes, he's a soldier. Yes, he's a considerable amount of action. Yes, there can be no question about his courage," Mr McClintock said. "But he's still a human being, your honour, and to confront allegations like this put forward by a large and powerful media organisation in circumstances where it turns out that what they actually said in the articles is insupportable — and now they want to change position."


Mr McClintock also accused Nine of a second error relating to the date of an alleged incident in which Mr Roberts-Smith is accused of taking a number of Afghans off a Helix and then

boasting about having shot one. Originally, the newspapers said the incident had occurred on or about October 20, 2012.

In response, Mr Roberts-Smith said he was on another mission at the time, for which he received an official commendation. The newspapers on Tuesday applied to have the date of the incident moved to November 5.

Mr McClintock said this fact was known to one of the authors of the article, Chris Masters, who referred to the operation in which Mr Roberts-Smith received the commendation in his book about the Afghan conflict. "Where is Mr Masters to explain how, in his defence, an allegation that he must have known was false, appears?" Mr McClintock asked.

The new allegations about Sola and Syahchow had only emerged because the newspapers had been forced to concede "major errors" in their earlier accounts, he said. Justice Anthony Besanko will rule on the amended defence at a later date.



Department of Planning, Industry and Environment

## Public Notice of Critical State Significant Infrastructure Determination

### Snowy 2.0 - Main Works

Application No: SS19/87

Description: Development of a 2,000 megawatt underground pumped hydro-electric power station and ancillary infrastructure linking Talingga Reservoir with Talingga Reservoir

Location: Lobs Hole, Ravine, Marica, Adamnaby, Rock Forest, Talingga Reservoir and Talingga Reservoir primarily within the Kosciuszko National Park

Proponent: Snowy Hydro Limited

Council Area: Snowy Monaro Regional, Snowy Valleys

Determination: Approved, subject to conditions

Determination Date: 20 May 2020

Approval Authority: Minister for Planning and Public Spaces

The Critical State Significant Infrastructure Approval and the Assessment Report may be viewed electronically on the Department's website (<https://www.planningportal.nsw.gov.au/major-projects/projects>).

For more information: 1300 305 695 or [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)





## OPEN QUEENSLAND AND WESTERN AUSTRALIA NOW

Fellow Australians,

### **Palaszczuk and McGowan must open Queensland and Western Australia borders**

Premiers Annastacia Palaszczuk and Mark McGowan continue to deny both Queenslanders and Western Australians jobs and prosperity by refusing to open their state's borders to the rest of the country.

These premiers need to act now to ensure a successful future beyond COVID-19 by opening their borders to allow the flow of trade and travel from other Australian states.

I have this week lodged documents with the High Court declaring the border closure of Western Australia and Queensland unconstitutional.

By maintaining lockdown borders, Labor Premiers Palaszczuk and McGowan have condemned millions within their states to financial ruin, unemployment, stress and family break-ups.

For the Queensland and Western Australian Governments to be considering September or beyond before our borders are opened is irresponsible, particularly when Australia's leading expert on infectious diseases, Professor Paul Kelly, believes it is safe to do so now.

This is what Professor Kelly – Australia's deputy chief medical officer and a member of two World Health Organisation advisory groups on disease study – said about the closures:

"From a medical point of view, I can't see why the borders are still closed. The domestic borders were not part of our plan for control of this."

Why is it that our Queensland and Western Australian leaders are not deferring to the medical experts on this matter, and consigning their states to economic oblivion?

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Businesses, such as mine, have stepped up and paid full entitlements to their employees. Now it is time for the State Governments to enable their people to provide for their families.

There are no health issues that justify the continued destruction of Queensland and Western Australia. The Premier needs to respond in the best interests of their states by reopening their borders immediately.

All the best,

Clive Palmer



Rule 29.02

**Annexure Certificate  
MM5**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM5" referred to in the affidavit of Mark McGowan sworn at  
Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

---

# Economy faces seven-year glitch

EMPLOYMENT

EWYN HANNAN  
WORKPLACE EDITOR

Treasury has warned employers and unions that the economy could take five to seven years to recover from the COVID-19 pandemic, as the government kicked off attempts to reach a consensus on workplace relations changes to help create jobs in hard-hit industries.

Sources said Treasury Secretary Steven Kennedy gave a downbeat assessment of the economic outlook at the first meeting of union and employer representatives in Sydney on Wednesday, ahead of months of talks to try to get agreement on industrial relations changes.

They said Mr Kennedy told the meeting it would take five to seven years to "bring back" the economy, and the unemployment rate would be between 8 and 9 per cent next year. Attorney-General and Industrial Relations Minister Christian Porter said Australia was "facing the greatest economic challenge outside of a world war".

"The purpose of the process is to try and change what have been longstanding policy settings and problems which we see as inhibiting job growth at a time where Australia needs job growth more than it has ever needed job growth in the modern era," he said later.

Awards covering workers in the retail, restaurant, hospitality and tourism sectors will be the focus of attempts to simplify the award system, while unions said they were prepared to listen to employer concerns about the bargaining system, provided workers also got improvements.



ACTU president Michele O'Neil at the roundtable in Sydney to map out an industrial relations reform working group process

ACTU secretary Sally McManus, who arrived with ACTU president Michele O'Neil, said unions had two clear objectives from the process: fair pay rises and addressing work insecurity.

Ms McManus said unions would listen to employer concerns about the Fair Work Act's better-off-overall test but would also push for increased rights to pursue sector-wide bargaining.

Business Council of Australia chief executive Jennifer Westacott said unions and employers ac-

knowledge the better-off-overall test was not working well. She said business was willing to make concessions during the process.

Australian Industry Group chief executive Innes Willox said while it was sensible to look at a few awards in distressed industries, broader changes to the Fair Work Act's award-making provisions had to be addressed.

"Many subject matters currently dealt with in awards are also dealt with in the Fair Work Act," Mr Willox said. "Consideration

needs to be given to whether a simpler system could be achieved for all parties by removing various matters from awards and dealing with them entirely in the act. Annual leave is a good example.

"Changes are also required to the annualised salary provisions. The way that the Fair Work Commission has interpreted and applied these provisions has led to the loss of a lot of important flexibility for employers and employees in the 20 awards that contain annualised salary clauses."

Australian Chamber of Commerce and Industry chief executive James Pearson said the ACCI strongly supported a re-examination of modern awards forming a central part of the review process.

"Employers and unions have spent 10 years continuously making and reviewing awards under the Gillard-era legislation, but with little to show for it in terms of making it easier to run a business or hire more people," he said.

"Awards remain highly complex, confusing documents which



Minister for Industrial Relations Christian Porter



ACTU secretary Sally McManus

are too hard to get right and too easy to get wrong, especially for people running small businesses who do not have the resources to navigate them.

"We expect the discussion to focus on awards in our hardest-hit sectors, including retail, restaurants and hospitality, and agree that they are a great starting point, similar to how our successful temporary award variations negotiations were laid out."

BUSINESS PFS

## Unis 'on their own' as jobless turn to study

HIGHER ED

THE CRISIS  
RICHARD FERGUSON

Education Minister Dan Tehan has told universities they need to rely on their own resources to handle next year's expected boost in domestic student numbers, as the scarcity of jobs turn people to education.

Universities want the government to end the freeze on funding for bachelor degrees and other entry courses which has been in place since December 2017, and are looking for other support to help retrain the recession-hit workforce.

But after a meeting with Universities Australia on Wednesday, Mr Tehan dampened their hopes. "The Australian government is confident that Australia's university leaders are up to the challenge of minimising the impact of COVID-19 on their operations, such as a greater focus on domestic students, online education and greater alignment with industry needs," Mr Tehan said, noting the government had guaranteed no cut to \$18bn in funding this year even if student numbers dipped.

Universities across the country have begun to unveil plans to slash staff numbers and salaries as the coronavirus pandemic leaves them facing mounting losses.

The University of Adelaide became the latest to warn of a significant budget shortfall, forecast at \$250m in 2020 and 2021 — \$150m of that next year alone.

It followed the University of Tasmania, which said it faced a revenue loss of between \$30m and \$34m this year, rising to between \$60m and \$200m in 2021 and 2022 as the full impact of reduced international student numbers was felt.

The university's vice-chancellor Rufus Black, said the institution would take on \$100m of debt but still needed to cut \$40m to

\$50m from its salary budget. Rather than cutting pay, the university plans "proactive voluntary measures" and stop pay rises.

On Tuesday, La Trobe University also warned it had a budget deficit of between \$197m and \$16m in the three years from 2020 to 2022, and said it had approached major banks for a new debt facility. La Trobe's vice-chancellor John Dewar said the university had liquidated a \$77m investment portfolio in May.

The University of Melbourne, in its annual report released this week, declined the value of its investment portfolio had fallen by \$189m in the first three months of the year, "predominantly due to sharemarket movements".

Group of Eight chief executive Vicki Thompson said the fact the government would not agree to pay for extra domestic students was a "significant structural impediment" to the economy that needed to be addressed "as part of the economic recovery plan".

NTEU national president Allison Barnes called on vice-chancellors to cut costs via building projects, executive salaries and travel budgets.

The tertiary education union chief singled out Deakin University's move to get rid of 300 jobs, amid claims staff were overwhelmed by the short notice given on the cuts.

"Universities can be and should be, much more accountable. Many vice-chancellors have backtracked on our job protection framework simply because they are allergic to scrutiny and want to sack staff. This is callous and cruel."

"Careers and livelihoods are being demolished," she said. "Before sacking staff, vice-chancellors can cut costs in many ways."

A Deakin University spokesman said staff were being treated with "genuine compassion and sensitivity".

EDITORIAL PH

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## OPEN QUEENSLAND AND WESTERN AUSTRALIA NOW

Fellow Australians,

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Why is it that our Queensland and Western Australian leaders are not deferring to the medical experts on this matter, and consigning their states to economic oblivion?

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Businesses, such as mine, have stepped up and paid full entitlements to their employees. Now it is time for the State Governments to enable their people to provide for their families.

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All the best,

Clive Palmer

Rule 29.02

**Annexure Certificate  
MM6**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM6" referred to in the affidavit of Mark McGowan sworn at  
Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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## OPEN WESTERN AUSTRALIA NOW

Fellow Australians,

### McGowan must open Western Australia borders

Premier Mark McGowan continues to deny West Australians jobs and prosperity by refusing to open the state's borders to the rest of the country.

Like his Labor counterpart in Queensland, he needs to act now to ensure a successful future beyond COVID-19 by opening borders to allow the flow of trade and travel from other Australian states.

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All the best,

Clive Palmer

Authorised by Clive Palmer  
2 The Esplanade, Perth WA 6000

MMWJ2020PANA



Rule 29.02

**Annexure Certificate  
MM7**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

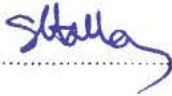
Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM7" referred to in the affidavit of Mark McGowan sworn at  
Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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All the best,

Clive Palmer

Authorised by Clive Palmer  
2 The Esplanade, Perth WA 6000

MM13207R PWA



Rule 29.02

**Annexure Certificate  
MM8**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM8" referred to in the affidavit of Mark McGowan sworn at  
Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

---



## HIGH COURT OF AUSTRALIA

### NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 12 Jun 2020 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

#### Details of Filing

File Number: B26/2020  
File Title: Palmer & Anor v. The State of Western Australia & Anor  
Registry: Brisbane  
Document filed: Form 1A - Notice of intervention  
Filing party: Interveners  
Date filed: 12 Jun 2020

#### Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. 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 and whenever the document is reproduced for use by the Court.



**IN THE HIGH COURT OF AUSTRALIA  
BRISBANE REGISTRY**

BETWEEN:

**CLIVE FREDERICK PALMER**  
First Plaintiff

**MINERALOGY PTY LTD (ABN 65 010 582 680)**  
Second Plaintiff

and

**STATE OF WESTERN AUSTRALIA**  
First Defendant

**CHRISTOPHER JOHN DAWSON**  
Second Defendant

**NOTICE OF INTERVENTION**

1. The Attorney-General of the Commonwealth of Australia gives notice of the Attorney-General's intervention in this proceeding under s 78A of the *Judiciary Act 1903*.
2. The Attorney-General intervenes in support of the position of the plaintiffs.
3. The address for service of the Attorney-General of the Commonwealth of Australia is:

The Australian Government Solicitor  
4 National Circuit  
Barton ACT 2600  
Attn: Andrew Buckland / Danielle Gatehouse  
Andrew.Buckland@ags.gov.au / Danielle.Gatehouse@ags.gov.au

Dated 12 June 2020

Andrew Buckland  
AGS Lawyer

for and on behalf of the Australian Government Solicitor  
Solicitor for the Attorney-General of the Commonwealth

Rule 29.02

**Annexure Certificate  
MM9**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

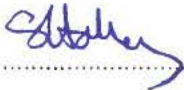
Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM9" referred to in the affidavit of Mark McGowan sworn at  
Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

---



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/ [Media hub - coronavirus \(COVID-19\) \(/media-hub-coronavirus-disease-covid-19\)](#) /

## Coronavirus update for Victoria - 29 July 2020

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Media release  
29 July 2020

Victoria has recorded 295 new cases of coronavirus since yesterday, with the total number of cases now at 9304.

The overall total has increased by 255 due to 40 cases being reclassified – largely due to duplication.

Within Victoria, 34 of the new cases are linked to outbreaks or complex cases and 261 are under investigation.

There have been nine new deaths from COVID-19 reported since yesterday. They were one man in his 60s, one man in his 70s, three men and two women in their 80s and two women in their 90s. Seven of the nine deaths are linked to aged care facilities. To date, 92 people have died from coronavirus in Victoria.

In Victoria at the current time:



- 1418 cases may indicate community transmission
- 4839 cases are currently active in Victoria
- 307 cases of coronavirus are in hospital, including 41 in intensive care
- 4123 people have recovered from the virus
- Of the total cases, 8632 cases are from metropolitan Melbourne, while 500 are from regional Victoria
- Total cases include 4625 men and 4593 women
- More than 1,554,000 tests have been processed
- Total number of healthcare workers: 884, active cases: 502
- There are 804 active cases relating to outbreaks across aged care facilities

Cases currently linked to public housing in North Melbourne, Flemington and Carlton are as follows:

- 309 cases are residents of various public housing towers in North Melbourne and Flemington. Investigations are continuing into how these cases are linked.
- 64 cases are residents of various public housing towers in Carlton. Investigations are continuing into if and/or how these cases are linked.

Active aged care outbreaks with the highest cumulative case numbers are as follows:

- 91 cases have been linked to Estia Aged Care Facility in Ardeer
- 89 cases have been linked to St Basil's Home for the Aged in Fawkner
- 86 cases have been linked to Epping Gardens Aged Care in Epping
- 79 cases have been linked to Kirkbrae Presbyterian Homes in Kilsyth
- 62 cases have been linked to Menarock Life Aged Care Facility in Essendon
- 56 cases have been linked to Estia Aged Care Facility in Heidelberg
- 54 cases have been linked to Glendale Aged Care Facility in Werribee
- 51 cases have been linked to BaptCare Wyndham Lodge in Werribee

- 44 cases have been linked to Outlook Gardens Aged Care Facility in Dandenong North
- 41 cases have been linked to Arcare Aged Care Facility in Craigieburn

Single cases in staff members at the following aged care facilities have also been notified to the department – Kalyna Aged Care in Delahey, Doutta Galla Lynch's Bridge in Kensington and Estia Health Aged Care in Glen Waverley. Two cases have also been identified at Mecwacare John Atchison Centre in Hoppers Crossing.

Cases currently linked to key outbreaks are as follows:

- 100 cases have been linked to Somerville Retail Services in Tottenham
- 100 cases have been linked to Bertocchi Smallgoods in Thomastown
- 78 cases have been linked to JBS in Brooklyn
- 51 cases have been linked to Australian Lamb Company in Colac
- 29 cases have been linked to Woolworths Distribution Centre Mulgrave
- 27 cases have been linked to LaManna Supermarket in Essendon Fields
- 24 cases have been linked to Clever Kids in Ashburton
- 19 cases have been linked to Respite Services Australia in Moonee Ponds
- 14 cases have been linked to the Linfox Warehouse in Truganina
- 10 cases have been linked to Don KR Castlemaine
- 9 cases have been linked to Blackwoods Scoresby

As investigations are undertaken throughout the day, these outbreak totals are likely to change as the public health team identify links between cases and identified outbreaks. Organisation based outbreaks totals include contacts as well as employees/residents/staff/students of that location/business.

People living in metropolitan Melbourne and Mitchell Shire are required to wear a face covering when leaving home for one of the four reasons.

There will be some reasons not to wear a face covering. For example, those who have a medical reason, children under 12 or during strenuous exercise.

Stage 3 "Stay at Home" restrictions are in force across metropolitan Melbourne and the Mitchell Shire.

# Media enquiries

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Department of Health & Human Services Media Unit (03) 9096 8860 or [press@dhhs.vic.gov.au](mailto:press@dhhs.vic.gov.au)

## Cases by Local Government Area

Please find the latest COVID-19 notifications by local government areas below

### Note:

- Residential location is the residential address provided when the case is notified.
- This is not where they were infected and may not be where the case currently resides.
- Numbers are correct as of 11.59pm last night but are subject to change as cases are followed up and data is analysed. This can include changes to residential addresses following case interviews.
- The last column shows the number of current active cases in an LGA. Active cases are defined as someone who has tested positive, is currently in isolation and being monitored by the Department and who has not yet recovered.

## Confirmed cases by LGA 29/07/2020

LGA	Confirmed cases (ever)	Active cases (current)
BRIMBANK	922	603
WYNDHAM	916	532
HUME	841	392
MELBOURNE	593	276
WHITTLESEA	528	352
MORELAND	512	282
MOONEE VALLEY	509	214
MELTON	416	253



<b>LGA</b>	<b>Confirmed cases (ever)</b>	<b>Active cases (current)</b>
CASEY	365	186
BANYULE	316	144
YARRA	266	158
MARIBYRNONG	261	149
DAREBIN	234	103
GREATER DANDENONG	172	130
STONNINGTON	171	43
BOROONDARA	164	51
HOBSONS BAY	150	78
MONASH	141	63
PORT PHILLIP	124	48
GREATER GEELONG	120	44
YARRA RANGES	116	80
WHITEHORSE	114	59
GLEN EIRA	107	40
KINGSTON	103	56
MANNINGHAM	101	38
INTERSTATE	89	10
MORNINGTON PENINSULA	81	12
FRANKSTON	78	31
KNOX	72	41
NILLUMBIK	72	39
BAYSIDE	69	31
CARDINIA	59	25
MAROONDAH	59	38

LGA	Confirmed cases (ever)	Active cases (current)
COLAC OTWAY	56	54
MITCHELL	40	14
BALLARAT	24	10
MACEDON RANGES	22	11
GREATER BENDIGO	21	11
GREATER SHEPPARTON	17	0
LATROBE	15	6
MOORABOOL	15	12
SURF COAST	13	3
WELLINGTON	13	0
GOLDEN PLAINS	12	8
HORSHAM	11	7
MOIRA	11	0
BAW BAW	9	3
SOUTH GIPPSLAND	9	3
MOUNT ALEXANDER	8	2
BASS COAST	7	2
GLENELG	7	6
ARARAT	6	1
CAMPASPE	6	1
OVERSEAS	6	1
SWAN HILL	6	2
WARRNAMBOOL	6	1
LODDON	5	2
MANSFIELD	5	1

LGA	Confirmed cases (ever)	Active cases (current)
MILDURA	5	0
NORTHERN GRAMPIANS	4	1
BENALLA	3	0
SOUTHERN GRAMPIANS	3	1
EAST GIPPSLAND	2	1
GANNAWARRA	2	0
HEPBURN	2	0
MURRINDINDI	2	0
STRATHBOGIE	2	0
WANGARATTA	2	0
WEST WIMMERA	2	1
WODONGA	2	1
ALPINE	1	0
CENTRAL GOLDFIELDS	1	0
CORANGAMITE	1	0
MOYNE	1	0
YARRIAMBICK	1	0
BULOKE	0	0
HINDMARSH	0	0
INDIGO	0	0
PYRENEES	0	0
QUEENSCLIFFE	0	0
TOWONG	0	0
UNKNOWN	77	72
<b>Total</b>	<b>9304</b>	<b>4839</b>



Rule 29.02

**Annexure Certificate  
MM10**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM10" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:

.....  
Witness

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**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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# Coronavirus update for Victoria - 30 July 2020

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Media release  
30 July 2020

Victoria has recorded 723 new cases of coronavirus since yesterday, with the total number of cases now at 9,998.

The overall total has increased by 694 due to 29 cases being reclassified – largely due to duplication.

Within Victoria, 64 of the new cases are linked to outbreaks or complex cases and 660 are under investigation.

There have been 13 new deaths from COVID-19 reported since yesterday. They were three men in their 70s, three women in their 70s, three men in their 80s, two women in their 80s and two men in their 90s. Ten of the 13 deaths are linked to known outbreaks in aged care facilities. To date, 105 people have died from coronavirus in Victoria.

In Victoria at the current time:

- 1698 cases may indicate community transmission
- 5385 cases are currently active in Victoria
- 312 cases of coronavirus are in hospital, including 34 in intensive care
- 4259 people have recovered from the virus
- Of the total cases, 9230 cases are from metropolitan Melbourne, while 565 are from regional Victoria
- Total cases include 4945 men and 4931 women
- More than 1,574,600 tests have been processed
- Total number of healthcare workers: 951, active cases: 549
- There are 877 active cases relating to outbreaks across aged care facilities

Cases currently linked to public housing in North Melbourne, Flemington and Carlton are as follows:

- 311 cases are residents of various public housing towers in North Melbourne and Flemington. Investigations are continuing into how these cases are linked.
- 66 cases are residents of various public housing towers in Carlton. Investigations are continuing into if and/or how these cases are linked.

Active aged care outbreaks with the highest cumulative case numbers are as follows:

- 94 cases have been linked to Estia Aged Care Facility in Ardeer
- 111 cases have been linked to St Basil's Homes for the Aged in Fawkner
- 90 cases have been linked to Epping Gardens Aged Care in Epping
- 81 cases have been linked to Kirkbrae Presbyterian Homes in Kilsyth
- 67 cases have been linked to Estia Aged Care Facility in Heidelberg
- 62 cases have been linked to Menarock Life Aged Care Facility in Essendon
- 56 cases have been linked to Glendale Aged Care Facility in Werribee
- 52 cases have been linked to BaptCare Wyndham Lodge in Werribee



- 49 cases have been linked to Outlook Gardens Aged Care Facility in Dandenong North
- 42 cases have been linked to Arcare Aged Care Facility in Craigieburn

A single case in a staff member has been notified at the BlueCross Willowmeade residential aged care facility in Kilmore. The facility has been locked down and all staff and residents will be tested.

Cases currently linked to key outbreaks are as follows:

- 121 cases have been linked to Bertocchi Smallgoods in Thomastown
- 106 cases have been linked to Somerville Retail Services in Tottenham
- 82 cases have been linked to JBS in Brooklyn
- 64 cases have been linked to Australian Lamb Company in Colac
- 30 cases have been linked to Woolworths Distribution Centre Mulgrave
- 30 cases have been linked to Melbourne Health Royal Park Campus
- 22 cases have been linked to Respite Services Australia in Moonee Ponds
- 20 cases have been linked to Nino Early Learning Adventures in Bundoora
- 19 cases have been linked to Hazeldean Transition Care, Western Health
- 16 cases have been linked to the Linfox Warehouse in Truganina
- 11 cases have been linked to Diamond Valley Pork in Laverton North

As investigations are undertaken throughout the day, these outbreak totals are likely to change as the public health team identify links between cases and identified outbreaks. Organisation based outbreaks totals include contacts as well as employees/residents/staff/students of that location/business.

Last week, we announced that face coverings would be mandatory in metropolitan Melbourne and Mitchell Shire. Today, we announced that same requirement will apply across regional Victoria.

That means from Sunday 2 August at 11:59pm, a face covering will be mandatory whenever you leave home – wherever you live.

## Media enquiries

Department of Health & Human Services Media Unit (03) 9096 8860  
or [press@dhhs.vic.gov.au](mailto:press@dhhs.vic.gov.au) (<mailto:press@dhhs.vic.gov.au>)

## Cases by Local Government Area

Please find the latest COVID-19 notifications by local government areas below

Note:

- Residential location is the residential address provided when the case is notified.
- This is not where they were infected and may not be where the case currently resides.
- Numbers are correct as of 11.59pm last night but are subject to change as cases are followed up and data is analysed. This can include changes to residential addresses following case interviews.
- The last column shows the number of current active cases in an LGA. Active cases are defined as someone who has tested positive, is currently in isolation and being monitored by the Department and who has not yet recovered.

## Confirmed Cases by LGA 30/07/2020

LGA	Confirmed cases (ever)	Active cases (current)
WYNDHAM	996	601
BRIMBANK	987	651
HUME	896	428
MELBOURNE	620	290
WHITTLESEA	576	392
MORELAND	544	302
MOONEE VALLEY	529	220

<b>LGA</b>	<b>Confirmed cases (ever)</b>	<b>Active cases (current)</b>
MELTON	478	312
CASEY	409	223
BANYULE	324	144
YARRA	284	170
MARIBYRNONG	279	163
DAREBIN	250	118
GREATER DANDENONG	186	144
STONNINGTON	177	51
BOROONDARA	170	55
HOBSONS BAY	160	79
MONASH	146	65
GREATER GEELONG	134	59
PORT PHILLIP	126	46
YARRA RANGES	126	90
WHITEHORSE	117	60
GLEN EIRA	111	45
KINGSTON	108	57
MANNINGHAM	106	41
INTERSTATE	89	10
FRANKSTON	84	38
MORNINGTON PENINSULA	83	14
COLAC OTWAY	79	76
BAYSIDE	75	37
KNOX	75	44
NILLUMBIK	74	41



<b>LGA</b>	<b>Confirmed cases (ever)</b>	<b>Active cases (current)</b>
CARDINIA	70	35
MAROONDAH	64	42
MITCHELL	44	18
GREATER BENDIGO	28	18
MACEDON RANGES	25	14
BALLARAT	24	10
GREATER SHEPPARTON	17	0
LATROBE	15	6
MOORABOOL	15	12
GLENELG	14	13
SURF COAST	14	4
GOLDEN PLAINS	13	8
WELLINGTON	13	0
HORSHAM	11	7
MOIRA	11	0
BAW BAW	9	3
SOUTH GIPPSLAND	9	3
BASS COAST	8	3
MOUNT ALEXANDER	8	2
ARARAT	6	1
CAMPASPE	6	1
MANSFIELD	6	2
SWAN HILL	6	2
WARRNAMBOOL	6	1
LODDON	5	2

<b>LGA</b>	<b>Confirmed cases (ever)</b>	<b>Active cases (current)</b>
MILDURA	5	0
NORTHERN GRAMPIANS	5	2
OVERSEAS	5	0
BENALLA	3	0
MURRINDINDI	3	1
SOUTHERN GRAMPIANS	3	1
CORANGAMITE	2	1
EAST GIPPSLAND	2	1
GANNAWARRA	2	0
HEPBURN	2	0
STRATHBOGIE	2	0
WANGARATTA	2	0
WEST WIMMERA	2	1
WODONGA	2	1
ALPINE	1	0
CENTRAL GOLDFIELDS	1	0
MOYNE	1	0
YARRIAMBICK	1	0
BULOKE	0	0
HINDMARSH	0	0
INDIGO	0	0
PYRENEES	0	0
QUEENSCLIFFE	0	0
TOWONG	0	0
UNKNOWN	109	104

LGA	Confirmed cases (ever)	Active cases (current)
Total	9998	5385

## CORONAVIRUS (/CORONAVIRUS)

Victoria's restriction levels (/victorias-restriction-levels-covid-19)

How to stay safe and well (/how-stay-safe-and-well-covid-19)

Getting tested (/getting-tested)

For health services and professionals (/health-services-and-professionals-coronavirus-covid-19)

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Wastewater testing (/wastewater-testing-covid-19)

Tracking coronavirus in Victoria (/tracking-coronavirus-victoria)

Coronavirus (COVID-19) daily update (/coronavirus-covid-19-daily-update)

### Media hub - coronavirus (COVID-19) (/media-hub-coronavirus-disease-covid-19)

Promotional material (/promotional-material-coronavirus-covid-19)

Updates (/coronavirus/updates)

Additional case data (/additional-coronavirus-covid-19-case-data)

Coronavirus testing data across Victoria (/coronavirus-testing-data-across-victoria)

Coronavirus (COVID-19) vaccine data (/coronavirus-covid-19-vaccine-data)

For service providers (/service-providers-coronavirus-disease-covid-19)



Rule 29.02

**Annexure Certificate  
MM11**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM11" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

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**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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# Coronavirus update for Victoria - 31 July 2020

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Media release  
31 July 2020

Victoria has recorded 627 new cases of coronavirus since yesterday, with the total number of cases now at 10,577.

The overall total has increased by 579 due to 48 cases being reclassified – largely due to duplication.

Within Victoria, 77 of the new cases are linked to outbreaks or complex cases and 550 are under investigation.

There have been eight new deaths from COVID-19 reported since yesterday.

They were two men in their 50s, two men in their 70s, one woman in her 70s and three men in their 80s. Four of the eight deaths are linked to known outbreaks in aged care facilities. To date, 113 people have died from coronavirus in Victoria.

In Victoria at the current time:

- 1792 cases may indicate community transmission
- 5743 cases are currently active in Victoria
- 349 cases of coronavirus are in hospital, including 36 in intensive care
- 4479 people have recovered from the virus
- Of the total cases, 9754 cases are from metropolitan Melbourne, while 595 are from regional Victoria
- Total cases include 5201 men and 5195 women
- More than 1,608,400 tests have been processed
- Total number of healthcare workers: 1030, active cases: 614
- There are 928 active cases relating to outbreaks across aged care facilities

Cases currently linked to public housing in North Melbourne, Flemington and Carlton are as follows:

- 311 cases are residents of various public housing towers in North Melbourne and Flemington. Investigations are continuing into how these cases are linked.
- 66 cases are residents of various public housing towers in Carlton. Investigations are continuing into if and/or how these cases are linked.

Active aged care outbreaks with the highest cumulative case numbers are as follows:

- 124 cases have been linked to St Basil's Home for the Aged in Fawkner
- 115 cases have been linked to Epping Gardens Aged Care in Epping
- 104 cases have been linked to Estia Aged Care Facility in Ardeer
- 87 cases have been linked to Kirkbrae Presbyterian Homes in Kilsyth
- 82 cases have been linked to Estia Aged Care Facility in Heidelberg
- 63 cases have been linked to Menarock Life Aged Care Facility in Essendon
- 58 cases have been linked to Glendale Aged Care Facility in Werribee
- 55 cases have been linked to Outlook Gardens Aged Care Facility in Dandenong North



- 52 cases have been linked to Baptist Care Wyndham Lodge in Werribee
- 45 cases have been linked to Arcare Aged Care Facility in Craigieburn

New cases in other aged care facilities include: a single case in a staff member at Homestyle Aged Care in Point Cook; a single case in a staff member at Bupa Aged Care in Templestowe; a single case in a staff member at Royal Freemasons Bendigo; a single case in a staff member at Cumberland Manor in Sunshine North; a single case in a staff member at Gary Smorgon House in Caulfield; and a single case in a resident in Florence Aged Care Facility in St Albans.

Cases currently linked to key outbreaks are as follows:

- 184 cases have been linked to Al-Taqwa College
- 134 cases have been linked to Bertocchi Smallgoods in Thomastown
- 84 cases have been linked to JBS in Brooklyn
- 68 cases have been linked to Australian Lamb Company in Colac
- 37 cases have been linked to Melbourne Health Royal Park Campus
- 31 cases have been linked to Woolworths Distribution Centre Mulgrave
- 13 cases have been linked to Golden Farms Poultry in Breakwater
- 13 cases have been linked to Diamond Valley Pork in Laverton North
- 12 cases have been linked to Dowell Windows in Bayswater
- 11 cases have been linked to the My Moovers call centre in Docklands
- 6 cases have been linked to the Centrelink office in Epping.
- 6 cases have been linked to Capral Aluminium in Campbellfield
- 5 cases have been linked to Victoria Police sites at Docklands

As investigations are undertaken throughout the day, these outbreak totals are likely to change as the public health team identify links between cases and identified outbreaks. Organisation based outbreaks totals include contacts as well as employees/residents/staff/students of that location/business.

Last week, we announced that face coverings would be mandatory in metropolitan Melbourne and Mitchell Shire. Yesterday, we announced that same requirement will apply across regional Victoria.

That means from Sunday 2 August at 11:59pm, a face covering will be mandatory whenever you leave home – wherever you live.

As Eid al-Adha has commenced, it is important that we remind Victorians to stay safe and protect their family and community.

We understand this is a sacrifice for Victorian Muslims, but while we may be physically apart, we can be spiritually connected.

It is important that every Victorian takes this virus seriously and that we all do the right thing.

## Media inquiries:

Department of Health & Human Services Media Unit [\(03\) 9096 8860](tel:(03)90968860) (tel:(03) 9096 8860) or [press@dhhs.vic.gov.au](mailto:press@dhhs.vic.gov.au) (<mailto:press@dhhs.vic.gov.au>)

## Cases by Local Government Area

Please find the latest COVID-19 notifications by local government areas below

Note:

- Residential location is the residential address provided when the case is notified.
- This is not where they were infected and may not be where the case currently resides.
- Numbers are correct as of 11.59pm last night but are subject to change as cases are followed up and data is analysed. This can include changes to residential addresses following case interviews.
- The last column shows the number of current active cases in an LGA. Active cases are defined as someone who has tested positive, is currently in isolation and being monitored by the Department and who has not yet recovered.

## Confirmed cases by LGA 31/07/2020

<b>LGA</b>	<b>Confirmed cases (ever)</b>	<b>Active cases (current)</b>
WYNDHAM	1097	671
BRIMBANK	1021	658
HUME	943	460
MELBOURNE	629	279
WHITTLESEA	629	435
MORELAND	575	320
MOONEE VALLEY	536	212
MELTON	517	340
CASEY	438	243
BANYULE	332	141
MARIBYRNONG	300	179
YARRA	294	170
DAREBIN	273	140
GREATER DANDENONG	200	156
STONNINGTON	182	53
BOROONDARA	176	60
HOBSONS BAY	170	81
MONASH	152	67
GREATER GEELONG	149	73
YARRA RANGES	146	108
PORT PHILLIP	133	50
WHITEHORSE	123	64
GLEN EIRA	120	52
MANNINGHAM	110	44
KINGSTON	109	55



<b>LGA</b>	<b>Confirmed cases (ever)</b>	<b>Active cases (current)</b>
FRANKSTON	93	47
INTERSTATE	90	11
MORNINGTON PENINSULA	84	15
COLAC OTWAY	83	78
BAYSIDE	79	41
NILLUMBIK	78	45
KNOX	77	42
CARDINIA	71	34
MAROONDAH	67	43
MITCHELL	45	20
GREATER BENDIGO	30	19
MACEDON RANGES	30	19
BALLARAT	25	10
GREATER SHEPPARTON	18	1
LATROBE	15	6
MOORABOOL	15	12
GLENELG	14	13
SURF COAST	14	4
GOLDEN PLAINS	13	8
WELLINGTON	13	0
HORSHAM	11	7
MOIRA	11	0
BASS COAST	9	4
BAW BAW	9	3
MOUNT ALEXANDER	9	3

<b>LGA</b>	<b>Confirmed cases (ever)</b>	<b>Active cases (current)</b>
SOUTH GIPPSLAND	9	3
ARARAT	6	1
CAMPASPE	6	1
LODDON	6	3
MANSFIELD	6	2
SWAN HILL	6	2
WARRNAMBOOL	6	1
MILDURA	5	0
OVERSEAS	5	0
NORTHERN GRAMPIANS	4	1
BENALLA	3	0
MURRINDINDI	3	1
SOUTHERN GRAMPIANS	3	1
EAST GIPPSLAND	2	1
GANNAWARRA	2	0
HEPBURN	2	0
STRATHBOGIE	2	0
WANGARATTA	2	0
WEST WIMMERA	2	1
WODONGA	2	1
ALPINE	1	0
CENTRAL GOLDFIELDS	1	0
CORANGAMITE	1	0
MOYNE	1	0
YARRIAMBIACK	1	0

LGA	Confirmed cases (ever)	Active cases (current)
BULOKE	0	0
HINDMARSH	0	0
INDIGO	0	0
PYRENEES	0	0
QUEENSCLIFFE	0	0
TOWONG	0	0
UNKNOWN	133	128
<b>TOTAL</b>	<b>10577</b>	<b>5743</b>

## CORONAVIRUS (/CORONAVIRUS)

Victoria's restriction levels (/victorias-restriction-levels-covid-19)

How to stay safe and well (/how-stay-safe-and-well-covid-19)

Getting tested (/getting-tested)

For health services and professionals (/health-services-and-professionals-coronavirus-covid-19)

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Contact tracing data (/contact-tracing-data-covid-19)

Victorian healthcare worker coronavirus (COVID-19) data (/victorian-healthcare-worker-covid-19-data)

Wastewater testing (/wastewater-testing-covid-19)

Tracking coronavirus in Victoria (/tracking-coronavirus-victoria)

Coronavirus (COVID-19) daily update (/coronavirus-covid-19-daily-update)



Rule 29.02

**Annexure Certificate  
MM12**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM12" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:

.....  
Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

---

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# A LETTER TO ALL WEST

## Men and Women of Western Australia

Like all Australians my major concern is for the health and welfare of our community. I have a strong commitment to Western Australia and the men and women who have built this state. I have invested decades of my life in developing the state and employing Western Australians. That is why I must fight so that the truth prevails over injustice.

Western Australians are entitled to know the truth. In the Federal court in Brisbane the truth was finally revealed by Western Australia's chief medical officer, Dr Andy Robertson... who revealed to the Federal court that South Australia, Queensland, Tasmania, Northern Territory and Australian Capital Territory were all further advanced than Western Australia in eradicating the virus. It was clear from his sworn evidence there was no reason that travel should be restricted between those states and Western Australia. He even suggested a travel bubble could be created between WA and NT, for example and had advised the Western Australian government of this but they never got back to him and instead decided to close borders to all states.

Not only is the Western Australian government's action unconstitutional, it is against the best interests of Western Australian families. There has been little talk of the increase in suicides, domestic violence, financial hardship and unemployment that the Premier's action has brought on the community.

The Premier says he relies on the advice of the chief medical officer when obviously he doesn't. The police commissioner says he relies on the advice of the chief medical officer when he lets people, friendly to the Premier, visit Western Australia as against others the Premier does not like. The truth is that tens of thousands of people have entered the state from other states while Labor maintains it has been locked down. Why? To support their mates and win votes. Politicians will tell the Australian public anything to be re-elected. It is particularly disturbing to me when politics becomes mixed up with health policies close to an election.

Authorised by Clive Palmer  
2 The Esplanade, Perth WA 6000

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# AUSTRALIANS

We all know how many lives and families have been affected by business closures in Western Australia. For a long time there has been an undercurrent that there is a difference between the western and eastern states of our country. I have found that Australians are Australians whatever state they come from and that their families all have the same needs, hopes and aspirations; that they all have a need for love, hope, acceptance and opportunity.

As a great man once said:

"Our most basic common link is that we all inhabit this planet. We all breathe the same air. We all cherish our children's future. And that we all are mortal."

When the Federal government eventually stops, as it must, paying Job Keeper and other benefits we have to make sure that all Western Australians have a healthy and prosperous future. That can best be done by truthfully dealing with problems we face and making sure that our families and jobs are not eliminated just so a politician can win an election.

While the Premier is not slow to call me names and attack my integrity, I have never met the Premier. I bear neither he nor his family any ill will. What we need today is unity and a sense of belonging and honesty. One of the rarest commodities in politics is courage. All Australians must admire the courage of Western Australia's chief medical officer who put Western Australia and the truth before lip service to politicians.

I call upon the Western Australian government to maintain restrictions against virus hot spots but not destroy the lives of Western Australians by misleading them with threats that don't exist just to win an election.

The federal and state governments must come together and do what is best for the long term future of Western Australia so that all Western Australians can be what they can be.

**God bless Australia**



**Clive Palmer**

Authorised by Clive Palmer  
2 The Esplanade, Perth WA 6000

MINT2227R PWA



Rule 29.02

**Annexure Certificate  
MM13**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM13" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
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Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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# A LETTER TO ALL WEST AUSTRALIANS

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**God bless Australia**



**Clive Palmer**

Authorised by Clive Palmer  
2 The Esplanade, Perth WA 6000

MW13227R FWA

Rule 29.02

**Annexure Certificate  
MM14**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**


Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM14" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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# A LETTER TO ALL WEST

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2 The Esplanade, Perth WA 6000

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**God bless Australia**



**Clive Palmer**

Authorised by Clive Palmer  
2 The Esplanade, Perth WA 6000

MINT2227R PWA

Rule 29.02

**Annexure Certificate  
MM15**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM15" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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## Record investment in WA school upgrades to help with recovery

Monday, 3 August 2020

- Major School Upgrade package to deliver first-class learning experiences for WA students
- Package to upgrade and modernise 63 public schools as part of WA Recovery Plan
- \$492.2 million package for new schools and school improvements across the State
- Projects will help boost the construction industry, and create hundreds of local jobs

Premier Mark McGowan and Education and Training Minister Sue Ellery have unveiled an unprecedented package to modernise Western Australian schools as part of the WA Recovery Plan.

The Major School Upgrade package - totalling \$492.2 million - includes \$319.2 million of new funding for upgrades and refurbishments at 63 public schools around the State, stimulating economic growth and supporting around 1,850 jobs.

Works will be carried out over the next four years, and will include major additions to burgeoning secondary schools, new sports halls, classrooms, specialist facilities and refurbishments.

Forty-six metropolitan schools will receive upgrades totalling \$201.2 million, while 17 regional schools will share in a total of \$118 million.

Major projects include:



Hon Mark McGowan BA LLB  
MLA

Premier; Minister for Public  
Sector Management; State  
Development, Jobs and  
Trade; Federal-State  
Relations



Hon Sue Ellery BA MLC  
Minister for Education and  
Training

**86**

- Carine Senior High School - \$32 million major upgrade to provide classrooms and facilities for up to 600 students;
- Albany Senior High School - \$6.3 million for a new performing arts centre;
- Kalamunda Senior High School - \$18.3 million rebuild of education support facilities and new classrooms;
- Lynwood Senior High School - \$18.3 million for a new performing arts centre, sports hall and classroom building;
- Melville Senior High School - \$925,000 for refurbishment of technical classrooms;
- Ocean Reef Senior High School - \$5 million for a sports hall;
- Margaret River Senior High School - \$6.27 million for a new full-sized sports oval;
- Bunbury Senior High School - \$3.1 million for a major refurbishment of the sports hall and specialist areas;
- Karratha Senior High School - \$22 million upgrade to provide new facilities to accommodate increasing enrolments;
- Joseph Banks Secondary College - \$16 million new classroom building;
- Lesmurdie Primary School - \$15.2 million to complete school rebuild;
- Australind Senior High School - \$15 million upgrade to provide new double-storey classroom building, science and design and technology facilities;
- Eastern Hills Senior High School - \$2 million for a major refurbishment to the cafeteria and specialist classrooms;
- Wanneroo Secondary College - \$5 million for a new performing arts centre and cafeteria;
- Willetton Senior High School - \$12.5 million for a Stage 3 - classroom block;
- Wickham Primary School - \$3.5 million for a new early childhood education centre;
- Dianella Secondary College - \$5.3 million for a new performing arts centre;

**87**

- Pinjarra Senior High School - \$10.4 million for a new performing arts centre and sports hall; and
- Westminster Primary School - \$10 million for school rebuild.

The \$319.2 million investment is in addition to \$173 million of infrastructure funding for public schools recently announced, including Bob Hawke College Stage 2 and a new secondary school in Piara Waters.

For the full list of schools, visit  
<http://inthisogether.wa.gov.au>

**Comments attributed to Premier Mark McGowan:**

"My Government is committed to delivering high-quality education facilities across Western Australia, for the benefit of Western Australian students.

"This ambitious capital works undertaking has dual aims - to create an injection of local jobs for WA workers and deliver exceptional learning facilities for WA children and teenagers.

"The school upgrades form part of my Government's unprecedented \$5.5 billion investment in our State as we move into the recovery phase of COVID-19.

"Our comprehensive WA Recovery Plan will help drive economic and social recovery across the State, and create a pipeline of jobs for Western Australians."

**Comments attributed to Education and Training Minister Sue Ellery:**

"This significant package of work will see ageing infrastructure at our public schools upgraded, to create top rate learning spaces for WA students.

"These works come on top of major school infrastructure already announced, such as stage two of the flagship Bob Hawke College, additions to Ridge View Secondary College and a new school for Piara Waters."



**88**

Premier's office - 6552 5000

Education and Training Minister's office - 6552 5700

Rule 29.02

**Annexure Certificate  
MM16**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM16" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
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# The West Australian

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Coronavirus (COVID-19) Health Public Health World News Donald Trump

## Coronavirus crisis: Donald Trump's COVID-19 cure linked to deaths

**Bloomberg**

Sat, 23 May 2020 9:46AM



**Drug touted by Trump as COVID-19 treatment tied to higher death risk**

1:53



■ The malaria drug hydroxychloroquine, which U.S. President Donald Trump says he has been taking and has urged others to use, was tied to increased risk of death in hospitalized COVID-19 patients, according to a large study published in the medical journal

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Antimalaria drugs that US President Donald Trump has touted for treatment of COVID-19 were linked to an increased risk of death and heart ailments in a study.

Hydroxychloroquine and chloroquine didn't benefit patients with the coronavirus, either alone or in combination with an antibiotic, according to the study published Friday by The Lancet medical journal.

Researchers are searching through available options to treat the coronavirus, which has killed more than 330,000 people, including drugs like the antimalarials that are also already approved to treat lupus and rheumatoid arthritis. Trump's endorsement has led many people to take the medications without scientific proof of their benefit.

## *Hydroxychloroquine and chloroquine didn't benefit patients with the coronavirus, either alone or in combination with an antibiotic.*

The study looked at the records of 15,000 people who had been treated with the antimalarials and one of two antibiotics that have sometimes been paired with them.

Treatment with any combination of the four drugs was associated with a higher risk of death than seen in 81,000 patients who didn't receive them.

The biggest risk increase was seen in the group treated with hydroxychloroquine and an antibiotic, where 8% of patients who got the combination developed a heart arrhythmia with 0.3% of those in the comparison group.

The drugs should only be used for COVID treatment as part of robust studies that will definitively show their impact, the researchers said.



 Hydroxychloroquine tablets. Credit: John Locher/AP

### **Study nulled**

Authors of a separate study that supported the use of antimalaria drugs with antibiotics for COVID requested that their paper be withdrawn, according to the Retraction Watch website.

The paper had been posted online May 11 and hadn't been reviewed or published in a medical journal.

The lead author of the study, Benjamin Davido of the Hopital Raymond Poincare near Paris, declined to comment when reached by telephone.

The paper's text has been replaced with a statement that the authors intend to revise the manuscript because of "controversy about hydroxychloroquine and the retrospective nature of their study."

Only one drug, Gilead Sciences Inc.'s remdesivir, has been shown to benefit coronavirus patients in a clinical trial.

It reduced patients' recovery time from an average of 15 days to 11 days in that study.

Trump said this week that he's taking hydroxychloroquine in an effort to ward off the coronavirus.

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Rule 29.02

**Annexure Certificate  
MM17**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM17" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
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---

# Hydroxychloroquine taken off emergency list to treat COVID-19

By **THOMAS BURTON** and **JARED HOPKINS**

THE WALL STREET JOURNAL

7:08PM JUNE 16, 2020 • 6 COMMENTS

The US Food and Drug Administration has revoked its emergency-use authorisation for two malaria drugs, chloroquine and hydroxychloroquine, for the treatment of COVID-19.

“It is no longer reasonable to believe” the two drugs “may be effective in treating COVID-19”, FDA chief scientist Denise Hinton said in a letter.

Nor was it reasonable to believe that “known and potential benefits of these products outweigh their known and potential risks”.

The two drugs were widely touted by Donald Trump and others as useful in helping patients with the disease, which some say contributed to panic-buying and shortages.

The US President disclosed last month that he had taken hydroxychloroquine to ward off possible infection. In one tweet, he had claimed that hydroxychloroquine combined with the antibiotic azithromycin “have a real chance to be one of the biggest game changers in the history of medicine”.

At the White House on Monday, Mr Trump said he was unaware of the FDA’s decision, but added: “It certainly didn’t hurt me.”

The FDA had issued the authorisation for emergency use of the two drugs in March, after the medicines had fallen in short supply. The decision allowed the government to distribute millions of doses donated by drug companies.

But on April 24 it issued a cautionary statement after learning of serious heart-rhythm problems among coronavirus patients who had used chloroquine. At that time, the agency stressed that the

medicines hadn't been shown to be safe and effective against COVID-19, and that they were being studied in clinical trials.

The FDA said clinical trials of both drugs — to determine their effectiveness in treating COVID-19 — would be allowed to continue.

In London, scientists at Imperial College will start the first clinical trials of a potential COVID-19 vaccine this week with more than £45m (\$82.4m) from the British government and philanthropic donors.

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The trials are the first human tests of a new technology that the researchers say could transform vaccine development by enabling rapid responses to emerging diseases such as the COVID-19 infection caused by the new coronavirus.

About 300 healthy volunteers will receive two doses of the vaccine in the initial human trials to test whether it is safe in people and whether it produces an effective immune response against COVID-19. If it shows promise, larger trials with about 6000 people would be planned for later this year.

More than 100 potential COVID-19 vaccines are in development around the world, including several already in human trials from AstraZeneca, Pfizer, BioNtech, Moderna, Johnson & Johnson, Merck, Sanofi and CanSino Biologics.

The Imperial trials come after the team won £41m in funding from the government plus £5m in donations.

*The Wall Street Journal, Reuters*



Rule 29.02

**Annexure Certificate  
MM18**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM18" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper

Law firm: Clayton Utz

**Address for service:**

Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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# Coronavirus: Anti-malarial drug trials abandoned

By NATASHA ROBINSON, HEALTH EDITOR

9:35PM JULY 30, 2020 32 COMMENTS

Scientists leading a clinical trial that aims to prevent coronavirus patients needing intensive care have abandoned testing antimalarial drug hydroxychloroquine on the basis that it is not effective in treating COVID-19.

Instead, the scientists will administer convalescent plasma to COVID-19 patients in a recasting of the clinical trial.

Melbourne's Doherty Institute is conducting a major randomised control trial known as the ASCOT trial, set to enrol more than 2000 patients in hospitals in Australia and internationally. Previously, the trial was testing the efficacy of hydroxychloroquine and anti-HIV drug lopinavir, given either separately or in combination.

The leaders of the ASCOT study made the decision to discontinue administering hydroxychloroquine and lopinavir after a major clinical trial by Oxford University in Britain in conjunction with the World Health Organisation found the two drugs were not effective in reducing COVID-19 mortality.

"We have made this decision based on the reports of the UK study, plus growing evidence from several smaller studies showing hydroxychloroquine and lopinavir are not effective in treating COVID-19," said ASCOT principal investigator Steven Tong, a Royal Melbourne Hospital infectious diseases clinician and co-lead of clinical research at the Doherty Institute.

Professor Tong said antiviral drug remdesivir had been shown to be more effective in reducing the severity of COVID-19, together with anti-inflammatory drug dexamethasone.

Most patients in hospital with severe COVID-19 were receiving these treatments, he said.

The effectiveness of convalescent plasma in treating COVID-19 has not been established in major clinical trials, but Professor Tong said its use during pandemics had a long history.

“Convalescent plasma has been used historically for the 1918 Spanish and the 2009 influenza pandemics, for pneumococcal pneumonia, and also for previous coronaviruses — SARS and MERS,” he said.

“Over 20,000 patients in the US have safely received convalescent plasma for COVID-19. While conceptually attractive, we still need clinical trials to demonstrate efficacy for patients with COVID-19.”

As part of the immune response, people recovering from COVID-19 can develop antibodies targeting parts of the SARS-CoV-2 virus. These antibodies are contained in the liquid part of the blood, the plasma, and can be given to patients newly infected with COVID-19 via plasma transfusion, potentially resulting in more rapid control and clearance of the virus.

Red Cross Lifeblood is collecting convalescent plasma from recovered coronavirus patients. It's already received more than 1000 donations from 474 donors who have recovered from COVID-19.

There is a smaller clinical trial of convalescent plasma under way in Australia, led by pharmaceutical company CSL. CSL is also working on a hyper-immune COVID-19 immunoglobulin product made from purified and concentrated antibodies.

Convalescent plasma will also be given to patients in a second clinical trial led by the Doherty Institute and Monash University, called REMAP-CAP.

“The convalescent plasma arms of these trials complement each other,” said Monash University associate professor Zoe McQuilten.

#### **NATASHA ROBINSON, HEALTH EDITOR**

Natasha Robinson began her career at The Australian in 2004. A Walkley awards finalist and a Kennedy Awards winner, she was appointed Health Editor in 2019, and has covered rounds including national affairs, in... [Read more](#)

#### **More stories on this topic**

- [Gym owner sues over Victorian lockdown](#)
- [‘What do you mean?’: Bizarre court antics](#)
- [Major mask rule change in Victoria](#)



Rule 29.02

**Annexure Certificate  
MM19**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM19" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:

Witness



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**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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4 THE AUSTRALIAN,  
FRIDAY, JULY 31, 2020  
theaustralian.com.au

# Vaccine test

EXCLUSIVE

NATASHA ROBINSON  
HEALTH DOCTOR

A COVID-19 vaccine that has been developed by Adelaide scientists has been shown to be safe in phase I trials, and has generated an immune response in human subjects.

The vaccine developed by Flinders University professor Nikolai Petrovsky is the first candidate to clear phase I trials in Australia, and one of only a handful that have progressed beyond the first phase of human trials in the world.

Forty volunteers were dosed

with the vaccine, dubbed Covax-19, this month. While definitive study results are yet to be published, Professor Petrovsky said safety data from the phase I trial of the vaccine had been provided to the study's ethics committee, which had approved further testing in more volunteers, including the elderly, children and cancer patients.

"We have confirmed that the Covax-19 vaccine can induce appropriate antibody responses in human subjects," he said. "We now have preliminary safety data showing there were no significant systemic side-effects in any of the subjects."

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## Anti-malarial drug trials abandoned

NATASHA ROBINSON

Scientists leading a clinical trial that aims to prevent coronavirus patients needing intensive care have abandoned testing anti-malarial drug hydroxychloroquine on the basis that it is not effective in treating COVID-19.

Instead, the scientists will administer convalescent plasma to COVID-19 patients in a re-casting of the clinical trial.

Melbourne's Doherty Institute is conducting a major randomised control trial known as the ASCOT trial, set to enrol more than 2000 patients in hospitals in Australia and internationally. Previously, the trial was testing the efficacy of hydroxychloroquine and anti-HIV drug lopinavir, given either separately or in combination.

The leaders of the ASCOT study made the decision to discontinue administering hydroxychloroquine and lopinavir after a major clinical trial by Oxford University in Britain in conjunction with the World Health Organisation found the two drugs were not effective in reducing COVID-19 mortality.

"We have made this decision based on the reports of the UK study, plus growing evidence from several smaller studies showing hydroxychloroquine and lopinavir are not effective in treating COVID-19," said ASCOT principal investigator Steven Tong, a Royal Melbourne Hospital infectious diseases clinician and co-lead of clinical research at the Doherty Institute.

Professor Tong said antiviral drug remdesivir had been shown to be more effective in reducing the severity of COVID-19, together with anti-inflammatory drug dexamethasone.

Most patients in hospital with severe COVID-19 were receiving these treatments, he said.

The effectiveness of convalescent plasma in treating COVID-19 has not been established in major clinical trials, but Professor Tong said its use during pandemics had a long history.

"Convalescent plasma has been used historically for the 1918 Spanish and the 2009 influenza pandemics, for pneumococcal pneumonia, and also for previous coronaviruses — SARS and MERS," he said.

"Over 20,000 patients in the US have safely received convalescent plasma for COVID-19. While conceptually attractive, we still need clinical trials to demonstrate efficacy for patients with COVID-19."

As part of the immune response, people recovering from COVID-19 can develop antibodies targeting parts of the SARS-CoV-2 virus. These antibodies are contained in the liquid part of the blood, the plasma, and can be given to patients newly infected with COVID-19 via plasma transfusion, potentially resulting in more rapid control and clearance of the virus.

Red Cross Lifeblood is collecting convalescent plasma from recovered coronavirus patients. It's already received more than 1000 donations from 474 donors who have recovered from COVID-19.

There is a smaller clinical trial of convalescent plasma under way in Australia, led by pharmaceutical company CSL. CSL is also working on a hyper-immune COVID-19 immunoglobulin product made from purified and concentrated antibodies.

Convalescent plasma will also be given to patients in a second clinical trial led by the Doherty Institute and Monash University, called REMAP-CAP.

"The convalescent plasma arms of these trials complement each other," said Monash University associate professor Zoe McQuillen.

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Rule 29.02

**Annexure Certificate  
MM20**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM20" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:

Witness



---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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**Australian Government**  
**Department of Health**  
Therapeutic Goods Administration

## **Amendments to the new restrictions on prescribing hydroxychloroquine for COVID-19**

26 August 2020

### **Update**

#### **26 August 2020**

Further to the information published below, the TGA reiterates its advice that it strongly discourages the use of hydroxychloroquine to treat COVID-19 (including in hospitalised patients) or prevent COVID-19 (<https://www.nps.org.au/hcq-and-covid-19>), unless the patient is enrolled in a clinical trial, which will have safety monitoring protocols and oversight by a Human Research Ethics Committee.

The National COVID-19 Clinical Evidence Taskforce upgraded the strength of its recommendation against the use of hydroxychloroquine to treat COVID-19 outside of clinical trials (pdf, 248kb) ([https://covid19evidence.net.au/wp-content/uploads/MR\\_Taskforce\\_hydroxychloroquine.pdf](https://covid19evidence.net.au/wp-content/uploads/MR_Taskforce_hydroxychloroquine.pdf)) on 7 August 2020. The Taskforce comprises 29 peak health professional bodies whose members treat people with COVID-19.

The TGA is closely monitoring clinical studies in Australia and around the world investigating the use of hydroxychloroquine for the treatment of COVID-19. The interim results of a large trial conducted by the World Health Organization ( the SOLIDARITY trial (<https://www.who.int/news-room/detail/04-07-2020-who-discontinues-hydroxychloroquine-and-lopinavir-ritonavir-treatment-arms-for-covid-19>) ) found that hydroxychloroquine produced little or no reduction in the death of hospitalised patients with COVID-19, leading to halting of the hydroxychloroquine arm of that study. Similar studies by the US National Institutes of Health ( the ORCHID study (<https://www.nih.gov/news-events/news-releases/nih-halts-clinical-trial-hydroxychloroquine>)) and Oxford University ( the RECOVERY trial (pdf, 471kb) (<https://www.recoverytrial.net/files/hcq-recovery-statement-050620-final-002.pdf>) ) were halted after showing no benefit of hydroxychloroquine.

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These studies were all randomised controlled trials that are less prone to bias compared to non-randomised trials. Recent media commentary claiming that hydroxychloroquine, on its own or in combination with azithromycin or zinc, is effective for the treatment of COVID-19 has tended to refer to research findings from clinical studies that were non-randomised and therefore provide less reliable evidence.

Similar to the TGA's current position on the use of hydroxychloroquine in patients with COVID-19, the US Food and Drug Administration (FDA) has cautioned against the use of hydroxychloroquine outside of clinical trial settings (<https://www.fda.gov/drugs/drug-safety-and-availability/fda-cautions-against-use-hydroxychloroquine-or-chloroquine-covid-19-outside-hospital-setting-or>) and has revoked the Emergency Use Authorisation that was previously in effect. The UK Medicines and Healthcare products Regulatory Agency (MHRA) has suspended recruitment to all studies of hydroxychloroquine (<https://www.gov.uk/government/news/mhra-suspends-recruitment-to-covid-19-hydroxychloroquine-trials>) for the treatment or prevention of COVID-19.

## Update

### 27 May 2020

The TGA is updating the below advice regarding hydroxychloroquine use in treating COVID-19. Based on the latest international data, use of hydroxychloroquine to treat COVID-19 is **strongly discouraged**, including in hospitalised patients, unless the patient is enrolled in a clinical trial which will have safety monitoring protocols and oversight by a Human Research Ethics Committee. It is important to note that the number of COVID-19 patients currently hospitalised in Australia is very low.

## Update - PBS changes and supplier letter reinforce prescribing guidance

### 8 May 2020

To reflect Therapeutic Goods Administration (TGA) regulatory changes regarding hydroxychloroquine (described below), the Department of Health adjusted the Pharmaceutical Benefits Scheme (PBS) listing (<http://www.pbs.gov.au/info/news/2020/05/revised-hydroxychloroquine-pbs-listings-for-the-treatment>) for hydroxychloroquine from 1 May 2020.

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This change will help minimise the risk of PBS prescriptions being supplied to patients accessing hydroxychloroquine for unapproved uses and ensure that patients who rely on this medication for approved uses will have continued access.

As of 1 May 2020, the general unrestricted benefits listing of hydroxychloroquine on the PBS was split into separate initial and continuing treatment listings for the TGA-approved uses of malaria and autoimmune disorders. Under both listings the prescribing health professional is required to seek PBS authority (streamlined). Under the initial PBS listing, initial therapy must be authorised by a medical practitioner of any of the specialities defined in the clinical criteria (listed below).

Sanofi, the supplier of one of the hydroxychloroquine products marketed in Australia (Plaquenil), has also written to health professionals reinforcing that hydroxychloroquine is not approved for use in Australia for treatment of COVID-19 outside the confines of a clinical trial. Sanofi also reinforced some of the known risks of prescribing hydroxychloroquine, in particular potentially serious cardiac issues. Globally, Sanofi has received an increased number of reports of serious cardiac issues, including deaths, in patients treated with hydroxychloroquine. This appears to be more common in patients also treated with other medicines that can affect the heart.

### Amendments to the new restrictions

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#### 6 April 2020

On 24 March 2020, new restrictions came into effect limiting the health practitioners who could initiate therapy with hydroxychloroquine. These were introduced following reports of increased off-label prescribing of medicines containing hydroxychloroquine, which had the potential to create a shortage of the product in Australia. You can read the 24 March announcement relating to prescribing restrictions for hydroxychloroquine at [New restrictions on prescribing hydroxychloroquine for COVID-19 \(//www.tga.gov.au/alert/new-restrictions-prescribing-hydroxychloroquine-covid-19\)](https://www.tga.gov.au/alert/new-restrictions-prescribing-hydroxychloroquine-covid-19).

From 3 April 2020, dental board practitioners who are registered specialists in oral medicine have been added to the list of specialist health practitioners who are permitted to initiate treatment with hydroxychloroquine.

### Information for consumers

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If you are currently taking hydroxychloroquine for a chronic condition and are worried about being able to access this medicine, please speak to your health professional.

The TGA is working with the pharmaceutical industry to help ensure supply of hydroxychloroquine is maintained for patients needing it to treat chronic conditions for which it is indicated.



## Information for health professionals

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Effective 3 April 2020, the Poisons Standard has been amended to include oral medicine specialists registered with the Australian Dental Board to the list of specialist health practitioners authorised to supply and initiate treatment with hydroxychloroquine. This in addition to the categories of specialist medical practitioners currently permitted to authorise the supply of hydroxychloroquine.

Drugs and Poisons control legislation in the states and territories will be updated as required to reflect this change to the Poisons Standard.

## Authorisation of initial treatment with hydroxychloroquine by listed specialists

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Under the Appendix D Item 8 entry for hydroxychloroquine, medical practitioners that are not one of the listed specialists cannot initiate treatment with hydroxychloroquine.

Authorisation of initial treatment by one of the listed specialists could include documented instruction from a listed specialist to a general practitioner (GP) which would enable the GP to write the initial and continuing prescriptions.

Documented instruction could include verbal instruction that are recorded in the patient's medical record, or written correspondence from the relevant specialist.

Repeat scripts for patients already on treatment with hydroxychloroquine are not restricted to the listed specialists.

Please contact your relevant state or territory for information on their implementation of the Poisons Standard. Contact details for the Drugs and Poisons Units for each state and territory are available on the TGA website at [Contacts for State/Territory medicines & poisons regulation units](https://www.tga.gov.au/contacts-state/territory-medicines-poisons-regulation-units) ([//www.tga.gov.au/contacts-state/territory-medicines-poisons-regulation-units](https://www.tga.gov.au/contacts-state/territory-medicines-poisons-regulation-units)).

## Further information

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- [Product Information for hydroxychloroquine](https://www.ebs.tga.gov.au/ebs/picmi/picmirepository.nsf/pdf?OpenAgent&id=CP-2010-PI-05655-3&d=202003241016933) (<https://www.ebs.tga.gov.au/ebs/picmi/picmirepository.nsf/pdf?OpenAgent&id=CP-2010-PI-05655-3&d=202003241016933>).
- [Consumer Medicine Information for hydroxychloroquine](https://www.ebs.tga.gov.au/ebs/picmi/picmirepository.nsf/pdf?OpenAgent&id=CP-2010-PI-05655-3&d=202003241016933) (<https://www.ebs.tga.gov.au/ebs/picmi/picmirepository.nsf/pdf?OpenAgent&id=CP-2010-PI-05655-3&d=202003241016933>).
- NPS MedicineWise: 'Off-label prescribing' (<https://www.nps.org.au/australian-prescriber/articles/off-label-prescribing>).
- [Notice of an amendment to the current Poisons Standard under paragraph 52D\(2\)\(a\) of the Therapeutic Goods Act 1989](https://www.tga.gov.au/scheduling-decision-final/notice-of-amendment-to-the-current-poisons-standard-under-paragraph-52D(2)(a)-of-the-therapeutic-goods-act-1989) ([//www.tga.gov.au/scheduling-decision-final/notice-](https://www.tga.gov.au/scheduling-decision-final/notice-of-amendment-to-the-current-poisons-standard-under-paragraph-52D(2)(a)-of-the-therapeutic-goods-act-1989)

Rule 29.02

**Annexure Certificate  
MM21**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**


Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM21" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

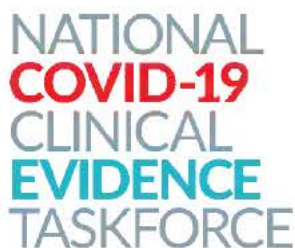
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**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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View this email in your browser



## MEDIA RELEASE

07 August 2020

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### 'Do not use': National Taskforce strengthens its recommendation against the use of hydroxychloroquine as a treatment for COVID-19

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The **National COVID-19 Clinical Evidence Taskforce** has upgraded the strength of its recommendation against the use of the widely-debated drug, **hydroxychloroquine**.

The Taskforce is comprised of 29 peak health professional bodies whose members are caring for people with COVID-19. The strong recommendation is as follows:

***Do not use hydroxychloroquine for the treatment of COVID-19.***

*This recommendation applies to adults, children and adolescents, pregnant and breastfeeding women, older people living with frailty and those receiving palliative care.*

*Use of hydroxychloroquine may still be considered in the context of randomised trials with appropriate ethical approval, such as combination therapies that include hydroxychloroquine.*

Taskforce Executive Director, Associate Professor Julian Elliott said the evidence indicates that hydroxychloroquine is potentially harmful and no more effective than standard care in treating patients with COVID-19.

"As a national Taskforce we have reviewed all the scientific data around hydroxychloroquine and we can now say, definitively, that hydroxychloroquine should not be used as a treatment for anyone with COVID-19.

"There is now sufficient data for us to make a very clear and strong recommendation. In this instance, that is based on data from randomised controlled trials that enrolled nearly 6000 patients. This is a substantial amount of very high-quality scientific data upon which we've



based the recommendation.

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"The pooled results show the drug does not reduce mortality, or shorten the amount of time a sick person spends in hospital. It also exposes them to side effects including cardiac toxicity."

The Taskforce also recommends against the use of hydroxychloroquine for post-exposure prophylaxis:

***For people exposed to individuals with COVID-19, only administer hydroxychloroquine for post-exposure prophylaxis in the context of randomised trials with appropriate ethical approval.***

There are ongoing prevention trials investigating the use of hydroxychloroquine to reduce the risk of contracting COVID-19, and the Taskforce will continue to review these data as soon as they become available.

Associate Professor Elliott said it was also important to remember that we do have effective treatments for people with COVID-19.

"Just last week, the Taskforce strengthened its recommendation for the use of **dexamethasone** – an inexpensive, widely available steroid that has been shown to reduce the risk of death by 14% in patients requiring oxygen and 29% in ventilated patients.

"We also know that antiviral drug **remdesivir** has been shown to reduce the time to recovery for moderate or severe cases of COVID-19.

"Australians should be reassured that our leading expert panels are reviewing new research every week to provide evidence-based guidance to clinicians on the frontline."

A first of its kind, the National COVID-19 Clinical Evidence Taskforce was formed to provide a clear and consistent voice of cross-disciplinary consensus on the clinical care of people with COVID-19. The Taskforce delivers 'living' guidelines that are updated weekly by seven expert panels, an expert advisory group and two working groups comprising Australia's leading researchers and clinicians.

**The latest weekly guidelines can be viewed here: [www.covid19evidence.net.au](http://www.covid19evidence.net.au)**



**RADIO:** A selection of audio grabs are [available here for download](#).

- JElliot\_1 - What is the significance of this updated recommendation?
- JElliot\_2 - Can you tell us on what evidence you based this recommendation?
- JElliot\_3 - How confident are you in this recommendation?
- JElliot\_4 - What's the difference between using it as a treatment and preventatively?
- JElliot\_5 - What's the Taskforce's recommendation for Hydroxychloroquine
- JElliot\_6 - Are there effective, evidence-based treatments for COVID-19?

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Ends.

For more information or to arrange media interviews, please contact Eloise Hudson, 0417 437 967 [eloise.hudson@monash.edu](mailto:eloise.hudson@monash.edu)

## ABOUT JULIAN ELLIOTT

Associate Professor Julian Elliott is the Executive Director of the **National COVID-19 Clinical Evidence Taskforce**, Lead for Evidence Systems at Cochrane, Senior Research Fellow at **Cochrane Australia**, and a physician in the Department of Infectious Diseases at the Alfred Hospital and Monash University. Julian leads Cochrane's development of innovative global evidence systems, combining machine learning, artificial intelligence and citizen science to improve the production and impact of systematic reviews.

He is also the co-founder and CEO of **Covidence**, a non-profit online platform enabling efficient systematic review production. Julian's ongoing focus is the development and use of 'living evidence' to inform high quality, responsive and up-to-date health guidelines, policies and care around the world. Julian has served as a consultant to the World Health Organization (WHO), UNAIDS and the World Bank, and in 2017 received the Commonwealth Health Minister's Award for Excellence in Health and Medical Research in Australia.

## ABOUT THE TASKFORCE

The National COVID-19 Clinical Evidence Taskforce is comprised of Australia's peak health professional bodies whose members are caring for people with COVID-19.

### Taskforce member organisations:

- **Australian Living Evidence Consortium\***  
(Convenor)
- **Cochrane Australia** (Secretariat)
- **Australasian Association of Academic Primary Care** (AAAPC)
- **Australian Association of Gerontology** (AAG)
- **Australasian College for Emergency Medicine** (ACEM)
- **Australasian College for Infection Prevention and Control** (ACIPC)
- **Australasian Society for Infectious Diseases** (ASID)

### The Australian Living Evidence Consortium members are:

- **Arthritis Australia**
- **Australasian Paediatric Endocrine Group** (APEG)
- **Australia and New Zealand Musculoskeletal Clinical Trials Network** (ANZMUSC)
- **Australian and New Zealand Society of Nephrology** (ANZSN)
- **Australian Diabetes Educators Association** (ADEA)
- **Australian Diabetes Society** (ADS)
- **Cochrane Australia**
- **Diabetes Australia**

Rule 29.02

**Annexure Certificate  
MM22**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

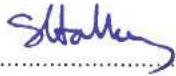
Applicant

**Mark McGowan**

Respondent

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Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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## WA Recovery Plan boosts local manufacturing to create WA jobs

Wednesday, 5 August 2020

- \$92.4 million suite of initiatives to activate new industries and create a jobs pipeline
- \$40.1 million to construct a new diesel railcar maintenance facility and boost local jobs
- New focus on manufacturing and maintaining iron ore wagons in WA
- \$13.2 million incentives program to make cathode active materials in lithium-ion batteries
- \$35.6 million towards local concrete manufacturing and local waste processing capabilities
- Package complements recent \$3.5 million Local Capability Fund to manufacture PPE

The McGowan Labor Government is taking the next step to being more self-sufficient and bring more local manufacturing back to Western Australia, as part of the WA Recovery Plan.

Building on the successful METRONET Railcar Manufacturing and Assembly facility, currently under construction in Bellevue, the McGowan Government will now invest an additional \$40.1 million to build a new diesel railcar maintenance facility as well.

The diesel facility will be situated at the site of the new world-class Bellevue facility, where the new 246 C-Series railcars will soon be manufactured, tested and maintained for decades to come.

Underpinned by the McGowan Government's \$1.3 billion METRONET railcar program, a contract to build the diesel facility will be awarded next year.



Hon Mark McGowan BA LLB  
MLA

Premier; Minister for Public  
Sector Management; State  
Development, Jobs and  
Trade; Federal-State  
Relations



Hon Rita Saffioti BBus MLA  
Minister for Transport;  
Planning

## 113

The centre will provide maintenance and cleaning facilities for the new Australind, the existing Prospector and AvonLink railcars, as well as the high-tech new Infrastructure Diagnostic Vehicle and PTA's locomotive U201, which provides track maintenance and rail shunting services across the network.

Stage one of the new Bellevue railcar facility is on track for completion later this year.

This year alone the McGowan Government has seven METRONET projects underway, supporting and creating local jobs while providing opportunities for local businesses.

To further boost local manufacturing opportunities in WA and create local jobs, the McGowan Government will form an action group to investigate the viability of manufacturing and maintaining iron ore railcar wagons in the Pilbara or other parts of WA.

It is expected the study will support initiatives that create long-term competitiveness of the steel fabrication industry in WA in supplying the iron ore sector to support jobs into the future, and explore maintenance opportunities linked to both new and existing ore wagon stock.

A report from the study is anticipated to be completed later this year.

Another key local manufacturing initiative - as part of the \$92.4 million package - is \$13.2 million in project funding to attract a global cathode active materials manufacturer to establish a production facility in WA.

The cathode active manufacturing initiative includes incentives to offset project costs, such as land lease rates on industrial land to help businesses establish and keep local jobs in WA.

This will strengthen WA's position as a world leader in future battery minerals, materials, technology and expertise in global battery supply chains - and supports the implementation of the Western Australian Future Battery Industry Strategy.

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Other initiatives part of the local manufacturing boost include:

- \$600,000 to assess viability of a Collie Eco-Concrete Processing Plant which will analyse the benefits of Collie based concrete manufacturing using waste fly-ash from coal powered stations instead of imported cement;
- \$15 million towards developing waste paper and cardboard processing capacity to support the COAG Waste Export Ban; and
- \$20 million in grants and industrial land to support the development of local waste processing capabilities and to implement the COAG Waste Export Ban.

These initiatives complement a \$3.5 million investment, already announced, in Local Capability Fund rounds to boost local manufacture of personal protective equipment (PPE) for Australia's COVID response.

More information is available at [inthis.together.wa.gov.au](https://inthis.together.wa.gov.au)

### Comments attributed to Premier Mark McGowan:

"Boosting local manufacturing to create a pipeline of WA jobs, will help our State become more self-sufficient and rebound from COVID-19 stronger than ever.

"WA is primed to join the supply chain of major industries and sectors like renewable energy, conservation, mining and construction. This package is about giving local businesses confidence to establish themselves, make local products and keep jobs here in WA.

"Boosting our manufacturing industry means more local jobs, more training and more apprenticeship opportunities for Western Australians for generations to come.

"One of my Government's key election commitments was to return railcar manufacturing back to the Midland area.



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"We're delivering on this and now we're doing what we can to ensure we're removing interruptions in supply chains and allowing local businesses to take advantage of the great manufacturing opportunities in our State."

**Comments attributed to Transport Minister Rita Saffioti:**

"The Bellevue plant is where Western Australia's biggest ever order of railcars will be built, tested and maintained for decades to come.

"Around 250 railcars will be produced at Bellevue over the next decade, while it will also serve as a permanent maintenance facility for the expanded METRONET fleet.

"This new \$40 million diesel maintenance facility will be a new key element to the services provided at Bellevue and will provide local job and training opportunities for local Western Australians.

"The first stage of the Bellevue facility will be completed later this year with the first lot of new C-Series trains rolling out in late 2022."

Premier's office - 6552 5000

Transport Minister's office - 6552 5500

Rule 29.02

**Annexure Certificate  
MM23**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM23" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:

Witness



---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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PM'S LETTER  
EXTRACTS

PRIME MINISTER

Dear Premier,

Decisions were all made in good faith and on the basis of what was considered at a time of great uncertainty to be in the best health interests of Australians, including those living in Western Australia.

I also accept that recent events in the eastern states, especially Victoria, are creating real concerns to residents in other states less impacted. I do not wish to see these concerns further exacerbated in Western Australia.

Having taken into account the changed state of the pandemic that has worsened since these matters were first brought to the High Court...

**we must set aside the normal convention in these circumstances and not continue the Commonwealth's participation in this case.**



Commonwealth discontinues case

# PM PULLS OUT OF BORDER BATTLE

EXCLUSIVE JOE SPAGNOLO  
Political Editor

THE Commonwealth has pulled out of Clive Palmer's High Court case to bring WA's hard border down, Scott Morrison announced yesterday.

In a stunning development, the Prime Minister informed Premier Mark McGowan by letter that the Commonwealth would not continue to participate in Mr Palmer's court fight to force WA to open up its interstate border.

Mr Morrison's decision, taken after discussions with Finance Minister Mathias Cormann and Attorney-General Christian Porter, is a major blow to Mr Palmer's chances of winning the high-profile trial.

"While taking our constitutional responsibilities seriously in seeking to respect established conventions, I also accept that recent events in the Eastern States, especially Victoria, are creating real concerns to residents in other States less impacted," Mr Morrison said in his letter.

"I do not wish to see these concerns further exacerbated in Western Australia.

"Having taken into account the changed state of the pandemic that has worsened since these matters were first brought to the High Court, the high level of concern regarding public health in the Western Australian community, and our desire to work with you cooperatively on a constitutionally sustainable way forward, I consider, on balance, that we must set aside the normal convention in these circumstances and not continue the Commonwealth's participation in this case."

Through his lawyers, Mr Palmer argued

in the Federal Court this week that Mr McGowan's hard border stance was unconstitutional.

The Commonwealth, through Mr Porter, made the decision to also participate in the trial, agreeing with Mr Palmer's position that WA's actions were unconstitutional — sparking a public backlash.

The High Court is scheduled to deliver its final verdict in September-October, with the Commonwealth up until yesterday also scheduled to participate in that hearing. Mr Morrison said in his letter he had no intention of forcing WA to open its borders.

"Let me be clear, the Commonwealth is not requesting the Western Australian Government to change its current border settings," Mr Morrison said.

"While the administration of border arrangements can always be improved to avoid unintended consequences, making any substantive changes to these arrangements, especially now following the outbreak in Victoria, would give rise to significant and unnecessary public concern."

But he maintained the Commonwealth's view that WA — by going it alone and closing its border to all States and Territories — now risked being overruled by the High Court.

Where a State unilaterally places restrictions on interstate travel which are found by the High Court to be disproportionate, this is contrary to the fundamental constitutional guarantee that residents of one State can move to another State. Whether this has occurred will be a matter for the Court," Mr Morrison warned in his letter.

Senator Cormann negotiated on behalf

## Attack on border cop

A MAN has been arrested at a NSW-Victoria border checkpoint after allegedly providing false information to police and then punching an officer in the face.

The man and two women in their 20s were yesterday morning in a car seeking to cross into NSW at Corowa when they were pulled over by police and defence personnel.

Police say the two women presented valid permits and identification but the man, sitting in the back seat, did not follow suit.

Subsequent checks found

the man was wanted on seven outstanding warrants, including one revoking his parole.

The 21-year-old man then allegedly attempted to flee the vehicle and punched a senior constable in the face, causing bruises.

He was arrested by other officers and defence personnel and taken to Corowa Hospital due to suspected drug ingestion, with authorities seizing drug paraphernalia from the car.

The man remains in hospital and is yet to be charged.



Warm: Jodie Comer says the BAFTAs look different this year.

## Star shines at home

THERE was no red-carpet glitz, but Jodie Comer ensured there would still be glamour as the BAFTA TV awards went ahead on Friday night with a virtual ceremony.

The *Killing* star, 27, shared a photograph of her posing in a colourful Duro Oluwu floral dress.

Comer, who was nominated for leading actress for her role as assassin Villanelle in the hit BBC series, told her 1.6million Instagram followers: "BAFTA is looking a little different this year. I've swapped the Royal Festival Hall for a BBQ in the

back garden!" She said the dress had not been delivered until yesterday morning.

"After saying I was going to wear my pyjamas to this year's BAFTAs I nearly got what I wished for."

Rival nominee Suranne Jones, 41, short-listed for her role as Anne Lister in *Gentleman Jack*, also took to Instagram to wish everyone good luck.

She posted several pictures, including one of her in a \$730 full-length, custom-made dress by O Pioneers, and \$1300 Miu Miu shoes.



SUNDAY, AUGUST 2, 2020

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CORONAVIRUS EMERGENCY NEWS | 7Scott Morrison. Left: Clive Palmer.  
Opposite page: Mark McGowan.

By working together and proceeding on this basis we would strengthen the constitutional sustainability of any position determined by the Western Australian Government.

I also want to stress the advice I receive from the Chief Medical Officer... that border arrangements are no substitute for a strong public health response capability and maintenance of social distancing principles.

We must be careful to protect against any complacency regarding social distancing and maintaining a strong public health response capability. In the event of an outbreak within Western Australia, border controls will provide no protection.

I look forward to your response.

Kind regards

Scott Morrison

of the Prime Minister with Mr McGowan during the week on a way forward which was constitutionally sustainable.

In his letter, Mr Morrison suggested to Mr McGowan a plan which he believed would not only help WA's case in the High Court, but make sure that future decisions on border control were constitutional.

He wrote: "I propose the following principles to guide our future action.

"1. Within our Federation it is important for States not to act arbitrarily or indiscriminately in relation to the restriction of movement of Australian residents between State borders.

"2. Where it is considered necessary to restrict such movement it should preferably be done in consultation with the Commonwealth on the basis of clear and transparent advice addressing the cause and necessity of any proposed restriction, in this case protecting public health and safety.

"3. Where any such restriction is to be imposed, the initiating State should also seek to consult with other affected States, especially in relation to land



Setting the agenda about the mood of West Australians and the border.

borders that are shared with any such State.

"4. Where any restrictions are put in place, administrative arrangements should also be put in place that are preferably nationally consistent, properly resourced, seek to minimise disruption and set out clear criteria and

processes for regular assessment to determine when such restrictions can be lifted to provide greater certainty to residents impacted."

Mr Morrison said such an approach could also be adopted through National Cabinet.

In a statement issued to *The Sunday Times* yesterday, Mr Morrison gave an insight into the thought-process behind the letter.

"In fighting this pandemic we have to be flexible and pragmatic," he said. "I just want to keep people safe, to protect their lives and livelihoods."

"That is what I have been doing from day one of this crisis. There is no time for getting precious or distracted by politics and disagreements."

"Throughout the pandemic I have simply sought to work with whoever I have to — Premiers, medical experts, business owners, union officials, doctors, nurses, teachers, lawyers, Generals — to get the job done."

"Circumstances change and we have to move with them. I'm not going to get bogged down in keeping score. I

look forward to getting on with the job with the WA Government."

Last night Mr McGowan confirmed to *The Sunday Times* he had received the PM's letter.

"On behalf of Western Australia, the Federal Government's decision to withdraw their support for Clive Palmer's action is welcomed," he said.

"I thank the Prime Minister for listening to West Australians and taking on my advice. I just hope it's not too late in the legal process."

"Unfortunately, this doesn't stop the High Court challenge. WA will continue to fight to keep our hard border in place and we will defend our position in the high court."

"Our hard border is in place, and will stay in place, to protect the health and safety of all West Australians."

"It's based on the best health advice for WA and won't be coming down unless it's safe to do so."

The Premier urged Mr Palmer to also reconsider his position, saying: "This could all be solved now if Mr Palmer did the right thing and withdrew the High Court challenge."

Editorial Page 35

## Tax break helps save jobs

MORE than 750,000 small and medium-sized businesses have received an average of \$22,900 under a Government stimulus scheme to help them hold on to their workers during the pandemic.

New tax data shows \$175.1 billion has been paid to small and medium businesses to cushion the economic blow of COVID-19.

The stimulus measure, announced in March, meant not-for-profit organisations and firms with turnover below \$50 million would receive a payment equal to 100 per cent of the amount withheld from their workers' wages, up to a maximum of \$100,000.

Under the scheme all eligible businesses

that pay income tax on their employees' salaries could receive a minimum payment of \$20,000. By linking the payments to wage tax withholdings, the Government hoped to encourage businesses to hold on to more of their workers. The latest data has revealed the average cash boost paid to WA businesses was \$24,200.

In WA, 70,731 businesses have benefited from the stimulus scheme, which included 6630 in Perth's CBD. A further 5834 firms in the electorate of O'Connor, 5642 in Perth seat of Curtin, 5150 in metropolitan seat of Swan and 5093 in Durack, have accessed the payments.

## 5000 students get all-clear

NEARLY 5000 schoolchildren, teachers and staff from WA public schools have undergone coronavirus testing — with no cases of the deadly disease recorded.

Health Minister Roger Cook said yesterday 4757 tests had been carried out across 40 schools.

The voluntary program involved getting consent from parents of participating children and all staff, before a swab was taken from the throat and nose. Nearly 80 schools will be involved in total.

So far, 28 metropolitan and 12 regional schools have participated in the program.

The process involves nurses from the Child and Adolescent Health Service and Country Health Service conducting the swabs on random participants.

Participants ranged from four years old to 71 years of age, and 85 per cent were children.

The project, carried out in partnership with the Telethon kids Institute, also involves a psychological survey of students, parents, teachers and

staff representing a range of socio-economic, educational and cultural backgrounds.

To date, 20,500 surveys have been completed.

"I am extremely pleased that swab testing has provided further reassurance that we have no COVID-19 infection in the community and thank the school community for their overwhelming support of this initiative," Mr Cook said.

The swab testing at participating schools will be repeated at least twice more during Term 3.

Rule 29.02

**Annexure Certificate  
MM24**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

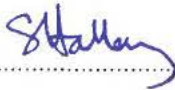
Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM24" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768





## PRIME MINISTER

1 August 2020

The Hon Mark McGowan MLA  
Premier of Western Australia  
1 Parliament Place  
WEST PERTH WA 6005

Dear Premier

In my earlier letter regarding the current High Court proceedings I indicated that the Commonwealth was acting consistent with the convention and our responsibility in relation to constitutional matters of this nature. Namely, that there is a standing expectation of the High Court for the Commonwealth to assist the Court where the constitutional validity of measures taken by a jurisdiction is brought before the Court. This position is confirmed by the advice we have received.

I appreciate that constitutional issues may not be top of mind as we address this pandemic. In the circumstances we currently face this is understandable. That said, while acting to protect the health and safety of all Australians, the Commonwealth also has a special responsibility to seek to uphold and maintain our federation and the integrity of our Constitution in all seasons.

Under section 92 of our Commonwealth Constitution, it is required that movement be 'absolutely free' among the states—including travel across state borders. It is a provision that at its heart has a federating purpose and is one of the central constitutional provisions that establishes Australia as a single indissoluble and federal nation.

Where a State unilaterally places restrictions on interstate travel which are found by the High Court to be disproportionate, this is contrary to the fundamental constitutional guarantee that residents of one State can move to another State. Whether this has occurred will be a matter for the Court.

A further concern is that now this issue has arisen it may also have exposed every State and the Commonwealth to a High Court decision with potentially far-reaching implications for a range of executive government decisions. This includes those relating to interstate border movements, made in a cooperative way under the *Biosecurity Act 2015* (Cth) to protect cross-border indigenous communities.

Decisions taken early in the outbreak of the pandemic were made with the best of intentions and in necessary haste. At the time, when several states, including Western Australia,



Tasmania and South Australia, made these decisions the constitutionality of how these decisions were being taken was not the priority consideration.

Decisions were all made in good faith and on the basis of what was considered at a time of great uncertainty to be in the best health interests of Australians, including those living in Western Australia.

I stress that the Commonwealth raised no objections to these actions, however, did note the risk that constitutional issues could arise at a later time.

We must now deal with the situation as it is.

As you know, the Commonwealth did not bring these proceedings. It is the Commonwealth's preference that this case had never been brought forward. Likewise our actions have not been to support any private interest of the plaintiffs. To suggest such an association would be false. While taking our constitutional responsibilities seriously in seeking to respect established conventions, I also accept that recent events in the eastern states, especially Victoria, are creating real concerns to residents in other states less impacted. I do not wish to see these concerns further exacerbated in Western Australia.

Having taken into account the changed state of the pandemic that has worsened since these matters were first brought to the High Court, the high level of concern regarding public health in the Western Australian community, and our desire to work with you cooperatively on a constitutionally sustainable way forward, I consider, on balance, that we must set aside the normal convention in these circumstances and not continue the Commonwealth's participation in this case.

Having made that decision, I urge you to work with us to minimise constitutional risk so as to ensure that the necessary health protections in place can remain in place for as long as required.

That is why I wish to now propose the following way forward which would mitigate the Commonwealth's concerns with how border issues within our Federation are managed and seek your cooperation.

Firstly, let me be clear, the Commonwealth is not requesting the Western Australian Government to change its current border settings.

While the administration of border arrangements can always be improved to avoid unintended consequences, making any substantive changes to these arrangements, especially now following the outbreak in Victoria, would give rise to significant and unnecessary public concern.

Rather, I propose the following principles to guide our future action:

1. Within our Federation it is important for States not to act arbitrarily or indiscriminately in relation to the restriction of movement of Australian residents between state borders.
2. Where it is considered necessary to restrict such movement it should preferably be done in consultation with the Commonwealth on the basis of clear and transparent

advice addressing the cause and necessity of any proposed restriction, in this case protecting public health and safety.

3. Where any such restriction is to be imposed, the initiating State should also seek to consult with other affected States, especially in relation to land borders that are shared with any such State.

4. Where any restrictions are put in place, administrative arrangements should also be put in place that are preferably nationally consistent, properly resourced, seek to minimise disruption and set out clear criteria and processes for regular assessment to determine when such restrictions can be lifted to provide greater certainty to residents impacted.

This is broadly consistent with what was agreed between NSW, Victoria and the Commonwealth when the decision was recently taken to close the NSW/Victorian border. There has been an ongoing process between these jurisdictions to resolve any unforeseen issues that arise from the closing, and significant Commonwealth resources have been applied through the ADF to support the implementation of this decision.

By working together and proceeding on this basis we would strengthen the constitutional sustainability of any position determined by the Western Australian Government and set a positive precedent for managing these issues more broadly within the Federation. Such an approach could also be adopted through our National Cabinet processes, involving the AHPPC as necessary.

In addition, such a framework would enable a quick solution to be put in place in response to any decision of the High Court.

I also want to stress the advice I receive from the Chief Medical Officer, that has also been regularly conveyed to National Cabinet, that border arrangements are no substitute for a strong public health response capability and maintenance of social distancing principles. The Commonwealth has also been pleased to respond to your request for assistance to bolster Western Australia's quarantine arrangements with ADF resources and to reduce the number of incoming passengers to further reduce your quarantine risk.

If an outbreak were to occur in Western Australia, as has occurred in other states, it will be strength of your State's testing, tracing and outbreak containment capabilities that will determine your success or otherwise. There have been mixed outcomes in other states where this has occurred. It will also be determined by whether social distancing practices are maintained within the community to avoid rapid spread.

We must be careful to protect against any complacency regarding social distancing and maintaining a strong public health response capability. In the event of an outbreak in Western Australia, border controls will provide no protection.

I am sure you would agree that the Commonwealth has acted decisively and provided considerable support to Western Australia throughout the pandemic crisis. We have consistently responded positively to your requests for assistance and cooperation. In turn, I regularly acknowledge the positive and constructive role you have played on Western Australia's behalf both through the National Cabinet and our bilateral arrangements. In good faith, we should now continue with this cooperative approach in the interests of all Western Australians and our federation.

I look forward to your response.

Kind regards

A handwritten signature in black ink, appearing to read 'Scott Morrison', with a stylized, cursive script.

SCOTT MORRISON



Rule 29.02

**Annexure Certificate  
MM25**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM25" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:

.....  
Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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## ALP holds poll lead

ANNABEL HENNESSY

Opposition Leader Bill Shorten is still on track to win the election, according to the latest News-poll, which shows Labor leading the two-party preferred split 51-49.

The poll, conducted between May 2 and 5, shows that while Labor's primary vote has fallen to 36 per cent, the Coalition's primary vote has remained unchanged at 38 per cent.

Labor's primary is the lowest recorded by News-poll since Scott Morrison became Prime Minister.

Both leaders have had a fall in their personal approval ratings, with Mr Shorten's rating falling

CONTINUED PAGE 5



## Chinese cash pays for Palmer's election splurge

PETER MILNE

Clive Palmer's extraordinary \$50 million binge on his Federal election campaign is being bankrolled by a WA

mining deal with a Chinese company that is earning him an estimated \$1 million a day.

An analysis by The West Australian reveals less than two months of royalties

from CITIC Pacific's Sino Iron project in the Pilbara could cover the remarkable advertising spending.

Despite this, the businessman regularly attacks Bei-

jing as part of his campaign. Premier Mark McGowan has labelled Mr Palmer "a clear and present danger" to WA.

FULL REPORT PAGE 7

LANAI  
SCARR  
OPINION

## LABOR'S GHOSTS OF ELECTIONS PAST PAGE 13

PERTH 15-19 Showers easing. Tomorrow: Partly cloudy, 6-21. Yesterday: 11.3-22

Weather details P67



**"I'd love to see this farm stay in the family forever, Bankwest gets that."**

Grant Creagh, Director Creagh Brothers  
 See Grant's story Q Bankwest In Good Company

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# Chinese deal puts Palmer in poll position

EXCLUSIVE  
PETER MILNE

Clive Palmer's extraordinary \$50 million election campaign spending is being bankrolled by a WA mining deal with a Chinese company that could be earning him a million dollars a day.

The businessman has put his attacks on Beijing at the centre of his election campaign, despite most of his campaign funding likely coming from China.

Analysis by The West Australian shows that less than two months of royalties from CITIC Pacific's Sino Iron project in the Pilbara could cover the reported \$50 million advertising spend that has secured his United Australia Party 5 per cent of the national vote in Newpoll and may make Mr Palmer a major Canberra player.

Mr Palmer last month revealed he had spent \$50 million on election advertising and claimed his United Australia Party would win government.

"We've spent \$50 million, and just three weeks ago everyone said: 'Why is Mr Palmer doing this, it's all for nothing, he won't get any votes,'" he said.

"They're not saying that now are they?"

Mr Palmer has spent much of this election campaign railing against Chinese foreign investment — even though most of his campaign funds have likely come from royalties from a Chinese company in a deal forged 13 years ago.

For 20 years, Mr Palmer's company Mineralogy had been unable to develop its deposit of hard-to-process magnetite iron ore in the Pilbara until Hong Kong-based and Chinese Government-backed CITIC Pacific came along in 2006 and

created a 19 million-tonne-a-year mine.

Mineralogy received \$US415 million (\$590 million) up front, a royalty for each tonne of ore (known as the Royalty A payment), another for each tonne of concentrate sold (known as the Royalty B payment) and kept control of the mining leases.

Changes to the way Royalty B was calculated, which CITIC Pacific Mining chief executive Chen Zeng said last July would cost his company \$US10 for each tonne of concentrate, and a surge in the iron ore price in the past few months, mean the Australian-dollar value of CITIC's annual payment to Mr Palmer is an estimated \$330 million.

Mr Palmer's refusal to submit documents that would allow Sino Iron to expand its waste facilities, which the company says jeopardises operations, has drawn the ire of Premier Mark McGowan. "Mr Palmer is directly threatening more than 3000 West Australian jobs and our reputation as a safe place to invest," Mr McGowan said.

"He is a clear and present danger to the West Australian economy. I strongly urge him to resolve the issues with CITIC as soon as possible.

"It's pretty disappointing the Liberal Party did a preference deal with him."

When asked last week whether he would use his likely power in Canberra to influence the fight with CITIC, Mr Palmer said the matter was before the courts.

"And if you go to China of course there is no rule of law, you have a one-day trial and the verdict is decided by the Communist Party of China and I don't want that to happen in Australia," he said.

CITIC declined to comment.



Clive Palmer at the Hyatt Hotel last week. Picture: Jackson Flindell

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WHY POLITICAL PARTIES CAN  
LEARN A LOT FROM PALMER  
OPINION PAGE 20



Rule 29.02

**Annexure Certificate  
MM26**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

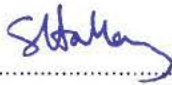
Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM26" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
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Brief PARLWA-WA1

Page 1 of 2

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## Palmer strikes a new cash bonanza

PAUL GARVEY

Clive Palmer's once-embattled private company Mineralogy is now collecting more than \$1 million a day in profits, with the former federal MP promising to use his growing cash stockpile to bankroll another aggressive tilt at federal parliament.

Accounts lodged with the Australian Securities & Investments Commission show that Mineralogy posted a \$354.7 million profit last financial year, driven by an influx of royalties from his estranged Chinese business partners.

The profit came after Mineralogy outlaid \$109.1m in income tax.

The windfall is a remarkable turnaround from a year ago, when the group posted a loss of \$6.1m amid signs of widespread stress among Mr Palmer's business empire.

Since then, Mineralogy and Mr Palmer have won a major victory in their ongoing battles with Citic WA's Supreme Court last year awarded Mr Palmer hundreds of millions of dollars in royalties from Citic's Sino Iron mine in the Pilbara, a ruling that also positioned him to collect hundreds of millions more

annually for years to come.

Speaking to *The Australian*, Mr Palmer described the remarkable return to profitability as "not a bad result" and indicated that profits should grow even further as output from Sino Iron continued to grow.

"We also had to pay a lot of expenses that were building up while we weren't getting paid by Citic so if you look at the profit closely it's more like \$430m or something like that," he said.

"Their (Citic's) current production is only half of what it should be so hopefully (the royalty) will double."

The accounts showed that Mr Palmer had stood down as the sole director of Mineralogy in October, replaced by his wife Anna.

He said the resignation was to clear the way for another run at

*Continued on Page 32*



Palmer

Rule 29.02

**Annexure Certificate  
MM27**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

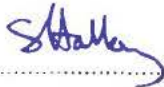
Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM27" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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# **Parliamentary Debates**

**(HANSARD)**

FORTIETH PARLIAMENT  
FIRST SESSION  
2020

LEGISLATIVE ASSEMBLY

Wednesday, 12 August 2020

## IRON ORE PROCESSING (MINERALOGY PTY. LTD.) AGREEMENT AMENDMENT BILL 2020

**523. Mrs L.M. HARVEY to the Premier:**

I have a supplementary question. I note that a short joint select committee inquiry and support for the legislation are not mutually exclusive topics. However, can the Premier explain why it is necessary to exclude disputed matters relating to the arbitration of Mr Palmer and Mineralogy from the Freedom of Information Act?

**Mr M. McGOWAN replied:**

As I am advised—as the Leader of the Opposition advised people—it is not unusual for matters to be excluded from the FOI act. It was passed in 1992 and it has a range of exclusions. The reason we are doing this is to prevent Mr Palmer from having another course of action against Western Australia. Mr Palmer is the most litigious man in Australia and he uses his money to sue everyone all the time. That is what he spends his time doing. He sits in his office and uses the \$1 million a day he gets from Western Australia from the state agreement with the Chinese company to pursue legal action against people all over the country. He is attempting in the High Court to bring down the hard borders and there will be more to come on that very shortly. He is now also threatening to take these laws to the High Court so he can secure \$30 billion from Western Australian taxpayers. The reality is and the reason that the Leader of the Opposition asked this question—I thought about it while she was sitting there—is that she cannot control her upper house colleagues. She has Nick Goiran and Michael Mischin —

*Point of Order*

**Mr Z.R.F. KIRKUP:** Mr Speaker, I draw your attention to the relevancy of the answer.

Several members interjected.

**The SPEAKER:** Members, I will hear this in silence, please.

**Mr Z.R.F. KIRKUP:** The supplementary question was in relation to the FOI act and I ask the Premier to get back to that.

**The SPEAKER:** No, it is all part of the original question.

*Questions without Notice Resumed*

**Mr M. McGOWAN:** It is because the Leader of the Opposition cannot control Nick Goiran and Michael Mischin.

**Mrs L.M. Harvey:** Is it?

**Mr M. McGOWAN:** Yes, it is, because it is clear you cannot control them. The Leader of the Opposition cannot exercise her authority in the Liberal Party room. Hence, she now has this issue.

**Mrs L.M. Harvey:** What are you afraid of?

**Mr M. McGOWAN:** What am I afraid of? I will tell you what I am afraid of. I am afraid that Western Australia will be bankrupted by Clive Palmer. That is what I am afraid of and the Leader of the Opposition appears to be on Clive Palmer's side!

Several members interjected.

**The SPEAKER:** Minister, take a deep breath.

## CORONAVIRUS — INTERSTATE BORDER RESTRICTIONS — HIGH COURT CHALLENGE

**524. Ms S.E. WINTON to the Attorney General:**

Can the Attorney General update the house on the status of Clive Palmer's High Court challenge to Western Australia's hard border?

**Mr J.R. QUIGLEY replied:**

I thank the member for Wanneroo for her question and yes, I can. The state of Western Australia has received an offer of settlement from Clive Palmer—an offer to withdraw the High Court action. In the terms of the offer, he exposes himself to be the liar and fraudster that he is. I will read out the letter of offer —

1. As the State is aware, Mineralogy is currently pursuing a High Court challenge against the state's border closers. One of Mineralogy concerns is ensuring all its team and representatives are able to attend any hearing of the arbitration. Mineralogy's High Court case has caused considerable stress in the community when it became apparent last week that it may be successful.
2. In good faith, and despite the fact that the Applicants' decision maker will not be able to attend in Perth in person, the Applicants have agreed that the mediation takes place in Perth and that Wayne Martin AC QC act as mediator.
3. If the matter does not settle at mediation, Mr Palmer must be able to attend the arbitration hearing in person. Likewise, Peter Dunning QC must also be able to attend in person.

4. As the state cannot guarantee those parties entry to Western Australia, the only option is for Mineralogy to be successful in its High Court challenge and for the arbitration hearings to be held in Perth or, alternatively, for the parties to agree the arbitration hearings can be held outside Western Australia.
5. If the State can agree for the arbitration hearing —

Listen to this bit!

being held in Canberra, Mineralogy could be agreeable to withdraw its High Court challenge on that basis with each party to pay their own costs.

6. I can explore this option if the State thinks it has merit. I will be discussing matters in detail with the relevant parties at 3 pm (AWST) on Monday, 3 August 2020 and it would be helpful if you could provide some feedback by then.

Yours faithfully,

**Thomas Browning**

**In-House Counsel**

**Mineralogy Pty Ltd**

**International Minerals Pty Ltd**

I table the offer put forward by Clive Palmer and Mineralogy and International Minerals.

[See paper [3556](#).]

**Mrs L.M. Harvey:** Nine days ago!

**Mr J.R. QUIGLEY:** You can count! That is good. You can count, and Parliament is back. This is my first opportunity to table this document. What is this document saying? It is saying, “I don’t care about the state border closure. What I care about is getting my arbitrator and the legal team and the experts into Perth to plunder Western Australia for \$30 billion in an arbitration. I will agree to withdraw my High Court challenge and to leave the border closed if you, Western Australia, agree to shift the venue over to a jurisdiction in the eastern states of Mr Palmer’s choosing.” What a liar he has exposed himself to be! He has been publishing these ads, which include statements such as —

Like all Australians my major concern is for the health of our community. I have a strong commitment to Western Australia and the men and women who have built this state.

He does not have any commitment. He has a visceral hatred for Western Australia. That is self-evident. He goes on —

Not only is the Western Australian government’s action unconstitutional, it is against the best interests of Western Australian families.

He does not care about the interests of Western Australian families. We know that the hard border introduced by the McGowan Labor government has kept Western Australia virus free for nearly three months—over three months, in fact. His only interest is getting across that border with his legal team and experts and arbitrator to plunder \$30 billion from Western Australian taxpayers. How do you like this bit?

**The SPEAKER:** Attorney General, this is question time. It is not a speech.

**Mr J.R. QUIGLEY:** I know it is question time. Thank you for reminding me of that, Mr Speaker, but this is very, very important. He calls upon the Western Australian government to maintain the hot spots but take down the border. To top it all he has an ad in the newspaper that says —

... Premier Mark McGowan continue to deny ... Western Australians jobs and prosperity by refusing to open their state’s borders ...

He wants the borders open so that he can come and plunder \$30 billion from this state and rob all our families of prosperity, rob all their jobs, shut the state down and send it bankrupt.

**The SPEAKER:** Attorney General!

**Mr J.R. QUIGLEY:** He says that Western Australia needs travel now so that he can travel over with his experts, with his counsel, with Mr Dunning, QC, to plunder this state for \$30 billion. It is not going to happen! I table the offer that has been sent to us. I think I have tabled it already.

**The SPEAKER:** The paper is tabled. Thank you, Attorney General.

#### CORONAVIRUS — QUARANTINE ARRANGEMENTS

#### 525. **Mr Z.R.F. KIRKUP to the Premier:**

I refer to the four publicly known breaches of hotel quarantine and the fact that it obviously takes only one breach to cause an outbreak. I also refer to the Premier’s comments yesterday in the house that no offer of Australian Defence Force personnel has been made by the Prime Minister. Why is the Premier waiting for the Prime Minister to offer ADF personnel instead of picking up the phone to protect Western Australians from COVID-19?



Rule 29.02

**Annexure Certificate  
MM28**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM28" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

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**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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# MINERALOGY PTY LTD

A.C.N. 010 582 680

# INTERNATIONAL MINERALS PTY LTD

A.C.N. 058 341 638

QUEENSLAND OFFICE:  
Level 17, 240 Queen Street  
Brisbane, QLD 4000

GPO Box 1538  
Brisbane, QLD 4001

Ph: 07 3832 2044

2 August 2020

Ms Tania Jeyamohan  
Senior Assistant State Solicitor  
State Solicitor's Office  
GPO Box B83  
PERTH WA 6838

[T.Jeyamohan@sso.wa.gov.au](mailto:T.Jeyamohan@sso.wa.gov.au)

Cc: [C.Mofflin@sso.wa.gov.au](mailto:C.Mofflin@sso.wa.gov.au); [A.Tam@sso.wa.gov.au](mailto:A.Tam@sso.wa.gov.au)

By Email

**WITHOUT PREJUDICE SAVE AS TO COSTS**

Dear Ms Jeyamohan

**RE: MINERALOGY PTY LTD & INTERNATIONAL MINERALS PTY LTD V STATE OF  
WESTERN AUSTRALIA (ARBITRATION)**

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1. As the State is aware, Mineralogy is currently pursuing a High Court challenge against the state's border closers. One of Mineralogy concerns is ensuring all its team and representatives are able to attend any hearing of the arbitration. Mineralogy's High Court case has caused considerable stress in the community when it became apparent last week that it may be successful.
2. In good faith, and despite the fact that the Applicants' decision maker will not be able to attend in Perth in person, the Applicants have agreed that the mediation takes place in Perth and that Wayne Martin AC QC act as mediator.
3. If the matter does not settle at mediation, Mr Palmer must be able to attend the arbitration hearing in person. Likewise, Peter Dunning QC must also be able to attend in person.
4. As the state cannot guarantee those parties entry to Western Australia, the only option is for Mineralogy to be successful in its High Court challenge and for the arbitration hearings to be held in Perth or, alternatively, for the parties to agree the arbitration hearings can be held outside Western Australia.
5. If the State can agree for the arbitration hearing being held in Canberra, Mineralogy could be agreeable to withdraw its High Court challenge on that basis with each party to pay their own costs.

*"Together we achieve the extraordinary"*

6. I can explore this option if the State thinks it has merit. I will be discussing matters in detail with the relevant parties at 3 pm (AWST) on Monday, 3 August 2020 and it would be helpful if you could provide some feedback by then.

Yours faithfully,



**Thomas Browning**  
**In-House Counsel**  
**Mineralogy Pty Ltd**  
**International Minerals Pty Ltd**



Rule 29.02

**Annexure Certificate  
MM29**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

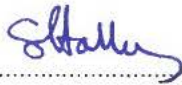
Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM29" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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Government of Western Australia  
Department of the Premier and Cabinet  
Media Monitoring Unit

## TRANSCRIPT

**DATE:** Friday, August 7, 2020  
**TIME:** 1.23pm  
**PROGRAM:** Channel 10 Perth – Media conference  
**SUBJECT:** MCGOWAN – COVID-19 update

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MARK MCGOWAN

Hi everyone. I'm sorry I... kept you waiting... please accept my apology.

Early this morning the National Cabinet met and just a short time ago there was a meeting of the State Disaster Council. There is some very important updates for the West Australian community.

Firstly though, I can report that Western Australia has recorded no new cases of COVID-19 overnight. We currently have 6 active cases in Western Australia all in hotel quarantine. Obviously, the situation in Victoria remains in the forefront of our minds, as does some... as do some of the emerging issues in other states.

Our thoughts are with the people of Victoria. We continue to seek volunteers, nursing and medical staff to go and assist in Victoria.

We will continue to monitor these situations very closely. Obviously, I... I would appreciate, and I do appreciate if nursing staff and medical staff decide to help our fellow Australians in Victoria. And clearly that is a big decision for them, but it's also very helpful for us because getting the situation under control in Victoria obviously is good for Western Australia.

We will continue to monitor these situations very closely. In light of all of this, our Chief Health Officer has recommended a further delay on Phase 5. Phase 5 would see the removal of Western Australia's nation-first 2square metre rule and the removal of the 50 per cent capacity for our major venues.

This would see the removal of all controls, except for our hard borders, and restrictions on entering some remote Aboriginal communities. On the advice of the Chief Health Officer, Phase 5 will be delayed for two more weeks - from August 15 until at least August 29.

As always, August 29 is a tentative date. We will provide clarity on whether we can proceed with this timeframe about a week out from August 29. Again, that decision will be based on the latest health advice to the Government of Western Australia.

KEY: \* Spelling indeterminate



I know this may cause some frustration for some sections of the community and the business community. But we need to be extra cautious here. The nation is on high alert right now. We cannot afford to let our guard down and take unnecessary risks.

As a nation we have entered the most dangerous phase of this pandemic. Even though WA has not had a community case of COVID-19 since April 11 we need to remain on high alert, given what is happening across the country. We all know just how quickly things can change. As I've said many times, WA has led the nation in our response to COVID-19. The hard work of West Australians, coupled with our hard border with the east, has allowed us to open up our economy more than any other state.

Many, many businesses are back to normal. It's great to see so many tourism businesses booming all over Western Australia. Our retail, land sales and payroll data continue to improve dramatically across Western Australia.

Over the last week I have visited the Kimberley, the Goldfields, and the Great Southern regions. Can I encourage those looking for a job from the city to look to regional WA for work. There are jobs in agriculture, tourism, and mining throughout regional WA. It's time to look further afield for work and potentially move to the country. The State Government is going to support our regional communities by promoting these job opportunities in regional WA.

We need West Australians from the city to take up regional jobs now. Let's all stay the course and continue to work together on our pathway to recovery. Today at National Cabinet we all agreed on a code of practice for the regular testing of interstate freight drivers. WA is finalising the systems and legal authority to implement these arrangements.

These arrangements will come into place next week. This means that any truck driver entering WA will have to show evidence of having received a negative COVID-19 test result in the past seven days. If they have not been tested in the last seven days they will be directed at the border to have a test within 48 hours.

This adds another layer of protection for Western Australia.

Now onto the High Court challenge, this morning our Solicitor General Joshua Thompson represented the State in the Federal court. As you know, we made an application to the court to have the Commonwealth Government's evidence struck out and for a fresh trial to be convened.

The Federal Court has now adjourned and reserved its judgement. The Commonwealth has withdrawn from the case, but unfortunately did not support Western Australia's application to have the case struck out. We would have preferred that they actively supported our case to have the trial completely restarted. I have welcomed the public support from the Prime Minister and their withdrawal of support for Clive Palmer's case, but it would have been better if they'd supported a fresh trial.

The Commonwealth position is now to leave it up to the court to decide. We believe a fresh trial is the only way forward and I hope that we are successful in court. Whatever the outcome of the Federal Court, I want every Western Australian to understand this, with or without the support of the Commonwealth Government,



Western Australia will keep fighting for what is our right and that is to protect the citizens of our State.

We will continue our battle, in fact, our war with Clive Palmer to protect our State. This a pandemic, we won't be rushed into anything that is against our health advice. Our position has been clear and consistent, and it won't be changing. For as long as our health advice recommends the hard border stay in place, it will remain.

Thank you

I'll now take any questions.

REPORTER

Senator Cormann this morning said that he would personally urge Clive Palmer to drop this case, is that helpful?

MARK MCGOWAN

Well firstly, that's good, that's good. Clive Palmer should drop his case, he's not doing himself, he's not doing Western Australia, he's not doing Australia any favours by what he is doing

I am pleased that Mr Cormann has taken this step. As I've said the whole way along, I wanted to work cooperatively with the Commonwealth Government. I haven't enjoyed having this conflict, it's not something I've relished, I've just wanted to work cooperatively. But this issue of the border is important, and I think the evidence is there that it's worked. . at this point in time. Obviously, the virus may well come back. We are doing everything we can to stop that from occurring, but the evidence is there, the hard border has worked. It's reduced the traffic across from the eastern states to Western Australia by 99 per cent. And then we have testing regimes for many of the people who come in, and indeed we're expanding it for truck drivers next week.

So we're doing everything we possibly can to support and protect West Australians. I'd urge Mr Palmer to pull out his case, all he's doing is being selfish. As I said, we're in a war with Clive Palmer and it's a war we intend to win and I'd urge him to back down, listen to the people of Western Australia, indeed Australia, and do the right thing.

REPORTER

Is the Federal Government have a, well first of all pulling out .. or supporting Clive Palmer, but then pulling out but not withdrawing all their evidence?

MARK MCGOWAN

Well as I said, I would have preferred that they supported us in a call for a fresh trial.

Now they've withdrawn their support for Mr Palmer's case and that is good but I think they could have gone further, I would have liked they'd gone further but now it's in the hands of the judge

REPORTER

The Prime Minister has also called on Clive Palmer to drop the case, is that slightly confusing considering what he wrote to you this morning?

MARK MCGOWAN

Ah look, I appreciate the fact that he's made that call and Mr Palmer now has the Prime Minister, the Finance Minister, the Premier of Western Australia, 99.9 per cent of West Australians and I expect 95 per cent of Australians, supporting the call. He has to listen, he should withdraw his case.

REPORTER

But is it too little too late for the Prime Minister now?

MARK MCGOWAN

Well you know we asked... we've asked for their support and they've withdrawn the case but they haven't withdrawn their evidence. As I've said we would have liked them to have gone further but now it's in the hands of the judge.

We'll do our best! Josh Thompson, our Solicitor General is an outstanding lawyer and highly respected across Australia and I'm sure he put an outstanding case to the court and we'll see what the court now hands down.

REPORTER

Did you ask the PM at national cabinet this morning why he had failed to... to come through.

MARK MCGOWAN

.. I can't go into what's discussed there Peter, that would be inappropriate, I'm sorry.

REPORTER

Yesterday the Prime Minister indicated that he would help or assist WA's case for a retrial, clearly that didn't happen. Has he let you down; has he let down WA?

MARK MCGOWAN

Ah well as I've said, I think they could've gone further and I think that would have been better and it would have certainly helped our case before the court, but what is done is done. I have to continue to work with the Commonwealth, I want to continue to work with the Commonwealth. We're in a pandemic. In coming months and years, we don't know what might happen, we have to keep up lines of communications, we have to keep up relationships, we need to continue to work together and that has been my strategy the whole way along. To put aside politics, to put aside political parties to work together. I don't want to see people die, I don't want to see our economy flattened again. So, I want to continue to work with the Commonwealth.

If you see what is happening in Victoria, the Commonwealth and the Federal Gov... the State Government are working hand in glove in a very, very difficult situation. If that ever happens here, I want to be able to do that with the Commonwealth Government.

KEY: \* Spelling indeterminate

So as I've said, we would have liked them to have gone further today than they have but obviously it's now in the hands of the court and in the future we will need to work cooperatively with the Commonwealth.

REPORTER

Are the Federal Government just washing their hands of any involvement in this case? I mean they've said that now that they've withdrawn, they can't strike, they can't put a request to the court to strike evidence to support WA. Are they just washing their hands and saying 'you deal with it'?

MARK MCGOWAN

Well they have left it to us, that's clear. So the Prime Minister made that plain, it's now a matter for Western Australia. So we will and we have run the case in the court this morning and obviously if it goes to the High Court and Mr Palmer doesn't withdraw then it'll be up to Western Australia to run the case. But I am very confident, I am very confident that 99.9 per cent of West Australians agree with our case, and I'm pretty sure virtually all Australians agree with our case. So... if... if the views of the Australian and Western Australian publics hold any sway, well then our case is very strong and I'd urge the court to understand, and I'd urge everyone to understand, we're doing this for the right reasons, we're trying to save lives, we're trying to protect a State that doesn't have community spread or community infection and make sure that remains the case.

We're trying to allow our economy to continue to recover. If we open the borders and the virus comes back and we have to do what Melbourne did, imagine... imagine the catastrophe that that would be. And so our strategy has been... has been correct so far and it has worked. I want to continue to pursue it, we would have liked the Commonwealth to support our case for a mistrial and abandoning the existing trial. Unfortunately they didn't do that but they have withdrawn from supporting Mr Palmer so that is... that was a good thing they did.

REPORTER

Premier is a retrial a waste though... Premier? Is a retrial a waste because Mr Palmer can subpoena all of the Commonwealth's, you know, witnesses. So are we just going to get to the same point and be out of pocket for the two trials?

MARK MCGOWAN

The trials will cost money, the trials will cost money but the consequence of closing the economy or having people die is far, far, far, far worse. So we will have to fight these things in the Federal Court and the High Court.

I don't know what Mr Palmer's lawyers will do, whether they would subpoena those witnesses, I don't know what would happen but I clearly think abandoning the existing trial is the right course.

REPORTER

Due to the fact that it was so deeply unpopular here, the case and then supporting Clive Palmer, that weighed on the Federal Government?

KEY: - Spelling indeterminate



MARK MCGOWAN

I think what they've said is the spread of infection in Victoria changed the circumstances. And you'd have to be living in a cave not to see what was occurring in Victoria and so I accept their advice on that

REPORTER

Is this just a giant waste of resources for one man's agenda.

MARK MCGOWAN

by Mr Palmer?

Well you know, correct. He is.. he is pursuing a case against our interests, against his own interests, against the country's interests simply because he can and he has money generated from Western Australia he's losing... he's using against our State. It really is abominable what he is doing, it really is shocking and .. an act of decency would be to pull out. So I'd say to Mr Palmer, listen to the Prime Minister, listen to me, listen to Mr Cormann, but most of all listen to West Australians, they don't want you to do this.

REPORTER

Premier can I ask you about your formal submission to the AFL for the Grand Final?

MARK MCGOWAN

I haven't submitted a.. I haven't put in a submission. I understand there's been discussions, I understand some .. you know, Venues Live or someone might have put together some document.. or VenuesWest .. I haven't put a submission in.

Our view on the Grand Final is this – it's not a priority, it's not our focus. If it can't be held in Melbourne, well then clearly Optus Stadium is the best ground in Australia and Western Australia is a football state, and if the football community wanted to abide by all the quarantine and safety requirements well then it should be held at Optus Stadium but if they don't want to abide by that, well then they'll have to find somewhere else.

REPORTER

So the WA Government hasn't put in a submission then?

MARK MCGOWAN

I have not authorised a submission. I don't know... look, obviously football and the .. the stadium and VenuesWest and all those sort of people talk every day, as they do all sea .. all year, they talk all year, every day. And so, that's an ongoing process and no doubt they send emails and letters to one another and they communicate all the time, every day of the year but I haven't authorised a formal submission and we have not, at my level, put in a formal submission

So as I said, I just want to repeat, the Grand Final is not our focus. I know I get it raised with me a lot in press conferences but on the street no-one raises it with me, it's not our

KEY \* Spelling indeterminate

focus. Keeping people safe is our focus, getting our economy back up is our focus, the Grand Final is not.

REPORTER

Is it correct to say that there's a formal submission from WA that hasn't come from the Government?

MARK MCGOWAN

Well as I said, there's constantly communication between VenuesWest and staff there and the people at Optus Stadium with football, no doubt. And... but I haven't authorised a formal submission.

REPORTER

On the freight testing .. will more staff members have to be sent out to the Eucla and Kununurra to be checking these people coming in and will it be health experts or will it just be police that are checking these?

MARK MCGOWAN

No the way it'll work is this, when a truck driver comes through they would need to verify that they've had a test within the last seven days and there'll be a process around that. If they haven't had a test in the last seven days, they will be directed to have a test within the next 48 hours. They then go to Kalgoorlie or Esperance or one of the major communities where you can get a test, and be expected to have a test there. So that's how it will work

Obviously we need freight, we need food, we need supplies, we need all the things that come on trucks across the Nullarbor. So that's a... that's a requirement that trucks come in but we do understand there is a risk associated with that of the virus coming in. Truck drivers currently when they get out of the truck, are required to wear masks, face masks. So we're doing what we can at this point in time but we're going to beef up that security by requiring these things on trucks .. truckies coming in.

As I've said a few times in these events. I feel for the truckies, you know, they probably don't want to go through the tests. I'm advised the tests aren't that pleasant and they haven't done anything wrong, they're just doing their job. But we're just trying to protect people and so that's why this arrangement has been put in place

REPORTER

Do they have to isolate for however many days before they get those results back

MARK MCGOWAN

No, no, they have to have a test every seven days. When they come in, within 48 hours, they're required to undertake a test, for which we'll get the results. As I've said at these events before, obviously we will get the results as quick as we can but we can't stop freight. You know, we need to eat, we need to have industry function. Most of our tinned and processed food comes from the east, that has to come in.

So they will be tested and obviously if there was a problem then we will know about it and we can contact trace. We have all our trucks assembled at the border are waiting for... are waiting you know for two days, awaiting test results, that would be a significant der... disruption to supply. So that's not what we're doing, we're doing a testing regime that is in accordance with the rest of the country.

REPORTER

And they'll continue driving onto their destination while they're waiting for the test results?

MARK MCGOWAN

Our expectation is that most of them will have had a test within the last seven days, and you know they'll have to do it weekly. And so the major trucking companies have been part of this discussion and the vast majority of truck drivers are part of those organisations. So that regime will be installed and they will be complying with it. So we'll have results for most of the truckies when they arrive.

REPORTER

So sorry just to confirm, if they've . if they've got a document saying they were tested within the last seven days, they still have to get the test within 48 hours?

MARK MCGOWAN

No... if you've had the test within the last seven days, got your results there, obviously you comply. If you don't have that, you are required within the next 48 hours to get a test. We have testing sites all over the State and so they would... the expectation is they go to Kalgoorlie and get a test there.

REPORTER

Are you aware that this FIFO worker from yesterday was flown in from Adelaide, the police yesterday saying that they're launching a criminal investigation and he's since been sent back to Adelaide?

MARK MCGOWAN

I am

REPORTER

What are your thoughts?

MARK MCGOWAN

Well people shouldn't mislead and people shouldn't tell lies and the police have caught various individuals, they've now got significant evidence against him, he's been sent back to Adelaide and he's been issued with a fine, and so that's what can happen when you do these things. And I just urge everyone across the community, you know, these cases people will tell you things, sometimes what they tell you isn't correct and people need to .. perhaps double check what people tell them.

KEY\* \* Spelling indeterminate



REPORTER

How much is he getting fined?

MARK MCGOWAN

I don't know the answer to that.

REPORTER

If a man from Victoria wants to come to WA to get on an oil rig and continue working there, he's not able to get an exemption while an international worker is able to get an exemption

MARK MCGOWAN

We don't control, we don't control the international borders. That's controlled by the Commonwealth Government, we're following up this case to, to ascertain the facts as to whether that is absolutely accurate

Obviously... the Commonwealth letting in people from overseas for these jobs when we have hard border arrangements is not entirely satisfactory. The best solution to all of this, the best solution, is for FIFO workers from the east to move to Western Australia, and that's what we've required of industry. Move to Western Australia, it's the best, simplest, most straightforward solution. It solves the problem

REPORTER

The Commissioner told us yesterday, that's not a good excuse to come into WA if you wanted to move

MARK MCGOWAN

Obviously .no, no I'm not sure he would have said that. I had a conversation with him this morning. We are looking at.. people who come to Western Australia, who claim that they are moving here with their families, we are ensuring, we are ensuring that they will be allowed in and they will have to quarantine for two weeks and then they are West Australians. They stay here, and they undertake their work

Just got to always watch out that people might not tell the truth about what they are doing, and so we just need verification, and this is a process the Commissioner is currently working on, verification that those people when they come, and they make these claims, that those claims are accurate.

REPORTER

What do you say to the interstate workers who are being overlooked for international workers.

MARK MCGOWAN

As I said, we're investigating these cases as to whether or not it's true.

KEY: \* Spelling indeterminate

REPORTER

You, you'd like to see interstate Australian workers, working offshore in WA

MARK MCGOWAN

Yeah, no, I would like them to move to Western Australia I want them to move to Western Australia.

If you have a job in Western Australia, our view now, in the COVID environment, is you should... you should live in Western Australia. You know the time. . the days of people flying out of Melbourne or Sydney or Hobart or Brisbane to Western Australia for work and flying back again are over. Move to Western Australia

REPORTER

How could there be that inconsistency with international and interstate workers

MARK MCGOWAN

As I said, I don't control the international borders. I don't know if the case is accurate. Some of these cases are not, you know what, you hear, as we learned with our friend from South Australia, not necessarily accurate. So we're going to find out. get to the bottom of the accuracy of the case.

REPORTER

Just on your policy to get regional, to get people from the city to go and work in the regions. What's prompted this? Are the regions particularly struggling because of COVID-19.

MARK MCGOWAN

Oh well, you know.. what's happened, is that some parts of the State are booming. The tourism industry in Exmouth and some parts of the South West has been booming and they need people

The agricultural sector of course these days, importing people from overseas to pick fruit . or work on perhaps wheat silos, wheat bins or whatever it might be.. those opportunities aren't there now.

Mining, the mining sector, if you have a look at the iron ore price and gold price and the like, is going very, very well and so they need people. Ah, so, I was out there and Alannah MacTiernan is out there all the time, and I was out in three regions over the course of last week and it was... the case was made to me by people in business. We need people, we need people as quickly as possible

So jobs are out there. So jobs are out there in regional WA and moving to the regions is a great experience. It's something when you are young you will always remember. So just say to West Australians, just look for those jobs out there Take the opportunity, take a chance, have some fun, do something different.

If you haven't got a job at the moment, go and get one out there. And living in a regional town, a regional community north or east or south of the State is a great experience. So we'll not only promote that, but we will promote that with campaigns, because we want to see West Australians take up these opportunities, and also let's take our farming community, they will need people to pick fruit or to assist on farms over the coming months, especially between now and November. So, we're going to pursue it as hard as we can.

REPORTER

You, you said earlier that we are now entering the most dangerous phase of this pandemic. Is it your expectation that the situation in Victoria and elsewhere is going to get worse before it, it gets better?

MARK MCGOWAN

Well it's been bad for, you know, what is it, a month now. It's been bad for a month and so clearly the figures yesterday were really bad. The figures today are bad and so they don't change. They are, you know, they're up in those sort of four to seven hundred mark. They are quite high, and so you know it's obviously very worrying and you know you can see the, you can see the pain etched in the face of the Victoria Premier. He does a press conference every day for an hour or an hour-and-a-half answering these questions.

It's very painful and difficult for everyone in Victoria, including the Victorian Premier, and I can say honestly, all the political leaders of Australia feel for Victoria and feel for everyone there including the Government, so... obviously it's a worrying time, that's why we want to keep our border in place, that's why we want to continue to protect our people

REPORTER

I mean,, given that, given that it is getting worse, when are we going to see an end to this federal state bickering. When are we going to see a national approach to restrictions and border controls. Is that something that you, you are taking up with National Cabinet.

MARK MCGOWAN

What bickering, what are you talking about?

REPORTER

Well, you know we have, just a week ago we had Federal Government advocating for WA's border settings to change. That's obviously changed in a massive backflip. When are we actually going to see a national strategic approach to how these restrictions introduced, kept in place and border controls are run?

MARK MCGOWAN

Oh okay. Well we are committed to continuing to work with the Commonwealth on those matters, but I just want to make it clear, if the High Court rules that we can keep our border, we will keep our border, until such time as we get health advice to bring it

KEY. ^ Spelling indeterminate



down, and, that will be our approach .but we will continue to work with the Commonwealth and if there's ways they can assist us along this road, that will happen

I actually think, comparing Australia to other countries, we've worked remarkably well together. Remarkably well And political boundaries have come down.

Obviously the border issue has been a significant problem in the relationship or in the process... but I want to get past that. I want to keep our border in place. I want a win in the High Court, I want Cliv . Clive Palmer to withdraw his case. I want to continue to protect Western Australians, but as I said earlier, you know, we've got to work together as a nation. The Commonwealth needs to work with the State and . the border however has been so important for protecting Western Australia that wasn't something that we could give in on. It wasn't something we could compromise on.

So, every relationship has its difficulties. It's not like everyday sweetness and light and.. in any relationship, and so the border has been a significant problem, but we will continue to fight for it.

REPORTER

Can I just take you back to the case I was talking about earlier. You said you were investigating it and needed more information. I've got information from three different companies that they do, in fact, find it easier to bring internationals in.

MARK MCGOWAN

Yeah..

REPORTER

I mean, what's the solution there?

MARK MCGOWAN

Well, the solution is. obviously it shouldn't be easier for people to come from overseas in that way But the best solution is people who work in Western Australia move to Western Australia.

REPORTER

Have you had any direct contact with Mr Pal... Mr Palmer. Have you spoken to him directly one-on-one and asked him to... to back off?

MARK MCGOWAN

No, I've never met him.

REPORTER

Would you? Is it worth reaching out

MARK MCGOWAN

no, I think he knows my views I think I've made them fairly plain . but you know, the Prime Minister of Australia, the Finance Minister of Australia, the Federal Government and the State Government have all said, it would be best for everyone if you stopped... he should listen

Thank you very much

Media conference

Ends

sb

Rule 29.02

**Annexure Certificate  
MM30**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM30" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

---



Advertisement

# HISTORY REPEATS!

## Men and Women of Western Australia

I'd like to draw to your attention the unconstitutional acts and McGowan cover up, and believe that history is very much on the people's side because this is not the first occasion on which a Western Australian Government has attempted unsuccessfully to intervene in matters which should have been left to the judicial process.

I am referring to what happened in the mega-litigation involving the Bell Group. In that case, after years of litigation, the State of Western Australia purported to jump in and legislate an outcome of its own invention which, in essence, involved the State taking over and performing what would otherwise have been the function of the Courts (Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015 (WA) (Bell Group Act)).

Similarly to the Act now passed by the McGowan government, that Act appropriated the property of the Bell Group companies, declared that rules of Natural Justice don't apply, and declared to be final and conclusive and unable to be challenged, appealed against, reviewed or quashed or called into question in any Court!

Despite it being utterly draconian legislation, the then WA Treasurer declared that he was confident the Bell Group Act would survive any High Court challenges. But once put under scrutiny, the High Court of Australia unanimously held that the Bell Group Act was invalid in its entirety: Bell Group NV (in liquidation) v Western Australia (2016) 260 CLR 500.

But however draconian that Act was, even it didn't seem to exempt the then Premier, Colin Barnett, and others from the operation of the Criminal Law, nor did it remove the right of Western Australians to freedom of information and all rights to access any and all relevant documents!

You should note the great irony in what was said after the Bell Group Act was declared invalid by both Ben Wyatt and John Quigley, who were in Opposition at that time.

Ben Wyatt said: *"When the Government of the day seeks to use the power of a Parliament to intervene in a commercial dispute so that the Government gets to dictate the outcome, you've got to make sure that the inevitable High Court challenge would [not] be successful,"* he said.

*Not only did it not survive, it was unanimously thrown out by the High Court of Australia. Now the Government has to return to the negotiating table, very much with its tail between its legs.*

*This will see further delays to a fair and equitable resolution for the Western Australian taxpayer who, by and large, funded the original litigation and now will be funding the failed attempt by the Barnett Government to try and resolve this issue."*  
See: <https://www.abc.net.au/news/2016-05-16/court-rules-against-wa-government-bell-group-act/7417122>

John Quigley said: *"The tragedy in all of this for the taxpayers is that just prior to the introduction of the Bell Litigation Finalisation Bill all parties were in mediation talks with a view to settling."*

*There was a chance that the State then could have settled and this drain on our coffers stopped. But as soon as the previous administration thought they'd finish this by an act of Parliament in which the winner takes all ... it drove all parties into their corners, ridden with distrust of each other."*

See: <https://thewest.com.au/news/wa/alan-bonds-bell-group-wind-up-costs-taxpayers-500k-a-month-ng-b88703123z>.

You should also note that the McGowan Act specifically terminates the Mediation Agreement between the State, Mineralogy and International Minerals. Clearly, as in the Bell Group case, Mediation between the parties was already on foot, as part of the peaceful and legal process for dispute resolution, but the now McGowan and Quigley Government have similarly terminated that legal process.

As part of the fight to protect Western Australians and all Australians rights and freedoms, the aggrieved parties to the arbitration, International Minerals and Mineralogy, are now seeking orders for recognition and enforcement of the 2014 and 2019 awards of distinguished former High Court of Australia Judge Michael McHugh in Chapter III Courts outside Western Australia, outside the reach of McGowan and Quigley's draconian and in my view unconstitutional legislation.

You should know that I am not personally a party to that arbitration and yet McGowan and Quigley have legislated to remove all my rights personally. If they think they can do that to me, they can do that to you too!

I am committed to do what I can to protect the rights and freedoms we enjoy in Australia and, until this McGowan Act, also used to have in Western Australia. You can do your bit by speaking up to your local Member of Parliament against this draconian and extraordinary legislation.

No politician should be above the law, no politician should be beyond public scrutiny, and no politician should be both judge and executioner!

**God Bless Australia!**



Clive Palmer

Authorised by Clive Palmer  
2 The Esplanade, Perth WA 6000

Rule 29.02

**Annexure Certificate  
MM31**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

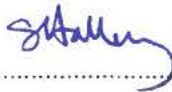
Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM31" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:

.....  
Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

---



Advertisement

# COVER UP

## Men and Women of Western Australia

Mark McGowan's actions in the past two months have been a concerted effort to cover up his personal involvement in breaking the law and people must question why his government has passed an Act which provides him and others with an exemption from the Criminal Law!

Why was an act passed in the Western Australian Parliament last night which takes away the rights of the Press and the Western Australian public to make Freedom of Information (FOI) applications to find out what McGowan did? The question for Western Australians is what did McGowan do to cause, as the Attorney General said, 30 billion dollars of liability for the State of Western Australia? Why should McGowan or anyone else be exempt from the Criminal Law?

As well as seeking to destroy the rights of individuals and protect politicians from the Criminal Law the Act also bans citizens taking to court any matter associated with the events and acts that caused the state to inflict substantial pain and damage on International Minerals and Mineralogy. I am not and have never been a party to the arbitration. Why did McGowan attack me personally?

International Minerals was an ASX publicly listed company with over 5,000 mum and dad shareholders. Any action by a state government to destroy the livelihoods of any of these people should not be beyond examination.

It is my position that McGowan personally destroyed their project. McGowan has focussed on the role of Colin Barnett, yet it was Mark McGowan who acted beyond the power of the government. The question must be asked did he do it to assist a foreign power? Did he act against Australia's interest? Is that why he must be exempted from the Criminal Law and Freedom of Information (FOI)?

With the Federal Court deciding matters of fact and their judgement likely to be made on 24 August 2020 what was the emergency to get the Act passed in one day. Was it a state emergency or a Mark McGowan emergency?

Why does the Act purport to take from me and every citizen their rights of natural justice, and take away Western Australians' right to have proper legal process in our own country of Australia. The Act is more akin to the laws of China than Australia!

Why did McGowan provide for the Act to destroy the two Awards made by distinguished former High Court Judge Michael McHugh? Both of the Awards were against the Western Australian Government. Why was it that the Western Australian Supreme Court also ruled against the Western Australian Government?

Why was it that the Chief Law Officer of Western Australia and barrister of the Supreme Court of Western Australia, John Quigley, not support the Rule of Law?

Betrayal of the Rule of Law, exemptions from the Criminal Law and removing freedom of information is not what Australia is about!

In 1972 Richard Nixon won a landslide victory in the Presidential election. He, like McGowan, had great public support. Nixon directed the greatest criminal cover up in history, but even he unlike McGowan was not supposedly exempted from the Criminal Law!

Eventually the High Court of Australia will decide the validity of the Act. In Australia we enjoy the separation of powers and the Rule of Law. The law has served our country well, it protects our values, our freedom and democracy. We must fight to protect it!

**God Bless Australia!**



Clive Palmer

Authorised by Clive Palmer  
2 The Esplanade, Perth WA 6000

WIN13232 PWR



Rule 29.02

**Annexure Certificate  
MM32**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM32" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

---

13/08/2020



Clive Palmer

August 13 at 8:40 AM

...

Read my statement about Mark McGowan and the Cover Up.  
Betrayal of the Rule of Law, exemptions from the Criminal Law &  
removing freedom of information is not what Australia is about!

August 2020

er Up

McGowan's actions in the past two months have been a concerted effort to a personal involvement in breaking the Law and people must question why Western Australian Government has passed an Act which provided him and others with an exemption from Criminal Law?

was an act passed in the Western Australian Parliament last night which took away the rights of the Press and the Western Australian public to make Freedom of Information (FOI) applications to find out what McGowan did? The question for Western Australians is what did McGowan do to cause, as the Attorney General, \$100 million dollars of liability for the State of Western Australia. Why should McGowan also be exempt from the Criminal Law?

as well as seeking to destroy the rights of individuals and protect politicians from the law the Act also bans citizens taking to court any matter associated with the Act and acts that caused the state to inflict substantial pain and damage on national minerals and Mineralogy. I am not and have never been a party to this. Why did McGowan attack me personally?

national minerals was an ASX publicly listed company with over 5,000 shareholders. Any action by a State government to destroy the livelihoods of these people should not be beyond examination.

my position that McGowan personally destroyed their project. McGowan has based on the role of Colin Barnett, yet it was Mark McGowan that acted beyond the power of the government. The question must be asked did he do it to assist a foreigner? Did he act against Australia's interest? Is that why he must be exempted from Criminal law and freedom of information (FOI)?

the Federal Court deciding matters of fact and their judgement likely to be in 4 August 2020 what was the emergency to get the Act passed in one day. Was it Emergency or a Mark McGowan emergency?

VE FREDRICK PALMER  
10 Queen St Brisbane QLD 4000 | PO Box 1578 Brisbane QLD 4001

does the Act purport to take from me and every citizen their rights of Nature, and take away Western Australians' right to have proper legal process in country of Australia? The Act is more akin to the laws of China than Australia.

did McGowan provide for the Act to destroy the two Awards made by distorting High court Judge Michael McHugh? Both of the Awards were against the Western Australian Government. Why was it that the Western Australian Supreme Court also ruled against the Western Australian Government?

was it that the Chief Law Officer of Western Australia and minister of the State of Western Australia, John Quigley, not support the Rule of Law?

of the Rule of Law, exemptions from the Criminal Law and removing freedom of information is not what Australia is about!

172 Richard Nixon won a landslide victory in the Presidential election. He, like McGowan, had great public support. Nixon directed the greatest criminal cover up, but even he unlike McGowan was not supposedly exempted from the Constitution.

usually the High Court of Australia will decide the validity of the Act. In Australia the separation of powers and the Rule of Law. The law has served our country and protects our values, our freedom and democracy. We must fight to protect it.

Bless Australia!

VE FREDRICK PALMER  
10 Queen St Brisbane QLD 4000 | PO Box 1578 Brisbane QLD 4001



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13 August 2020

## Cover Up

Mark McGowan's actions in the past two months have been a concerted effort to cover up his personal involvement in breaking the Law and people must question why his Government has passed an Act which provided him and others with an exemption from the Criminal Law!

Why was an act passed in the Western Australian Parliament last night which takes away the rights of the Press and the Western Australian public to make Freedom of information (FOI) applications to find out what McGowan did? The question for Western Australians is what did McGowan do to cause, as the Attorney General said, 30 billion dollars of liability for the State of Western Australia. Why should McGowan or anyone else be exempt from the Criminal law?

As well as seeking to destroy the rights of individuals and protect politicians from the Criminal law the Act also bans citizens taking to court any matter associated with the events and acts that caused the state to inflict substantial pain and damage on International Minerals and Mineralogy. I am not and have never been a party to the arbitration. Why did McGowan attack me personally?

International Minerals was an ASX publicly listed company with over 5,000 Mum and Dad shareholders. Any action by a State government to destroy the livelihoods of any of these people should not be beyond examination.

It is my position that McGowan personally destroyed their project. McGowan has focussed on the role of Colin Barnett, yet it was Mark McGowan that Acted beyond the power of the government. The question must be asked did he do it to assist a foreign power? Did he act against Australia's interest? Is that why he must be exempted from the Criminal law and freedom of information (FOI)?

With the Federal Court deciding matters of fact and their judgement likely to be made on 24 August 2020 what was the emergency to get the Act passed in one day. Was it a State Emergency or a Mark McGowan emergency!

**CLIVE FREDRICK PALMER**  
L17 248 Queen St Brisbane QLD 4000 | GPO Box 1538 Brisbane QLD 4001



Why does the Act purport to take from me and every citizen their rights of Natural Justice, and take away Western Australians' right to have proper legal process in our own country of Australia? The Act is more akin to the laws of China than Australia!

Why did McGowan provide for the Act to destroy the two Awards made by distinguished former High court Judge Michael McHugh? Both of the Awards were against the Western Australian Government. Why was it that the Western Australian Supreme Court also ruled against the Western Australian Government?

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Eventually the High Court of Australia will decide the validity of the Act. In Australia we enjoy the separation of powers and the Rule of Law. The law has served our country well, it protects our values, our freedom and democracy. We must fight to protect it!

God Bless Australia!



Clive Palmer

13/08/2020



Clive Palmer ✓

August 13 at 7:05 AM · 🌐

...

Statement from Clive Palmer  
RE: Mark McGowan cover-up

Mark McGowan's actions over the past two months have been a concerted effort to cover up his personal involvement in breaking the law. People must question why his Government has passed an Act which provided him and others with an exemption from criminal law.

Why was the Act passed in the Western Australian parliament which takes away the rights of the press and the Western Australian public to make FOI applications to find out what McGowan did?

The question for Western Australians is what did McGowan do to cause, as the Attorney General said, \$30 billion dollars of liability for the State of Western Australia? Why should McGowan or anyone else be exempt from the criminal law?

As well as seeking to destroy the rights of individuals and protect politicians from criminal law, the Act bans citizens taking to court any matter associated with the events and acts that caused the State to inflict substantial pain and damage on International Minerals and Mineralogy. I am not and have never been a party to the arbitration. Why did McGowan attack me personally?

International Minerals was and ASX publicly-listed company with over 5,000 mum and dad shareholders. Any action by a state government to destroy the livelihoods of any of those people should not be beyond examination.

It is my position that McGowan personally destroyed their project. McGowan has focussed on the role of Colin Barnett. It was Mark McGowan that acted beyond the power of the Government. The questions must be asked, did he do it to assist a foreign power? Did he act against Australia's interest? Is that why he must be exempted from the criminal law?

With the Federal Court deciding matters of fact and their judgement likely to be made on 24 August, 2020, what was the emergency to get the Act passed in one day? Was it a State emergency or a Mark McGowan emergency?



Why does the Act purport to take from me and every citizen their rights for natural justice, their rights to have proper legal process in their own country? The act is more akin to the laws of China than Australia.

Why did McGowan provide for the Act to destroy the two Awards made by former High Court Judge Michael McHugh? Both Awards were against the Western Australian Government. Why was it that the Western Australian Supreme Court also ruled against the Western Australian Government?

Why was it that the Chief Law Officer of Western Australia and barrister of the Supreme Court of Western Australia, John Quigley, did not support the rule of law?

Betrayal of the rule of law and exemptions from the criminal law is not what Australia is about. In 1972 Richard Nixon won a landslide victory in the Presidential Election. He, like McGowan, had great public support. Nixon directed the greatest criminal cover up in history but he, unlike McGowan, was not supposedly exempt from the criminal law.

Eventually the High Court of Australia will decide the validity of the Act. In Australia we enjoy the separation of powers and the rule of law. The law has served our country well, it protects our values. We have to fight to protect it.

God bless Australia.

Clive Palmer

   809

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**13/08/2020**



Clive Palmer  @CliveFPalmer · Aug 13

See my latest statement about Mark McGowan and the Cover Up.

Betrayal of the Rule of Law, exemptions from the Criminal Law and removing freedom of information is not what Australia is about!

#wapol #auspol



352

79

114



Rule 29.02

**Annexure Certificate  
MM33**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**


Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM33" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

---



## TRANSCRIPT

**DATE:** Friday, August 14, 2020  
**TIME:** 3.56pm  
**PROGRAM:** 6PR – Perth Live (PETERSON)  
**SUBJECT:** **PALMER – Clive Palmer advertisement**

This transcript is produced for information purposes only. Although all care is taken, no warranty as to its accuracy or completeness is given. It is the reader's responsibility to ensure by independent verification that all information is correct before placing any reliance on it.

CLIVE PALMER

McGowan wants to control our courts, stop your freedom of information, cover up criminal facts [sic], take national [sic] justice.

Keep courts separate from politicians.

Stop McGowan.

Ends...  
jt



Rule 29.02

**Annexure Certificate  
MM34**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM34" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

---



## TRANSCRIPT

**DATE:** Friday, August 14, 2020

**TIME:** 7.58am

**PROGRAM:** 6PR – Breakfast

**SUBJECT:** **PALMER – Clive Palmer advertisement**

This transcript is produced for information purposes only. Although all care is taken, no warranty as to its accuracy or completeness is given. It is the reader's responsibility to ensure by independent verification that all information is correct before placing any reliance on it.

CLIVE PALMER

How can someone be exempt from criminal law?

McGowan can be, read his Act. He's exempt he says. No freedom of information, no natural justice, no access to the courts.

Ends...  
DA

Rule 29.02

**Annexure Certificate  
MM35**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM35" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

---





## TRANSCRIPT

**DATE:** Friday, August 14, 2020  
**TIME:** 8.19am  
**PROGRAM:** 6PR – Breakfast  
**SUBJECT:** **PALMER – Clive Palmer advertisement**

This transcript is produced for information purposes only. Although all care is taken, no warranty as to its accuracy or completeness is given. It is the reader's responsibility to ensure by independent verification that all information is correct before placing any reliance on it.

CLIVE PALMER

Nixon won by a landslide in 1972, covered up criminal acts.

McGowan's very popular, McGowan's exempt from criminal acts.

Protect our Constitution.

Ends...

DA

Rule 29.02

**Annexure Certificate  
MM36**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM36" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

---



## TRANSCRIPT

**DATE:** Friday, August 14, 2020  
**TIME:** 7.48am  
**PROGRAM:** 6PR – Breakfast  
**SUBJECT:** **PALMER – Clive Palmer advertisement**

This transcript is produced for information purposes only. Although all care is taken, no warranty as to its accuracy or completeness is given. It is the reader's responsibility to ensure by independent verification that all information is correct before placing any reliance on it.

CLIVE PALMER

The separation of Parliament from court makes us different from China. McGowan wants control of our courts.

Protect the rule of law, keep courts separate from politicians, stop McGowan's cover-up.

Ends...  
DA



Rule 29.02

**Annexure Certificate  
MM37**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM37" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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## TRANSCRIPT

**DATE:** Friday, August 14, 2020  
**TIME:** 7.25am  
**PROGRAM:** 6PR – Breakfast  
**SUBJECT:** **PALMER – Clive Palmer advertisement**

This transcript is produced for information purposes only. Although all care is taken, no warranty as to its accuracy or completeness is given. It is the reader's responsibility to ensure by independent verification that all information is correct before placing any reliance on it.

CLIVE PALMER

McGowan's act against me exempts McGowan from the criminal law. It stops Western Australians going to court, takes freedom of information, takes natural justice.

Stop McGowan's cover-up.

Ends...  
DA

Rule 29.02

**Annexure Certificate  
MM38**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM38" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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## TRANSCRIPT

**DATE:** Wednesday, August 12, 2020  
**TIME:** 7.38am  
**PROGRAM:** 6PR – Breakfast (MILLS & ZEMPILAS)  
**SUBJECT:** **PALMER – Clive Palmer damages claim**

This transcript is produced for information purposes only. Although all care is taken, no warranty as to its accuracy or completeness is given. It is the reader's responsibility to ensure by independent verification that all information is correct before placing any reliance on it.

[Greetings not transcribed]

STEVE MILLS

I mean, do you find this amazing?

CLIVE PALMER

It is really, but there's a lot to, a lot to talk about I guess, it's hard to know where to start, but this particular dispute has been going for eight years and five days ago we signed an agreement with the former chief justice of Western Australia and the Government that we would mediate the dispute in a friendly cooperative manner and there's certainly no orders for \$30 billion of damages against the State.

But it's extraordinary that the State would bring legislation in, I mean, the real question to ask is, what have they done to, ah, ah, justify the award of such outrageous damages?

It's not me that's done anything, the Attorney-General really says that he thinks we're guilty and we're going to have to pay up. Well there's been no award for \$30 billion of damages, that's just a beat-up and there's been a continual beat-up about me for the last eight weeks and we saw the Premier declare war on me and of course it's unheard of that a State declares war on a citizen merely because they've made an application to the court, and then we were hosh-horror that our application could be successful and if you listen to the Federal Court you saw the Chief Medical Officer of Western Australia come out and say, quite clearly, that the Premier and the Government have not followed his advice.

BASIL ZEMPILAS

Mmm, yeah. So hang on, just to be clear though Mr Palmer, are you suing WA for \$30 billion or not?

CLIVE PALMER

KEY: \* Spelling indeterminate

No. There's no \$30 billion figure in any of our documents.

BASIL ZEMPILAS

Is there another figure?

CLIVE PALMER

Well, damages have to be assessed, that was the, that was the state and when the process has seen what are the damages, right, now, when they say it's \$30 billion well, that's their admission. It seems extraordinary to me...

STEVE MILLS

Well he said \$30-45 billion.

CLIVE PALMER

Well, that's just bullshit to be honest with you. But it's, it's, it's along the lines of these people trying to whip up support because in this particular act they sought indemnity against the Criminal Code of Western Australia. So in other words, if they'd breached the criminal law and are subject to being jailed, they've got immunity by this act of Parliament. That's something the press haven't picked up.

They said that the FOI legislation was exempt, and it couldn't be utilised to find out what was really going on. They also said that the rules of natural justice don't apply to, in this situation. That's the rules of having a fair trial and proper process and they went on and on, taking away the civil liberties of Western Australians, which they shouldn't be doing.

STEVE MILLS

So will you use this, when you talk about your border battle that you've got against the State, and you're on your Pat Malone at the present time, will you use this as an example of where the Government doesn't actually play by the rules, and they make their own rules up?

CLIVE PALMER

Well I, I think there's, there's three issues here really, there's the question of the border, okay, now people can differ and have different views on that. One of my concerns is that eight Western Australians take their life every week, 400 people a year take their lives, six people have died from the virus and most of them are from cruise liners, not Western Australians.

The Chief Medical Officer stands up in court and said there's no reason why there should be a travel ban against Queensland, South Australia, Australian Capital Territory or Northern Territory and he's advised the Government of that but they haven't listened to him.

And then we have the Premier and we have the Health Minister coming out and saying I'm acting on the Chief Minister's advice and I'll be lifting the borders as soon as the Chief Minister, sorry, the Chief Health Officer, [inaudible], you know, whoever, whatever position you've got on any issue, we should be making sure our politicians tell us the

KEY: \* Spelling indeterminate

truth and, and then you have a look at where they attack me and really I've done nothing. One court application

BASIL ZEMPILAS

Clive I will say this though, it's one thing to take on the Government of Western Australia, it's another thing to take on the people of Western Australia, because the people of Western Australia want the borders closed as well. They've been asked, we've all been asked 100 times, and the people of Western Australia unanimously want the borders closed.

So it's them you're taking on.

CLIVE PALMER

Well I'm not taking them on at all, I'm just, just saying that people can differ about these things.

I'm concerned that 400, that's 400 people, Western Australians, are committing suicide every year. That fact's not said by you or any of the media in Perth, that eight people died last week of suicide. That's not even taken into consideration, that the increase of family and domestic violence has doubled in Western Australia...

STEVE MILLS

They're all fair points, they're all fair points, but staying on topic and what we're talking about here...

CLIVE PALMER

Well that is the topic.

STEVE MILLS

Is your, is your ability to work with our Government just gone? Like, you've got no respect for them and they've obviously got no respect for you, has it gone to the extent that you will not do business here and you just walk away and not come back?

CLIVE PALMER

First of all, you know, I've got no ill-feelings towards the Premier, or, or John Quigley or anybody, right, I've been making substantial investments in Western Australia for other 30 years and created over 60,000 jobs in the projects that I've carried out in Western Australia.

So there's no ill-will from me. The question is, there's an election coming up and it's an old political fact you could get someone to have a shot at.

STEVE MILLS

So you are the villain? You are the villain here?

CLIVE PALMER

KEY: \* Spelling indeterminate



Well I think in view of today's *Western Australian*, that's how they're projecting me.

STEVE MILLS

Sure, and if you, if you look at this particular arbitration though, how much money would you be happy with? I mean, do you have to send the State broke, I mean, if you were successful, are you happy to say here, right here and right now, I don't want \$30 billion, I don't want \$45 billion, I'm happy just to be able to sell my property, or my commodity, any time I want to sell it?

CLIVE PALMER

Well, I, I'm happy to say we don't want \$45 billion and the whole point about it, when you, if you understand the case, which I don't want to go into here, it's confidential, the Premier's not even supposed to have said what he said about it, it relates to failures by the Government, not failures by me, and they think that they're guilty of those failures and those things need to be recorrected.

I wanted to create 10,000 more jobs in Western Australia and the Government stopped me from doing it, right, and the evidence shows that's the case and there's a great cost to the community.

STEVE MILLS

So you have a great, you have a great opportunity here right now to say to the people of WA, I'm not out to rip you off, I'm out for justice in regards to my business operation, but I certainly don't want to send every mum and dad, boy and girl in Western Australia broke.

CLIVE PALMER

Well of course I don't, nobody wants to do that, and it's not a question, they're setting the agenda by sending the media to respond to what they're raising in public. I'm not raising things in public because I respect the court, I respect the judicial process and we're not supposed to be doing that. I've signed agreements where we won't do that and so has the State.

But they've just breached all their agreements and that's a wrong thing to do. So, you know, what we did have arranged with the Chief Justice, what was his, no the Chief Justice of Western Australia, the former chief justice, we, we'd arranged that here would be a mediation, he'd sign the mediation agreement, I'd sign the mediation agreement, and then suddenly they got cold feet and I think probably it was on the back of the increasing popularity of the Premier, they thought oh well this is a chance, they were going to do an Act like this they could have done it any time in the last eight years, it's not that dramatic.

BASIL ZEMPILAS

Clive if the Parliament does pass what they're calling the Palmer law, what's your next move?

CLIVE PALMER

KEY: \* Spelling indeterminate

Well, we'll see. I don't, I think it would be very bad to do, I'll tell you why, right, because Western Australia has been a very successful State based on the sanctity of its State Agreements and its way of dealing with sovereign risk.

If it passes this Act all of that is out the window and its credit rating is liable to go down and people that invest in this State will be worried what'll happen.

Listen, each one of the State Agreements is a clause that says if there's a dispute between the State, whatever it is, it can go to arbitration and a fair person can work it out. All parties have agreed with that that have signed State Agreements. But if the first time the State is shown to be on a losing end they resort to going to Parliament as a means of solving a dispute, that'll mean that Western Australia will suffer and people won't invest here.

STEVE MILLS

That's one area I will agree with you and I think it's extraordinary that the Government have gone to this length, I think it should be back at the discussion table somewhere.

We appreciate your time.

BASIL ZEMPILAS

Thanks Clive Palmer.

CLIVE PALMER

All the best. God bless you.

Ends...

DA

Rule 29.02

**Annexure Certificate  
MM39**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM39" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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13<sup>th</sup> August 2020

By Email

Dear Member,

**Mark McGowan cover up and Western Australian Parliament unconstitutional acts**

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I am continuing to consider the above and believe that history is very much on the people's side because this is not the first occasion on which a Western Australian Government has attempted unsuccessfully to intervene in matters which should have been left to the judicial process.

I am referring here to what happened in relation to the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015 (WA) (Bell Group Act).

The background to the Bell Group Act was that, following the lengthy decision of Owen J in the "mega-litigation" in the West, and the liquidators' ultimate success on appeal, the liquidator's recovery of \$1.7 billion seemed certain to result in a further round of complex litigation between parties with competing interests in the distribution of the proceeds of that litigation.

Instead of allowing those matters to be determined by the courts, the State of Western Australia purported to jump in and legislate an outcome of its own invention which essence involved the State taking over and performing what would otherwise have been the function of the courts.

This the State did by purporting, in the Bell Group Act, to enable the State to appropriate the property of companies in the Bell Group, vest that property in a State authority and for the State then to determine in its absolute discretion who should be entitled to that property, in what priority and in what amounts and, to the extent that the State chose not to distribute the pooled property it had appropriated, that property would have vested in the State. The rules of natural justice were declared not to apply. A decision might be made that a particular creditor to be paid nothing at all, in which case every liability of the relevant Bell Group company to that creditor was "by force of this Act, discharged or extinguished". All such decisions were declared to be final and conclusive and unable to be challenged, appealed against, reviewed or quashed or called into question in any court and were declared not to be subject to review or remedy by way of prohibition, mandamus, injunction, certiorari or any remedy or writ to similar effect.

**CLIVE FREDERICK PALMER**

L17 240 Queen St Brisbane QLD 4000 | GPO Box 1538 Brisbane QLD 4001  
P +61 7 3832 2044 | F +61 7 3832 2021

The Bell Group Act, if valid, would obviously have had a dramatic impact on the accrued rights of parties who had spent years and millions of dollars on the litigation to date. It was utterly draconian legislation.

Unsurprisingly, there were constitutional challenges to the Bell Group Act by affected parties.

Equally unsurprisingly (and despite the fact that the WA Treasurer had confidently declared that he was confident that the Bell Group Act would survive the High Court challenges), the challenges succeeded.

The High Court of Australia unanimously held that the Bell Group Act was invalid in its entirety by reason of the operation of section 109 of the Constitution and the inconsistency between the Bell Group Act on the one hand and the Income Tax Assessment Act 1936 (Cth) and Taxation Administration Act 1953 (Cth) (together, the Tax Acts) on the other hand.

The Bell Group Act audaciously purported to enable the State authority referred to above, in its absolute discretion, to determine the quantification of any liability of a Bell Group company to the Commissioner of Taxation. This plainly flew in the face of the Tax Acts and the Bell Group Act was therefore held to be invalid in its entirety for its inconsistency with the Tax Acts: *Bell Group NV (in liquidation) v Western Australia* (2016) 260 CLR 500.

As a separate matter I note that, quite apart from the section 109 argument on which the High Court determined the matter, one aspect of the challenges involved an interesting argument that provisions of the Bell Group Act were also invalid because they infringed Chapter III of the Constitution. The High Court found it unnecessary to consider that question. Australians should give some thought to that aspect of the matter bearing in mind that a summons was filed in the Supreme Court of New South Wales early yesterday morning, seeking an order for recognition and enforcement of the 2014 and 2019 awards of former High Court of Australia judge Michael McHugh, I understand that an equivalent proceeding has also been commenced in the Supreme Court of Queensland and the Federal Court proceedings were also commenced yesterday and those are all matters now pending in Chapter III courts.

Finally, one cannot resist noting the great irony in what was said after the Bell Group Act was declared invalid by both Ben Wyatt and John Quigley.

Ben Wyatt said:

"When the Government of the day seeks to use the power of a Parliament to intervene in a commercial dispute so that the Government gets to dictate the outcome, you've got to make sure that the inevitable High Court challenge would [not] be successful," he said.

Not only did it not survive, it was unanimously thrown out by the High Court of Australia.

Now the Government has to return to the negotiating table, very much with its tail between its legs.

This will see further delays to a fair and equitable resolution for the Western Australian taxpayer who funded by and large the original litigation, and now will be funding the failed attempt by the Barnett Government to try and resolve this issue."

See: <https://www.abc.net.au/news/2016-05-16/court-rules-against-wa-government-bell-group-alan-bond-laws/7417122>

John Quigley said:

"The tragedy in all of this for the taxpayers is that just prior to the introduction of the Bell Litigation Finalisation Bill all parties were in mediation talks with a view to settling.

There was a chance that the State then could have settled and this drain on our coffers stopped. But as soon as the previous administration thought they'd finish this by an act of Parliament in which the winner takes all ... it drove all parties into their corners, ridden with distrust of each other."

See: <https://thewest.com.au/news/wa/alan-bonds-bell-group-wind-up-costs-taxpayers-500k-a-month-ng-b88703123z>

God bless Australia,



**Clive F Palmer**



Rule 29.02

**Annexure Certificate  
MM40**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM40" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

20 May, 2020

The Hon Mark McGowan  
Premier State of Western Australia  
By email:

[wa-government@dpc.wa.gov.au](mailto:wa-government@dpc.wa.gov.au)  
[mark.mcgowan@mp.wa.gov.au](mailto:mark.mcgowan@mp.wa.gov.au)

AND TO

Mr Chris Dawson  
Commissioner for Police for the State of Western Australia  
By email:

[supportwa@g2gpass.com.au](mailto:supportwa@g2gpass.com.au)

**URGENT COMMUNICATION- RESPONSE REQUIRED BY 5PM 20 MAY 2020**

Dear Premier and Commissioner

**EMERGENCY MANAGEMENT ACT 2005 (WA) Sections 61, 67, 70 and 72A QUARANTINE  
(CLOSING THE BORDER) DIRECTIONS ("Directions")**

**REFUSAL OF EXEMPT TRAVELLER APPLICATION**

I act for Clive Palmer, Anna Palmer, Emily Palmer and Declan Sheridan who represent The Palmer Foundation and Consolidated Pharmaceuticals. I am instructed as follows.

On 20 May 2020, an application by my clients for approval to enter Western Australia as *exempt travellers* was refused.

My clients object to this decision on 2 grounds:

1. First, the application should have been approved as my clients are "exempt traveller(s)" as defined in paragraph 27(a) of the Directions, namely "a person who is carrying out functions under a law of the Commonwealth"; and
2. Second, the Directions themselves, or alternatively, the manner in which they have been applied to my clients, is in breach of section 92 of the Constitution of Australia and therefore invalid.

**1. Carrying out functions under a law of the Commonwealth**

My clients are representatives of the Palmer Foundation and Consolidated Pharmaceuticals. Palmer Foundation and Consolidated Pharmaceuticals are presently engaged in philanthropic activities to develop a treatment for COVID -19. These activities to date include:

1. a donation of \$1,000,000 to the RBWH Foundation to fund a clinical trial into the treatment of COVID-19 using hydroxychloroquine;
2. the donation of 33 million doses of hydroxychloroquine into the National Medical Stockpile to be provided free of charge on physician's prescription for therapy or prophylaxis of COVID-19 infection and also for use in clinical trials;

3. funding and support for other clinical trials of treatments incorporating hydroxychloroquine in the United States.

In connection with the performance of these activities, on 4 April 2020 my clients received authorisation from the Deputy Secretary Australian Government Department of Health which relevantly provides that through their dealings with hydroxychloroquine and chloroquine API and tablets they are acting in accordance with condition 6 (a) (ii) under an arrangement with the Australian Government and are authorised under the *Therapeutic Goods (Medicines—Hydroxychloroquine and Chloroquine) (COVID-19 Emergency) Exemption 2020* to acquire Hydroxychloroquine and Chloroquine for the purpose of being donated by Consolidated Pharmaceuticals to the Australian Government.

The purpose of my clients' travel to Western Australia is to progress the purpose referred to in the above Commonwealth authorisation and the activities described above. As such, my clients are carrying out functions under a law of the Commonwealth and accordingly, an "exempt traveller" approval should have been issued to my clients.

My clients intend to travel to Perth Western Australia from Gold Coast Queensland on 21 May 2020 and return to the Gold Coast on approximately 22 May 2020 and intend to travel to Western Australia regularly over the next 3 months in furtherance of the purpose and the activities.

I attach for your information the following documents in respect of the above:

- Therapeutic Goods (Medicines— Hydroxychloroquine and Chloroquine) (COVID-19 Emergency) Exemption 2020 dated 2 April 2020
- letter Deputy Secretary Australian Government Department of Health to Consolidated Pharmaceuticals dated 4 April, 2020; and
- letter Deputy Secretary Australian Government Department of Health to Mr C Palmer, Chairman Palmer Foundation dated 23 April 2020.

## **S92 Constitution of Australia**

The Directions and / or the manner in which the Directions have been applied to my clients is a breach of s92 of the Constitution of Australia which provides that *trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.*

My clients wish to engage in trade, commerce and intercourse between Queensland and Western Australia. The conduct of the State of Western Australia infringes against my client's constitutionally protected rights.

The recognised limited exception to s92 to protect the State or its residents from injury, recognised in cases such as *Nationwide News Pty Ltd v Wills* [2003] HCA 52, do not extend to the Directions or the manner in which the Directions is sought to be applied in respect of my clients. In particular, the Directions and / or the manner in which the Directions is being applied to my clients are not measures which are appropriate to fulfilling an excepted purpose.

As such, the Directions is liable to be declared invalid by the High Court of Australia upon application by my clients.

## **Demand**

Without prejudice to my clients' position regarding the Constitution of Australia, my clients are willing for present purposes to resolve this matter if approvals as exempt traveller are issued immediately today.



My clients demand that by no later than 5PM this evening 20 May 2020, you grant approval to my clients as exempt travellers to enter and leave Western Australia for a period of 3 months.

To facilitate their travel, I am instructed to require that an approval as exempt travellers should also be given to the flight crew of my clients' aircraft Global Express VH-UPH, Mr Carlo Fillingeri and Mr Roger Mackay.

If my client's demand is not met, I advise I am instructed to immediately commence proceedings for the following relief:

1. in the High Court of Australia:
  - a. a declaration that the EMERGENCY MANAGEMENT ACT 2005 (WA) Sections 61, 67, 70 and 72A QUARANTINE (CLOSING THE BORDER) DIRECTIONS is invalid as against s 92 Constitution of Australia;
  - b. an action for damages against the Premier of Western Australia, the Commission of Police of Western Australia and the State of Western Australia for losses suffered by my clients as a result of the breach of my clients' constitutionally protected rights;
2. in the Supreme Court of Western Australia:
  - a. an application quashing the decision to reject my clients' application and an order for mandamus compelling the Commissioner to issue approvals;
  - b. damages for breach as aforesaid.

Yours faithfully



**Jonathan Shaw**



## **Therapeutic Goods (Medicines— Hydroxychloroquine and Chloroquine) (COVID-19 Emergency) Exemption 2020**

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I, Caroline Edwards, as delegate of the Minister for Health, make the following exemption.

Dated 2 April 2020

Caroline Edwards  
Acting Secretary  
Department of Health

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## Contents

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## 1 Name

This instrument is the *Therapeutic Goods (Medicines—Hydroxychloroquine and Chloroquine) (COVID-19 Emergency) Exemption 2020*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day this instrument is made.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under section 18A of the *Therapeutic Goods Act 1989*.

## 4 Definitions

Note: A number of expressions used in this instrument are defined in section 3 of the Act, including the following:

- (a) manufacture;
- (b) medicine;
- (c) supply.

In this instrument:

*Act* means the *Therapeutic Goods Act 1989*.

*COVID-19 emergency* means the public health emergency caused by the outbreak of the disease known as coronavirus disease (COVID-19).

Note: The World Health Organization declared the outbreak of COVID-19, formerly novel coronavirus (2019 nCoV), a Public Health Emergency of International Concern on 30 January 2020, and subsequently characterised the outbreak as a pandemic on 11 March 2020. On 18 March 2020, the Australian Government declared a human biosecurity emergency in Australia under the *Biosecurity Act 2015*.

*Regulations* means the *Therapeutic Goods Regulations 1990*.

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*specified therapeutic goods* means a medicine to which each of the following paragraphs apply:

- (a) the medicine contains the active ingredient, hydroxychloroquine sulfate or chloroquine phosphate; and
- (b) the medicine does not contain any other active ingredient; and
- (c) the medicine is manufactured in appropriate dosage forms for oral administration.

## 5 Exemption

- (1) The specified therapeutic goods are exempt from the operation of Division 2 of Part 3-2 of the Act in order to deal with the actual threat to public health caused by the COVID-19 emergency.

Note: Under paragraph 18A(2)(b) of the Act, the Minister may make an exemption under subsection 18A(1) only if satisfied that, in the national interest, the exemption should be made so that the goods can be made available urgently in Australia to deal with an actual threat to public health caused by an emergency that has occurred.

### *Period of exemption*

- (2) This exemption takes effect on the commencement of this instrument and ceases to have effect on 31 January 2021.

## 6 Conditions

This exemption is subject to the following conditions:

- (a) the specified therapeutic goods must only be imported, exported, manufactured or supplied by:
  - (i) a person under a contract between the person and the Australian Government Department of Health for that purpose; or
  - (ii) a person who has made prior written arrangement with the Australian Government Department of Health for that purpose; and
- (b) the specified therapeutic goods must only be supplied in Australia for the prevention, treatment or alleviation of coronavirus disease (COVID-19) following advice from the Australian Government Department of Health; and
- (c) the supply of the specified therapeutic goods for a therapeutic use mentioned in paragraph (b) must be accompanied by a patient information leaflet (in hard copy or electronic form) that includes the information specified in Schedule 1 relating to the therapeutic use; and
- (d) the patient information leaflet mentioned in paragraph (c) must be supplied in a manner that ensures the information is given to the person to whom the goods are administered or otherwise dispensed; and
- (e) the person mentioned in paragraph (a) must keep records in relation to the importation, exportation, manufacture and supply of the relevant specified therapeutic goods; and
- (f) on request from the Secretary, the person mentioned in paragraph (a) must make the records mentioned in paragraph (e) available to the Secretary; and

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(g) the specified therapeutic goods must be stored and transported in a manner that ensures:

- (i) the security of the goods is appropriate to the level of risk that the goods pose to the public and environment; and
- (ii) the integrity of the condition of the goods is maintained.

- Note 1: There are offences and civil penalty provisions in relation to goods exempt under section 18A, including:
- (a) sections 20, 22 and 22AA (offences and civil penalties for breaching a condition of exemption);
  - (b) sections 30F and 30FA (offence and civil penalty for goods not conforming to standards);
  - (c) section 30H (offence for not keeping records);
  - (d) sections 35 and 35A (offence and civil penalty for manufacturing goods without a licence).
- Note 2: There are other provisions in the Act that apply to goods exempt under section 18A, including:
- (a) section 31AA (requirement to provide information to the Secretary);
  - (b) sections 39 and 41 (provisions relating to manufacturing goods);
  - (c) section 46A (provision enabling search of premises).
- Note 3: Regulation 12AAB and Schedule 5B of the Regulations set out arrangements for the disposal of unused emergency goods for the purposes of section 30G of the Act.

## Schedule 1—Patient information leaflet

Note: See section 6.

Information to be included in a patient information leaflet	
Item	Specified information
1	<ul style="list-style-type: none"> <li>(a) the name of the medicine;</li> <li>(b) the quantity, proportion or strength of each active ingredient;</li> <li>(c) the method of administration;</li> <li>(d) the suggested dosage and duration of treatment;</li> <li>(e) the suggested frequency of administration;</li> <li>(f) a statement that optimal dosage, duration of treatment and frequency of administration is unknown;</li> <li>(g) a statement regarding contraindications;</li> <li>(h) a statement regarding warnings, precautions and other safety measures including symptoms and recommended treatment of overdose or accidental poisoning;</li> <li>(i) a statement regarding the medicine's interactions with other medicines and other serious forms of interactions;</li> <li>(j) a statement regarding adverse or undesirable effects;</li> <li>(k) a statement regarding appropriate storage conditions and a reference to the expiry date;</li> <li>(l) the name, street address and contact details of the Australian sponsor.</li> </ul>



**Australian Government****Department of Health****Deputy Secretary**

Ms Sokolova  
Consolidated Pharmaceuticals  
GPO Box 1538  
Brisbane QLD 4001

4 April 2020

Dear Ms Sokolova

**Subject: Re: *Therapeutic Goods (Medicines – Hydroxychloroquine and Chloroquine) (COVID-19 Emergency) Exemption 2020***

I refer to the above and advise that in relationship to this Emergency Exemption, Consolidated Pharmaceuticals and their officers and representatives (including but not limited to Stiliana Sokolova, Emily Palmer, Declan Sheridan, Dr Reza Madah and Jeremy Sheridan) through their dealings with hydroxychloroquine and chloroquine API and tablets are acting in accordance with condition 6 (a) (ii) under an arrangement with the Australian Government. They are duly authorised to acquire Hydroxychloroquine and Chloroquine for the purpose of being donated by Consolidated Pharmaceuticals to the Australian Government.

All shipments will be placed on the Australian Governments National medical stockpile. All shipments will be received by IDT Australia Limited on behalf of the Australian Government. The tablets and their distribution will remain at all times under the control of the Australian Government and their medical officers.

Yours sincerely

Adj. Professor John Skerritt  
Deputy Secretary for Health Products Regulation

4 April 2020

**Australian Government****Department of Health****Deputy Secretary**

Mr Clive F Palmer  
Chairman, The Palmer Foundation  
GPO Box 1538  
Brisbane QLD 4001

Dear Mr Palmer

**Re: Therapeutic Goods (Medicines – Hydroxychloroquine and Chloroquine) (COVID-19  
Emergency) Exemption 2020**

I refer to the above and advise that in relationship to this Emergency Exemption, the Palmer Foundation and their officers and representatives (including but not limited to Clive Palmer and Anna Palmer) through their dealings with hydroxychloroquine and chloroquine API and tablets are acting in accordance with condition 6 (a) (ii) under an arrangement with the Australian Government.

They are duly authorised to acquire products containing Hydroxychloroquine and Chloroquine for the purpose of these products being donated by the Palmer Foundation to the Australian Government.

All shipments will be placed on the Australian Government's National Medical Stockpile. All shipments will be received by IDT Australia Limited on behalf of the Australian Government. The tablets and their distribution will remain at all times under the control of the Australian Government and their medical officers.

I can confirm that because of the Emergency Exemption in place for goods donated to or purchased by the National Medical Stockpile, there is no requirement for imported hydroxychloroquine or chloroquine products to be included in the Australian Register of Therapeutic Goods. They are thus not required to have a TGA Aust R number.

Yours sincerely

Adj. Professor John Skeritt  
Health Products Regulation Group

23 April 2020

Rule 29.02

**Annexure Certificate  
MM41**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

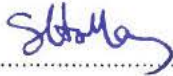
Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM41" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

**From:** Jonathan Shaw <j.c.shaw@bigpond.com>  
**Sent:** Thursday, 21 May 2020 9:14 AM  
**To:** 'Edward Fearis'  
**Cc:** 'Jonathan Shaw'  
**Subject:** RE: FW: Clive Palmer

Dear Mr Fearis.

I refer to your email below.

As regards your comment that "it is not for the Premier of Western Australia to grant or deny your clients entry into Western Australia under the relevant Directions", with respect, that statement proceeds from a misapprehension regarding the basis for the statement. You have incorrectly concluded that my clients accept the validity of the Directions and the authority of the Commissioner to make decisions pursuant to them.

My clients statement regarding the responsibility of the Premier is made because it is the Government which has caused the Quarantine (Closing the Border) Directions to be given pursuant to the Emergency Management Act 2005. Those Directions are constitutionally invalid and represent an unacceptable interference with the rights of Australian citizens to freedom of movement between the States. Responsibility for the Directions rests with the Government and the Premier.

For completeness, the reference to the meeting with Senator Cormann was not a relevant matter for the purpose of the application and was therefore not required to be included in it. Reference to the meeting was made to give context to the invitation to the State to contact Senator Cormann to verify the exception upon which my clients relied. The meetings planned by my clients have had to be cancelled.

I will be in further contact regarding service of the proceedings.

Yours faithfully,

**Jonathan Shaw**  
**Solicitor**

M: +61 (0) 418 758 268

Tel: +61 (0)7 3532 3849

E: [j.c.shaw@bigpond.com](mailto:j.c.shaw@bigpond.com)

Brisbane office: 17/240 Queen Street, Brisbane, QLD 4000

This communication and any attachments are confidential and may be privileged.

---

**From:** Edward Fearis <e.fearis@sso.wa.gov.au>  
**Sent:** Wednesday, 20 May 2020 8:27 PM  
**To:** Jonathan Shaw <j.c.shaw@bigpond.com>  
**Subject:** Re: FW: Clive Palmer

Dear Mr Shaw

I refer to your below email.

I confirm that this Office acts for both the Commissioner of Police and the State of Western Australia.

I note that you have been instructed that your clients intended to meet with Senator Cormann to discuss Commonwealth business. I am advised that this information was not provided or addressed within your clients'



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applications for exempt traveller status. Please advise if your clients intend to renew their applications and provide sufficient detail / evidence of these meetings.

I further note that your clients do not wish to make any application under any other paragraph of the Directions which they might rely on to be granted exempt traveller status, despite your being advised that the Commissioner would further consider the matter.

Finally, for the avoidance of all doubt, contrary to that which you have suggested, I confirm that it is not for the Premier of Western Australia to grant or deny your clients entry into Western Australia under the relevant Directions; rather, that decision rests solely with the State Emergency Coordinator (SEC) (or an officer authorised by the SEC) in light of the fact that a state of emergency has been declared for the whole of Western Australia under the *State Emergency Management Act 2005* (WA), and that the SEC has made Directions pursuant to sections 61, 67, 70 and 72A of that Act.

In the event that your clients commence proceedings it would be customary for this Office to accept service, however I will confirm the matter. In the circumstances I would be grateful if you could advise me if proceedings are commenced.

Yours sincerely

**Edward Fearis** | Solicitor | State Solicitor's Office

David Malcolm Justice Centre, 28 Barrack Street, Perth WA 6000 | D (08) 9264 1874 | M 0401 880 779 | [e.fearis@sso.wa.gov.au](mailto:e.fearis@sso.wa.gov.au)

From: "Jonathan Shaw" <[j.c.shaw@bigpond.com](mailto:j.c.shaw@bigpond.com)>  
To: "'Edward Fearis'" <[e.fearis@sso.wa.gov.au](mailto:e.fearis@sso.wa.gov.au)>  
Cc: "'Jonathan Shaw'" <[j.c.shaw@bigpond.com](mailto:j.c.shaw@bigpond.com)>  
Date: 20/05/2020 05:03 PM  
Subject: FW: Clive Palmer

---

Dear Ed

Please see correspondence below, forwarded to you at the request of Ms Eagling.

Yours faithfully,

**Jonathan Shaw**  
**Solicitor**

M: +61 (0) 418 758 268

Tel: +61 (0)7 3532 3849

E: [j.c.shaw@bigpond.com](mailto:j.c.shaw@bigpond.com)

Brisbane office: 17/240 Queen Street, Brisbane, QLD 4000

This communication and any attachments are confidential and may be privileged.

**From:** Jonathan Shaw <[j.c.shaw@bigpond.com](mailto:j.c.shaw@bigpond.com)>  
**Sent:** Wednesday, 20 May 2020 7:01 PM  
**To:** 'EAGLING Naomi [PD72199]' <[naomi.eagling@police.wa.gov.au](mailto:naomi.eagling@police.wa.gov.au)>  
**Cc:** 'Jonathan Shaw' <[j.c.shaw@bigpond.com](mailto:j.c.shaw@bigpond.com)>  
**Subject:** Clive Palmer

Dear Ms Eagling

Thank you for your 2 telephone calls this evening.

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I confirm your advice that the SSO opinion is that Mr Palmer is not performing a function under a law of the Commonwealth. With respect, my clients (and I) disagree for the reasons explained in my letter today. In this regard, I am instructed that Mr Palmer (and my other clients) were intending to meet with Senator Mathias Cormann, Leader of the Government in the Senate, in Perth Western Australia tomorrow. I am instructed that if you contact Senator Cormann, he will confirm that Mr Palmer (and my clients) were meeting Senator Cormann in respect of confidential Commonwealth business and the matters referred to in my correspondence today.

I also confirm your suggestion that my clients consider an application for exercise of the Commissioner's discretion under paragraph 27(r) setting out details of the visit. I am instructed my clients will not make such an application as they consider they fall within the exemption already noted and/ or the Direction is constitutionally invalid.

I am also instructed to advise that Mr Palmer considers it beyond belief that the Premier of Western Australia would deny Mr Palmer (and my other clients) access to Western Australia when the purpose of their visit is in the national interest and is to progress the philanthropic project to add hydroxychloroquine supplies to the National Medical Stockpile. Further, Mr Palmer intends to call a press conference tomorrow morning to highlight these matters.

Finally, I confirm my instructions are to make the applications to the High Court and the Supreme Court of Western Australia for the relief foreshadowed in my letter today. In this regard, I would be grateful if you could onforward this email (copy to me) to the Attorney General and the State Solicitor.

Thank you again for your prompt response this evening and assistance.

Yours faithfully,

**Jonathan Shaw**

**Solicitor**

M: +61 (0) 418 758 268

Tel: +61 (0)7 3532 3849

E: [j.c.shaw@bigpond.com](mailto:j.c.shaw@bigpond.com)

Brisbane office: 17/240 Queen Street, Brisbane, QLD 4000

This communication and any attachments are confidential and may be privileged.

-----Original Message-----

From: EAGLING Naomi [PD72199] <[naomi.eagling@police.wa.gov.au](mailto:naomi.eagling@police.wa.gov.au)>

Sent: Wednesday, 20 May 2020 6:03 PM

To: [j.c.shaw@bigpond.com](mailto:j.c.shaw@bigpond.com)

Subject: Clive Palmer

Dear Mr Shaw

As just discussed, could you please send me a copy of the document by which Mr Palmer's company applied for an exemption?

Regards

Naomi

Naomi Eagling  
Commissioner's Counsel  
State Solicitor's Office

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This message is confidential and is intended for the recipient named above. If you are not the intended recipient, you must not disclose, use or copy the message or any part of it. If you received this message in error, please notify the sender immediately by replying to this message, then delete it from your system.

Rule 29.02

**Annexure Certificate  
MM42**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

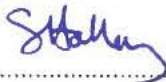
Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM42" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV 1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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# IRON ORE PROCESSING (MINERALOGY PTY. LTD.) AGREEMENT AMENDMENT BILL 2020

## EXPLANATORY MEMORANDUM

### OVERVIEW OF THE BILL

The Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 amends the *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act 2002*.

### PRELIMINARY

#### 1 Short Title

Clause 1 provides that the Bill, once enacted, will be known as the *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Act 2020*.

#### 2 Commencement

Clause 2 provides that the Act will commence on the day on which it receives Royal Assent.

#### 3 Act amended

Clause 3 provides that the Act amends the *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act 2002*.

#### 4 Part 1 heading inserted

Clause 4 inserts a new heading (Part 1 — Preliminary) before section 1.

#### 5 Part 2 heading inserted

Clause 5 inserts a new heading (Part 2 — Ratification) after section 2.

#### 6 Section 3 amended

Clause 6 amends section 3 to refer to terms used in the Part, rather than the Act.

## PROVISIONS RELATING TO BALMORAL SOUTH IRON ORE PROJECT AND CERTAIN OTHER MATTERS

### 7 Part 3 inserted

Clause 7 inserts a new Part 3 into the *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act 2002*.

### Division 1 – Preliminary provisions

Division 1 of Part 3 contains preliminary provisions.

### Proposed section 7 – Terms used

Proposed section 7 defines the terms used in Part 3, including the following key terms.

The term **Agreement** means the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement, a copy of which is set out in Schedule 1 of the Act, as varied from time to time in accordance with its provisions and as varied by the agreement set out in Schedule 2 of the Act.

The term **amending Act** means the *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Act 2020*.

The term **Balmoral South Iron Ore Project** means the project known as the "Balmoral South Iron Ore Project" as proposed or described from time to time.

The term **civil wrong** includes (without limitation) the following –

- (a) a tort;
- (b) a breach of trust;
- (c) a breach of confidence;
- (d) a breach of a duty in equity;
- (e) a breach of a written law;
- (f) maladministration, misconduct or any other conduct that, under an Act or law, could be the subject of an adverse report, adverse finding, penalty or other sanction of a disciplinary, regulatory or other civil type.

The term **civil wrong** is intended to be broad, to expand the ordinary meaning of the term and, when used throughout the Act, to provide wide protection to the State.

The term **commencement** means the coming into operation of section 7 of the amending Act.

The term **connected with** means directly or indirectly, and wholly or partly –

- (i) in anticipation of; or

- (ii) preparatory to; or
- (iii) relating to; or
- (iv) caused by; or
- (v) arising out of; or
- (vi) resulting from; or
- (vii) in consequence of; or
- (viii) contributed to by; or
- (ix) connected with in any other way.

This definition encompasses a broad conception of "connected with". Paragraph (ix) clarifies that the term ***connected with*** is not limited in any way by the preceding paragraphs.

The term ***disputed matter*** means any of the following –

- (a) the Minister's refusal or purported refusal, on or around 4 September 2012 —
  - (i) to accept the first Balmoral South proposal as valid proposals; and
  - (ii) therefore to consider the first Balmoral South proposal for the purposes of clause 7 of the Agreement;
- (b) the Minister's omission or purported omission, in respect of the first Balmoral South proposal, to give notice to the Project Proponents under clause 7(2) of the Agreement within the 2-month period referred to in that clause;
- (c) the Minister's requirement or purported requirement, on or around 22 July 2014, that the Project Proponents make alterations to the first Balmoral South proposal and comply with various conditions precedent concerning the first Balmoral South proposal;
- (d) the Minister's refusal or purported refusal, on or around 22 August 2013 —
  - (i) to accept the second Balmoral South proposal as valid proposals; and
  - (ii) therefore to consider the second Balmoral South proposal for the purposes of clause 7 of the Agreement;
- (e) the Minister's omission or purported omission, in respect of the second Balmoral South proposal, to give notice to the Project Proponents under clause 7(2) of the Agreement within the 2-month period referred to in that clause;
- (f) to the extent not covered by paragraphs (a) to (e), any conduct of the State, or of a State agent, occurring or arising before commencement and connected with the Balmoral South Iron Ore Project;

- (g) any other conduct of the State, or of a State agent, occurring or arising before, on or after commencement and connected with a disputed matter referred to in any of paragraphs (a) to (f);
- (h) pre-agreement State conduct.

The term ***disputed matter*** is one of two central terms used in the Bill (the other being ***protected matter***). The definition of ***disputed matter*** is intended to be broad and to capture all conduct of the State, or a State agent, connected with the Balmoral South Iron Ore Project or connected with the making of an agreement set out in Schedule 1 or Schedule 2 of the Act.

The term ***first Balmoral South proposal*** means –

- (a) the Project Proponents' proposals titled "Balmoral South Iron Ore Project; Project Proposal for the Western Australian Government" submitted, or purportedly submitted, under clause 6 of the Agreement on or around 8 August 2012; and
- (b) the addendum to those proposals titled "Balmoral South Iron Ore Project; Project Proposal addendum for the Western Australian Government" submitted, or purportedly submitted, under clause 6 of the Agreement on or around 22 August 2012.

The term ***liability***, except in the definition of ***non-WA liability*** –

- (a) means a liability, obligation or duty (whether actual, contingent, prospective or otherwise and whether incurred alone or jointly or jointly and severally or otherwise) arising —
  - (i) in contract or tort; or
  - (ii) under the law of restitution; or
  - (iii) in equity; or
  - (iv) under a written law; or
  - (v) under an order, award, ruling, finding or declaration made by an adjudicator; or
  - (vi) under a direction or other requirement (however described) made by a body or person appointed under a written law or under an arrangement; or
  - (vii) on any other basis;
 and
- (b) includes (without limiting paragraph (a)) a liability, obligation or duty of the type described in paragraph (a) (whether liquidated or unliquidated) to pay any of the following —
  - (i) damages;
  - (ii) compensation;
  - (iii) a debt;



- (iv) an amount by way of restitution;
- (v) interest;
- (vi) legal costs;
- (vii) any other type of amount; and
- (c) includes (without limiting paragraphs (a) and (b)) a non-WA liability.

The term **loss** –

- (a) means any loss, harm, damage, cost or expense (whether economic, non-economic or otherwise and whether actual, contingent, prospective or otherwise); and
- (b) includes (without limiting paragraph (a)) the following —
  - (i) loss, harm or damage to reputation;
  - (ii) wasted cost or expense;
  - (iii) loss of value of rights or other assets (including loss of value to nil);
  - (iv) loss of royalties or other income or profit;
  - (v) loss of funding or revenue;
  - (vi) loss of opportunity.

The terms **liability** and **loss** are intended to be broad and, when used throughout the Act, to provide wide protection to the State.

The term **Mr Palmer** –

- (a) means the individual who, on 10 August 2020, is named Clive Frederick Palmer and is a director of Mineralogy; and
- (b) includes any executor, administrator or trustee of the estate of the individual referred to in paragraph (a).

The term **non-WA liability** –

- (a) means a liability, obligation or duty (whether actual, contingent, prospective or otherwise and whether incurred alone or jointly or jointly and severally or otherwise) arising on any basis —
    - (i) under the law of the Commonwealth, another State or a Territory; or
    - (ii) under the law of a country or territory, or of a part of a country or territory, outside Australia; or
    - (iii) under international law (including an international treaty or other agreement or instrument); or
    - (iv) otherwise outside Western Australia;
- and

- (b) includes (without limiting paragraph (a)) any liability, obligation or duty of the type described in paragraph (a) that corresponds to, or is substantially the same as, or is similar to, a liability, obligation or duty of a type described in the definition of liability in this subsection;

The term ***non-WA proceedings*** means anything that corresponds to, or is substantially the same as, or is similar to, any proceedings as defined and that takes place or occurs –

- (a) under the law of the Commonwealth, another State or a Territory; or
- (b) under the law of a country or territory, or of a part of a country or territory, outside Australia; or
- (c) under international law (including an international treaty or other agreement or instrument); or
- (d) outside Western Australia on any other basis.

The term ***Part 3 subsidiary legislation*** means regulations under proposed section 29 or an order under proposed section 30.

The term ***proceedings*** –

- (a) means any of the following —
  - (i) an action, suit, complaint, arbitration or other proceedings brought or made before or to an adjudicator or before or to any other body or person appointed under a written law or under an arrangement;
  - (ii) an application, claim, counterclaim or demand (however described) brought or made before or to an adjudicator or before any other body or person appointed under a written law or under an arrangement;
  - (iii) to the extent not covered by subparagraphs (i) and (ii), a disciplinary, regulatory or other civil investigation, inquiry or proceedings under an Act or law;
  - (iv) a complaint or allegation (however described) that leads to, or is capable of leading to, an investigation, inquiry or proceedings referred to in subparagraph (iii);

and

- (b) includes (without limiting paragraph (a)) proceedings (as defined in paragraph (a)) connected with any of the following —
  - (i) establishing, quantifying or enforcing a liability;
  - (ii) seeking a remedy by way of injunction, declaration, prohibition, mandamus or certiorari or seeking a remedy having the same effect as any of those remedies or otherwise seeking judicial review of any conduct;

- (iii) seeking discovery, provision, production, inspection or disclosure of a document or other thing;
- (iv) seeking recognition or enforcement of an arbitral award;
- (v) seeking any other type of remedy, relief, order, direction, award, ruling or finding (whether interim or permanent and whether procedural or substantive);

and

- (c) includes (without limiting paragraphs (a) and (b)) non-WA proceedings; and
- (d) includes (without limiting paragraphs (a) to (c)) proceedings (as defined in paragraphs (a) to (c)) brought, made or begun as part of, or otherwise in the course of, other proceedings (as so defined).

The term **proceedings** is intended to be broad and, when used throughout the Act, to provide wide protection to the State.

The term **Project Proponents** means Mineralogy and International Minerals.

The term **protected matter** means any of the following (whether occurring or arising before, on or after commencement) –

- (a) the consideration of courses of action for resolving, addressing or otherwise dealing with a disputed matter or liabilities or proceedings, or potential liabilities or proceedings, connected with a disputed matter;
- (b) the preparation of the Bill for the amending Act (including any drafts of that Bill);
- (c) any decision or recommendation to introduce that Bill into Parliament;
- (d) the introduction of that Bill into Parliament or that Bill's passage through Parliament (including any amendment of it during its passage);
- (e) the enactment or coming into operation of the amending Act;
- (f) the consideration of courses of action for resolving, addressing or otherwise dealing with matters or things to be, or potentially to be, the subject of Part 3 subsidiary legislation;
- (g) the preparation of any Part 3 subsidiary legislation (including any drafts of Part 3 subsidiary legislation);
- (h) any decision or recommendation to make any Part 3 subsidiary legislation;
- (i) the making, publication or coming into operation of any Part 3 subsidiary legislation;
- (j) the operation of this Part or any Part 3 subsidiary legislation;
- (k) any of the following connected with a protected matter referred to in any of paragraphs (a) to (j) —

- (i) any explanation, advice, consultation, discussion, communication, announcement, disclosure or statement;
- (ii) any omission to explain, advise, consult, discuss or communicate or to make an announcement, disclosure or statement;
- (iii) any other conduct;
- (l) any matter or thing connected with a protected matter referred to in any of paragraphs (a) to (k).

The term **protected matter** is one of two central terms used in the Bill (the other being **disputed matter**). The definition of **protected matter** is intended to be broad and to capture all conduct of the State, or a State agent, broadly connected with the drafting of the Bill, the enactment of the amending Act, and the making of Part 3 subsidiary legislation.

The term **relevant arbitration** means an arbitration –

- (a) that begins before commencement (whether or not it is completed before commencement); and
- (b) that concerns a disputed matter; and
- (c) to which the State and the Project Proponents are parties.

The term **relevant arbitration arrangement** means an agreement connected with a relevant arbitration that is made before commencement by the State, the Project Proponents and the arbitrator.

The term **relevant mediation arrangement** means an agreement for mediation connected with a relevant arbitration that is made before commencement by the State, the Project Proponents and the mediator.

The term **second Balmoral South proposal** means the Project Proponents' proposals titled "Balmoral South Iron Ore Project; Project Proposal for the Western Australian Government" submitted, or purportedly submitted, under clause 6 of the Agreement on or around 21 June 2013.

The term **State** includes (without limitation) the following –

- (a) the Crown in right of the State;
- (b) the Government of the State;
- (c) a State authority.

The term **State agent** means an agent, representative, advisor or contractor of the State (but, to avoid doubt, does not include, apart from the State, a party to the Agreement or Mr Palmer).

The term **State authority** means any of the following –



- (a) the Governor;
- (b) a Minister of the Crown in right of the State;
- (c) a department of the Public Service;
- (d) an agency, authority, instrumentality or other body (whether or not a body corporate) established or continued for a public purpose —
  - (i) under a written law; or
  - (ii) otherwise by the State;
- (e) to the extent not covered by paragraph (d), a government trading enterprise as defined in the *Infrastructure Western Australia Act 2019* section 3;
- (f) a person holding, or exercising the powers of, an office established or continued for a public purpose —
  - (i) under a written law; or
  - (ii) otherwise by the State;
- (g) a ministerial officer, or any other employee, as those terms are defined in the *Public Sector Management Act 1994* section 3(1);
- (h) a member, officer or employee of a State authority referred to in any of paragraphs (d) to (f);
- (i) a person who is appointed to any office or other position under a written law, or otherwise by the State, for a public purpose and who is not covered by paragraphs (a) to (h).

Subsection 7(4) provides that, in Part 3, references to proceedings being brought, made or begun against the State include (without limitation) the following –

- (a) proceedings connected with any of the following being brought, made or begun —
  - (i) establishing, quantifying or enforcing a liability of the State;
  - (ii) in relation to any conduct of the State, seeking a remedy by way of injunction, declaration, prohibition, mandamus or certiorari or seeking a remedy having the same effect as any of those remedies or otherwise seeking judicial review of the conduct;
  - (iii) seeking, by or from the State, discovery, provision, production, inspection or disclosure of a document or other thing;
  - (iv) seeking recognition or enforcement of an arbitral award made in a relevant arbitration;
  - (v) seeking any other type of remedy, relief, order, direction, award, ruling or finding (whether interim or permanent and whether procedural or substantive) that would be against, or unfavourable to, the State or otherwise require the State to do, or not to do, anything;
- (b) a disciplinary, regulatory or other civil investigation, inquiry or proceedings under an Act or law being brought, made or begun in relation to any conduct of the State.

Subsection 7(6) provides for the avoidance of doubt that a reference in Part 3 to the conduct of the State or of a State agent includes conduct of a State authority or State agent even though the State authority or State agent subsequently ceases to exist or the person who is the State authority or State agent subsequently ceases to be a State authority or State agent.

### **Proposed section 8 – Other preliminary provisions**

Subsection (1) provides that Part 3 has effect despite Part 2 of the Act and any other Act or law.

Subsection (2) provides that, subject to subsection (1) and the rest of Part 3, the Agreement continues to operate in accordance with its provisions and as provided for under Part 2 of the Act.

Subsection (3) provides that the Agreement (or any part of the Agreement) is taken not to have been, and never to have been, repudiated by any conduct of the State, or of a State agent, occurring or arising on or before commencement.

Subsection (4) provides that a provision of Part 3 or a provision of any Part 3 subsidiary legislation does not apply to a matter or thing to the extent (if any) that is necessary to avoid the provision or any part of the provision applying to the matter or thing inconsistently with a law of the Commonwealth or not being valid for any other reason.

Subsection (5) provides that if, despite subsection (4), a provision of Part 3 or a part of a provision of Part 3 is not valid for any reason, the rest of Part 3 is to be regarded as divisible from, and capable of operating independently of, the provision or part of a provision that is not valid.

Subsections (4) and (5) are intended to preserve as much of the amending Act as possible if any provision or provisions of the amending Act are found to not be valid for any reason. In particular, this provision seeks to preserve Division 2 Subdivision 2 (which deals with protected matters) if Division 2 Subdivision 1 is found not to be valid.

Subsection (6) provides that Part 3 applies in relation to matters or things occurring or arising outside Western Australia so far as the legislative power of the Parliament permits.

Subsection (7) provides, for the avoidance of doubt, that the provisions of Part 3 and of any Part 3 subsidiary legislation contain matters that are substantive law and are not procedural in nature.

Subsection (7) is intended (without limitation) to be considered by an interstate court when applying the provisions of any written law which governs the recognition, or enforcement of, a domestic arbitration award in that State.

## **Division 2 – Main provisions**

Division 2 contains the main provisions of Part 3. It is separated into three subdivisions.

Subdivision 1 deals with disputed matters.

Subdivision 2 deals with protected matters.

Subdivision 3 deals with the interaction between the provisions of Subdivision 1 and Subdivision 2.

### **Division 2 Subdivision 1 – Disputed matters**

The purpose of Subdivision 1 is to provide broad protections to the State (and State agents) by terminating the existing claims by the Project Proponents and excluding any future liability or proceedings of any sort against the State (or State agents) in connection with the disputed matters.

### **Proposed section 9 – Proposals for Balmoral South Iron Ore Project**

Subsection (1) provides that, to the extent that it would not otherwise be the case, the first Balmoral South Proposal and the second Balmoral South proposal have no, and cannot have, any contractual or other legal effect under the Agreement or otherwise.

Subsection (2) provides that, for the Balmoral South Iron Ore Project –

- (a) only proposals submitted under the Agreement on or after commencement can be proposals for the purposes of the Agreement; and
- (b) no document provided to the State, or of which the State is otherwise aware, before commencement can be proposals for the purposes of the Agreement.

### **Proposed section 10 – Relevant arbitrations and awards**

The purpose of proposed section 10 is to:

- (a) terminate any arbitration that concerns a disputed matter between the State and the Project Proponents that is on foot prior to commencement, and any relevant arbitration arrangement and any relevant mediation agreement connected with that arbitration;
- (b) render the arbitral awards made on 20 May 2014 and 11 October 2019 in the course of such arbitrations of no legal effect; and
- (c) render the arbitration agreements under which such arbitral awards were made invalid to the extent that they authorised the making of the awards.

Subsection (1) provides that any relevant arbitration that is in progress or not otherwise completed immediately before commencement is terminated.

Subsection (2) provides that any relevant arbitration arrangement and any relevant mediation agreement connected with a relevant arbitration terminated under subsection (1) are terminated.

Subsection (3) provides that certain provisions of the *Commercial Arbitration Act 2012* continue to apply in relation to the relevant arbitration terminated under subsection (1).

Subsection (4) provides that the arbitral award made in a relevant arbitration on 20 May 2014 is of no effect and is taken never to have had any effect, and subsection (5) provides that the relevant arbitration agreement under which that arbitral award was made is not valid and is taken never to have been valid to the extent that it would underpin, confer jurisdiction to make, authorise or otherwise allow the making of that arbitral award.

Subsection (6) provides that the arbitral award made in a relevant arbitration on 11 October 2019 is of no effect and is taken never to have had any effect, and subsection (7) provides that the relevant arbitration agreement under which that arbitral award was made is not valid and is taken never to have been valid to the extent that it would underpin, confer jurisdiction to make, authorise or otherwise allow the making of that arbitral award.

### **Proposed section 11 – State to have no liability connected with disputed matters**

Proposed section 11 provides that the State will not have any liability of any kind to any person that is or would be connected with a disputed matter.

Proposed section 11 provides protection against the claims made to date by the Project Proponents and any future claims which might be made by any person against the State in relation to the first and second Balmoral South proposals, or the State's actions in relation to the disputed matters more generally.

Proposed section 11 provides that no proceedings (broadly defined by proposed section 7) can be brought against the State that are in any way connected with a disputed matter, and that any such proceedings that are in progress are terminated.

Subsection (1) provides that, on and after commencement, the State has no liability to any person that is or would be:

- (a) in respect of any loss, or other matter or thing, that is the subject of a claim, order, finding or declaration made against the State in a relevant arbitration; or
- (b) in respect of any other loss, or other matter or thing, that is or is connected with a disputed matter; or



- (c) in any other way connected with a disputed matter.

Subsection (2) provides that any liability of the type described in subsection (1) that the State has to any person before commencement is extinguished.

Subsection (3) provides that, on and after commencement, no proceedings can be brought against the State to the extent that they are:

- (a) for the purpose of establishing, quantifying or enforcing a liability of the type described in subsection (1);
- (b) in respect of any loss, or other matter or thing, that is the subject of a claim, order, finding or declaration made against the State in a relevant arbitration;
- (c) in respect of any other loss, or other matter or thing, that is or is connected with a disputed matter; or
- (d) in any other way connected with a disputed matter.

Subsection (4) provides that any proceedings brought against the State of the type described in subsection (3) that are brought before commencement but are not completed before commencement or are brought and not completed before the end of the day on which the Amending Act receives the Royal Assent, or both, are terminated.

Subsections (5) and (6) provide that if any proceedings of the type described in subsection (3) are brought against the State after the beginning of the day on which the Bill is introduced into the Legislative Assembly and completed before the end of the day on which the amending Act receives the Royal Assent, any remedy, relief, direction, award or any other outcome of the proceedings is extinguished to the extent that it is unfavourable to the State or otherwise requires the State to do or not to do anything.

Subsections (7) and (8) provide that a person cannot seek payment from the State for any legal costs connected with any proceedings to which subsection (4) or (6) applies or connected with a relevant arbitration, and that the State has no liability for legal costs connected with any such proceedings or arbitration.

Subsection (9) provides that references to the State in proposed section 11 include a State agent, and a person who is a former State authority or a former State agent if the liability or proceedings in question are connected with the person's conduct or role while a State authority or State agent.

### **Proposed section 12 – No appeal or review in respect of disputed matters**

The purpose of proposed section 12 is to protect the State and its agents from a broad range of actions in connection with the disputed matters.

Subsection (1) provides that any conduct of the State that is connected with a disputed matter cannot be appealed against, reviewed, challenged, quashed or called into question on any basis or be the subject of a remedy by way of injunction, declaration, prohibition, mandamus or certiorari or a remedy of the same effect.

Subsection (2) provides that the rules known as the rules of natural justice do not apply to any conduct of the State that is connected with a disputed matter.

Subsection (3) provides that the conduct of the State covered by subsections (1) and (2) includes conduct that occurs or arises before commencement.

Subsection (4) provides that any proceedings, to the extent that anything described in subsection (1) is being done or sought, brought before commencement but are not completed before commencement or are brought and not completed before the end of the day on which the Amending Act receives the Royal Assent, or both, are terminated.

Subsections (5) and (6) provide that, if any proceedings in which anything described in subsection (1) is done or sought are brought after the beginning of the day on which the Bill is introduced into the Legislative Assembly and completed before the end of the day on which the amending Act receives the Royal Assent, any remedy, relief, direction, award or any other outcome of the proceedings is extinguished to the extent that it is unfavourable to the State or otherwise requires the State to do or not to do anything.

Subsection (7) provides that a person cannot seek payment from the State for any legal costs connected with any proceedings to which subsection (4) or (6) applies, and that the State has no liability for legal costs connected with any such proceedings.

Subsection (8) provides that references to the State in proposed section 13 include a State agent, and subsection (9) provides that references to the State in subsections (6) and (7) include a person who is a former State authority or a former State agent if the proceedings in question are connected with the person's conduct or role while a State authority or State agent.

### **Proposed section 13 – Documents**

Proposed section 13 removes the application of the *Freedom of Information Act 1992* and pre-action document discovery processes from documents connected with disputed matters given that the capacity to bring claims in relation to these matters is removed by the Bill.

Subsections (1) to (3) provide that Parts 2 and 4 of the *Freedom of Information Act 1992* do not apply to a document connected with a disputed matter despite any provision of that Act, and that any application under section 11 for access to a document connected with a disputed matter is extinguished.

Subsection (4) provides that, on and after commencement, no proceedings in which documents or other things connected with a disputed matter are sought from the State can be brought.

Subsection (5) provides that any proceedings of the type described in subsection (3) that are brought before commencement but are not completed before commencement or are brought and not completed before the end of the day on which the Amending Act receives the Royal Assent, or both, are terminated.

Subsections (6) and (7) provide that, if any proceedings of the type described in subsection (4) are brought after the beginning of the day on which the Bill is introduced into the Legislative Assembly and completed before the end of the day on which the amending Act receives the Royal Assent, any remedy, relief, direction, award or any other outcome of the proceedings is extinguished to the extent that it is unfavourable to the State or otherwise requires the State to do or not to do anything.

Subsection (8) provides that a person cannot seek payment from the State for any legal costs connected with any proceedings to which subsection (5) or (7) applies, and that the State has no liability for legal costs connected with any such proceedings.

Subsection (9) provides that references to the State in proposed section 13 include a State agent, and a person who is a former State authority or a former State agent if the proceedings in question are connected with the person's conduct or role while a State authority or State agent.

#### **Proposed section 14 – Indemnity by Mineralogy, International Minerals, Mr Palmer and relevant transferees**

The purpose of proposed section 14 is to provide greater protection for the State in respect of proceedings connected to a disputed matter by creating a statutory obligation on Mineralogy, International Minerals, Mr Palmer and their transferees to indemnify the State against:

- (a) protected proceedings;
- (b) any loss and liability to any person connected with a disputed matter;
- (c) legal costs of the State connected with protected proceedings; and
- (d) any loss connected with a stated intention of or a threat by a person to bring protected proceedings.

The indemnity extends to proceedings that are brought by Mineralogy, International Minerals, Mr Palmer and/or their transferees themselves, and liabilities the State has to 1 or more of those persons.

Proposed section 14 enables the State to enforce the indemnity by setting off the liability owed to it under the indemnity against any liability that the State has to

Mineralogy, International Minerals, Mr Palmer or their transferees, or by not paying or otherwise meeting the liability the State has to that person.

Subsection (1) defines terms used in proposed section 14.

**Loss** is defined as including a loss of or reduction in revenue or funding that would otherwise have been received by the State from the Commonwealth.

***Non-WA right –***

- (a) means a right, entitlement or interest (whether legal or beneficial or otherwise and whether actual, contingent, prospective or otherwise and whether held alone or jointly or jointly and severally or otherwise) arising on any basis –
  - (i) under the law of the Commonwealth, or the law of another State or a Territory; or
  - (ii) under the law of a country or territory, or of a part of a country or territory, outside Australia; or
  - (iii) under international law (including an international treaty or other agreement or instrument); or
  - (iv) otherwise outside Western Australia; and
- (b) includes (without limiting paragraph (a)) a right, entitlement or interest of the type described in paragraph (a) that corresponds to, or is substantially the same as, or is similar to, a right, entitlement or interest of a type described in paragraph (b) of the definition of *right* in subsection (1).

***Protected proceedings*** means proceedings brought, made or begun, or purportedly brought, made or begun, and connected with a disputed matter.

***Relevant person*** is defined by reference to proposed subsection 14(2) (see below).

***Relevant transferee*** is defined by reference to proposed subsection 14(3) (see below).

***Right***, except in the definition of non-WA right in this subsection –

- (a) means a right, entitlement or interest (whether legal or beneficial and whether actual, contingent, prospective or otherwise and whether held alone or jointly or jointly and severally or otherwise) arising on any basis; and
- (b) includes (without limiting paragraph (a)) a right, entitlement or interest of the type described in paragraph (a) arising –
  - (i) in contract or tort; or
  - (ii) under the law of restitution; or
  - (iii) under a trust or otherwise in equity; or



- (iv) under a written law; or
- (v) under an order, award, ruling, finding or declaration made by an adjudicator; or
- (vi) under a direction or other requirement (however described) made by a body or person appointed under a written law or under an arrangement; and
- (c) includes (without limiting paragraphs (a) and (b)) a non-WA right; and
- (d) includes a part or share of a right, entitlement or interest of a type described in paragraphs (a) to (c).

**Transfer**, in relation to a right, means assign, transmit, vest or otherwise transfer the right whether by instrument, by operation of law or in any other way.

Subsection (2) provides that, for the purposes of proposed section 14, the following persons are a **relevant person**:

- (a) Mineralogy;
- (b) International Minerals;
- (c) Mr Palmer;
- (d) every relevant transferee;
- (e) every former relevant transferee.

Subsection (3) provides that, for the purposes of proposed section 14, a person (*person A*) is a **relevant transferee** if:

- (a) person A has a right in or respect of any protected proceedings (or the subject matter of any protected proceedings) or any liability of the State connected with a disputed matter (or the subject matter of such a liability); and
- (b) that right was transferred to person A from a relevant person or created in favour of person A out of a right held by a relevant person.

Subsection (4) provides that every relevant person must indemnify the State against:

- (a) any protected proceedings;
- (b) any loss or liability to any person connected with a disputed matter;
- (c) any legal costs of the State connected with any protected proceedings;
- (d) any liability of the State to pay any legal costs of any person connected with any protected proceedings; and
- (e) any loss connected with a stated intention of or a threat by any person to bring protected proceedings.

Subsection (5) provides that the liability of the relevant persons to indemnify the State under subsection (4) is joint and several, although subsection (6) limits the liability of a relevant transferee or former relevant transferee to matters in which the transferee has or had a right.

Subsection (7) provides that the State may enforce the indemnity under subsection (4) even if it has not made any payment or done anything to address the proceedings, liability or loss in question. It further provides that the State may enforce the indemnity by setting off the liability of the relevant persons under the indemnity against any liability that the State has to 1 or more of them.

Subsection (8) provides that the matters or things covered by the indemnity in subsection (4) include, without limitation, the following –

- (a) protected proceedings brought before commencement, or purportedly brought before commencement;
- (b) liabilities or losses that arise before commencement;
- (c) protected proceedings that are brought by 1 or more relevant persons themselves;
- (d) liabilities to 1 or more relevant persons themselves.

Subsection (9) provides that, to the extent the State is indemnified for a liability it owes to 1 or more relevant persons themselves, the State may enforce the indemnity by not paying or otherwise meeting the liability.

### **Proposed section 15 – Further indemnity**

The purpose of proposed section 15 is to provide greater protection for the State in respect of proceedings connected to a disputed matter by creating a more confined statutory obligation on other persons (being a person defined by subsection (1) as a **relevant person**) to indemnify the State.

Subsection (1) provides that, for the purposes of proposed section 15, the following persons are a **relevant person**:

- (a) in relation to any protected proceedings, any person who has, or has had, a right in, or in respect of, the protected proceedings or their subject matter; and
- (b) in relation to a liability of the State connected with a disputed matter, any person who has, or has had, a right in, or in respect of, the liability or its subject matter.

Subsection (1) provides that *protected proceedings* and *right* have the same meaning as in section 14.

Subsection (2) provides that every relevant person in relation to any protected proceedings must indemnify, and must keep indemnified, the State against the protected proceedings (including legal costs of the State and any liability of the State to pay legal costs).

Subsection (3) provides that every relevant person in relation to a liability of the State connected with a disputed matter must indemnify, and must keep indemnified, the State against the liability.

Subsection (4) provides that, if there is more than 1 relevant person, the liability of the relevant persons to indemnify the State under subsections (2) and (3) is joint and several.

Subsection (5) provides that the State may enforce the indemnity under subsection (2) or (3) even if it has not made any payment or done anything to address the proceedings, liability or loss in question. It further provides that the State may enforce the indemnity by setting off the liability of the relevant persons under the indemnity against any liability that the State has to 1 or more of them.

Subsection (6) provides that the protected proceedings covered by the indemnity in subsection (2) include, without limitation, the following –

- (a) protected proceedings brought before commencement, or purportedly brought before commencement;
- (b) protected proceedings that are brought by 1 or more relevant persons themselves.

Subsection (7) provides that the liabilities covered by the indemnity in subsection (1) include, without limitation, the following –

- (a) liabilities that arise before commencement;
- (b) liabilities to 1 or more relevant persons themselves.

Subsection (8) provides that, in relation to a liability of the type referred to in subsection (7)(b), the State may enforce the indemnity under subsection (3) by not paying, or otherwise meeting or performing, the liability.

### **Proposed section 16 – Matters relating to Commonwealth**

The purpose of proposed section 16 is to provide further protection to the State by creating a statutory obligation on Mineralogy, International Minerals, Mr Palmer and their transferees to indemnify the State if proceedings are brought against the Commonwealth or the Commonwealth incurs a liability to any person, or a loss, and the proceedings, liability or loss are connected with a disputed matter.

Without limitation, this provision (with proposed section 23) seeks to protect Western Australia in the event that a foreign company with a connection to Mineralogy or International Minerals brings an investor-state dispute settlement claim against the Commonwealth under a free trade agreement.

Subsection (1) defines terms used in proposed section 16.

Subsections (2) and (3) provide that if proceedings are brought against the Commonwealth or the Commonwealth incurs a liability to any person or a loss, and the proceedings, liability or loss are connected with a disputed matter, each indemnity under proposed section 14(4) or 15(2) or (3) applies as if the proceedings were brought against the State or the liability or loss were incurred by the State, and the State may enforce each indemnity accordingly.

Subsection (4) provides that, for the avoidance of doubt:

- (a) nothing in subsection (3) makes the State liable to indemnify the Commonwealth against the proceedings, liability or loss nor otherwise affects any liability of the State to the Commonwealth; and
- (b) subsection (3) applies even if the State has no liability to indemnify the Commonwealth against the proceedings, liability or loss.

Subsection (5) provides that the State may assign to the Commonwealth the State's right to receive an amount owed to the State or any other right the State has under an indemnity (whether by virtue of proposed section 16 or otherwise).

### **Proposed section 17 – Further provisions about liability of State**

Proposed section 17 provides various additional measures to protect the State. They include that no amount can be charged to, or paid out of, the Consolidated Account to meet a liability of the State connected with a disputed matter, no amount can be borrowed by or on behalf of the Crown in right of the State to meet the liability, no asset, right or entitlement of the State (which, under subsection (5) includes State agents, former State authorities, and former State agents) may be taken or used to enforce such a liability, and no execution or other process can be issued out of any court against the State in relation such a liability.

### **Division 2 Subdivision 2 – Protected matters**

Subdivision 2 adopts a cautious approach by adopting broad protective provisions with the purpose of excluding a wide range of proceedings from being initiated against the State or State agents in response to the introduction of the Bill or the enactment of the amending Act.

Subdivision 2 largely mirrors Subdivision 1, with some modifications.

### **Proposed section 18 – Protected matters not to have certain effects and related provisions**

Subsection (1) provides that protected matters do not have the effects specified in that subsection.



Subsection (2) provides that if a protected matter has an effect described in subsection (1) before commencement, the protected matter is taken to never have had that effect.

Subsection (3) further provides that protected matter includes a protected matter combined with another matter or thing; and a matter or thing connected with a protected matter.

Subsection (4) provides that references to the State in proposed subsection (1) include a State agent, and a person who is a former State authority or a former State agent if the effect of the protected matter would be connected with the person's conduct or role while a State authority or State agent.

Subsection (5) provides that no document or other thing, and no oral testimony, connected with a protected matter is admissible in evidence or can otherwise be relied upon or used in any proceedings in a way that is against, or against the interests of State and State agent.

Subsection (6) provides that no document or other thing connected with a protected matter can be required to be provided or disclosed in any proceedings or otherwise under a written law.

Subsection (7) provides that no person is compellable or can be required to provide or disclose a document or other thing connected with a protected matter, answer any question or provide information connected with a protected matter, or give any other type of testimony or evidence connected with a protected matter, in any proceedings or otherwise under a written law.

Subsection (8) provides that subsections (5) to (7) do not limit any other basis on which a person is not compellable, or can refuse, to do anything referred to in those subsections.

### **Proposed section 19 – State to have no liability connected with protected matters**

Proposed section 19 provides that the State will not have any liability of any kind to any person that is or would be connected with a protected matter.

Proposed section 19 provides protection against claims that may be made in response to the introduction of the Bill or the enactment of the Amending Act.

Proposed section 19 also provides that no proceedings (broadly defined by proposed section 7) can be brought against the State that are in any way connected with a protected matter, and that any such proceedings that are in progress are terminated.

Subsection (1) provides that on and after commencement, the State has no liability to any person that is or would be:

- (a) in respect of any loss, or matter or thing, that is or is connected with a protected matter; or
- (b) in any other way connected with a protected matter.

Subsection (2) provides that any liability of the type described in subsection (1) that the State has to any person before commencement is extinguished.

Subsection (3) provides that on and after commencement, no proceedings can be brought against the State to the extent that they are:

- (a) for the purpose of establishing, quantifying or enforcing a liability of the type described in subsection (1);
- (b) in respect of any other loss, or other matter or thing, that is or is connected with a protected matter; or
- (c) in any other way connected with a protected matter.

Subsection (4) provides that any proceedings of the type described in subsection (3) that are brought before commencement but are not completed before commencement or are brought and not completed before the end of the day on which the Amending Act receives the Royal Assent, or both, are terminated.

Subsections (5) and (6) provide that if any proceedings of the type described in subsection (3) are brought against the State after the beginning of the day on which the Bill is introduced into the Legislative Assembly and completed before the end of the day on which the amending Act receives the Royal Assent, any remedy, relief, direction, award or any other outcome of the proceedings is extinguished to the extent that it is unfavourable to the State or otherwise requires the State to do or not to do anything.

The purpose of subsections (5) and (6) is to extinguish the outcome of any proceedings brought against the State (to the extent the outcome is against, unfavourable to the State, or otherwise requires the State to do, or not do anything) at or after the time the Bill is introduced into Parliament.

Subsection (7) provides that a person cannot seek payment from the State for any legal costs connected with any proceedings to which subsection (4) or (6) applies, and that the State has no liability for legal costs connected with any such proceedings.

Subsection (8) provides that references to the State in proposed section 18 include a State agent, and a person who is a former State authority or a former State agent if the liability or proceedings in question are connected with the person's conduct or role while a State authority or State agent.

## **Proposed section 20 – No appeal or review or criminal liability in respect of protected matters**

Proposed section 20 is a mirror provision to proposed section 12, except for the additional protection that subsection (8) provides to the effect that any conduct of the State that is connected with a protected matter does not constitute an offence and is taken never to have constituted an offence.

For clarity, the Bill does not suggest that anything done by a State authority or agent connected with a protected matter would give rise to an offence if not for subsection (8). However, subsection (8) seeks to protect State authorities and agents from complaints that the Project Proponents, or any other person, may make.

### **Proposed section 21 – Documents**

Proposed section 21 is a mirror provision to proposed section 13.

### **Proposed section 22 – Indemnity by Mineralogy, International Minerals, Mr Palmer and relevant transferees**

Proposed section 22 is a mirror provision to proposed section 14.

### **Proposed section 23 – Further indemnity**

Proposed section 23 is a mirror provision to proposed section 15.

### **Proposed section 24 – Matters relating to Commonwealth**

Proposed section 24 is a mirror provision to proposed section 16.

### **Proposed section 25 – Further provisions about liability of State**

Proposed section 25 is a mirror provision to proposed section 17.

## **Division 2 Subdivision 3 – Interaction between provisions of Subdivisions 1 and 2**

### **Proposed section 26 - Interaction**

Subsection (2) provides that, subject to the rest of section 24, an applicable provision (defined by subsection (1) as a provision of Subdivision 1 or Subdivision 2) does not limit any other applicable provision.

Subsection (3) provides that, despite any applicable provision, the State must pay specified fees and expenses to the arbitrator in respect of a terminated arbitration arrangement (defined by subsection (1) as an arbitration arrangement terminated under section 10(2)).

Subsection (4) provides that no applicable provision affects a liability that the State has to any person under an order of a court made before commencement to pay any

of the person's legal costs connected with any proceedings before the court that are completed before commencement.

Subsection (5) provides that subsection (4) does not apply to proceedings to which subsection 11(6), 12(6), 13(7), 19(6), 20(6) or 21(7) applies.

Subsection (6) provides that no applicable provision affects the jurisdiction of a court to grant relief for jurisdictional error.

Subsection (7) provides that the reference in section 18(1)(a) to the commission of a civil wrong by the State includes (without limitation) a breach by the State of a provision of the *Commercial Arbitration Act 2012* that continues to apply under section 10(3).

### **Division 3 – Other provisions**

#### **Division 3 Subdivision 1 – Further provisions about liability and indemnity**

The purpose of Subdivision 1 is to protect the State (and State agents) from similar claims being brought in future under the Agreement by excluding any liability of the State for conduct of the State or a State agent under clauses 7 and 8 of the Agreement.

#### **Proposed section 27 – Consideration of proposals**

Proposed section 27 provides protection to the State against any future claims which might be made by any person in relation to the Minister's consideration of a proposal or purported proposal under the Agreement.

Proposed section 27 provides that the State has no liability to any person to pay damages, compensation or any other type of amount connected with any of the following occurring at or after introduction time:

- (a) the Minister's consideration of, or the Minister's omission to consider, any proposals or purported proposals under clause 7 or 8 of the Agreement; and
- (b) any other conduct of the State or a State agent under or in relation to clause 7 or 8 of the Agreement.

#### **Proposed section 28 – Indemnity for State authorities and State agents**

This provision indemnifies State authorities and State agents against proceedings brought against them in connection with a disputed matter or protected matter, including any legal costs connected to the proceedings.

Subsections (1) and (2) provide that, if proceedings connected with a disputed matter are brought against a person who is a State authority or a State agent, or a former State authority or former State agent in circumstances where the proceedings are connected to the person's conduct in that role (the *respondent*), the State must



indemnify the respondent against the proceedings and pay the respondent's legal costs connected with the proceedings if requested to do so.

Subsection (3) provides that, if the respondent makes such a request, the respondent must allow the State to conduct the respondent's defence or response to the proceedings and comply with any directions given by the State in that regard.

Subsection (4) provides that the State must indemnify the respondent against any loss connected with a stated intention of, or a threat by, any person to bring, make or begin proceedings connected with a disputed matter against the respondent.

Subsections (5), (6) and (7) apply to protected matters and are mirror provisions to subsections (2), (3) and (4).

Subsections (8) to (11) deal with miscellaneous matters.

### **Division 3 Subdivision 2 – Subsidiary legislation**

#### **Proposed section 29 – Regulations**

Proposed section 29 provides that the Governor may make regulations prescribing any matters that are necessary or convenient to be prescribed for giving effect to Part 3.

#### **Proposed section 30 – Orders**

The purpose of this provision is to provide a broad, but not unlimited, power to the Governor to (on the recommendation of the Minister) amend Part 3 or introduce new provisions to address specified circumstances and thereby further protect the State and State Agents from action by Mineralogy, International Minerals, Mr Palmer or other persons. The Governor may use this power to amend a provision or provisions of Part 3, or to introduce a new provision or provisions.

Subsection (1) provides that subsection (2) applies if the Minister is of the opinion, having regard to the purposes and subject matter of this Part, that 1 or more the circumstances specified at subsection (1)(a) to (e) exist.

Subsection (2) provides that the Governor may, on the Minister's recommendation, by order amend Part 3 to address the circumstances, make any other provision necessary or convenient to address the circumstances, or both.

Subsection (3) provides that the matters or things in respect of which an order can be made under this section include matters or things occurring or arising before commencement.

Subsection (4) provides that an order under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

**Proposed section 31 – Supplementary provision**

Paragraph (a) provides that Part 3 subsidiary legislation may be expressed to have effect despite the Agreement, Part 2, Part 3 or any other Act or law.

Paragraph (b) provides that Part 3 subsidiary legislation may provide that a specified provision of the Agreement or a written law does not apply, or applies with specified modifications, to or in relation to any matter or thing.

Paragraph (c) provides that Part 3 subsidiary legislation may be expressed to take effect before the day on which the legislation is published in the *Gazette*, but not earlier than commencement.

Rule 29.02

**Annexure Certificate  
MM43**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM43" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

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**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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**IRON ORE PROCESSING (MINERALOGY PTY. LTD.) AGREEMENT AMENDMENT BILL 2020**

*Standing Orders Suspension — Motion*

**MR D.A. TEMPLEMAN (Mandurah — Leader of the House)** [4.55 pm] — without notice: I move —

That so much of standing orders be suspended as is necessary to enable an urgent bill that is very much in the state's interest to be introduced into the Parliament without notice, first read, and for the Attorney General to make his second reading speech.

This bill is essential to answer a claim against Western Australia and prevent potentially dire financial consequences for the state. The government has drafted the bill in answer to damages that have been claimed against it that are nearly equivalent to the state's total annual budget or, put another way, if the claim were shared equally amongst all Western Australians, it would cost every Western Australian more than \$12 000. This claim is sought while the state is in a state of emergency dealing with a global pandemic and at a time when the people of Western Australia are most in need of public money. The damages claimed arise because of the decisions made by the former government. Although the McGowan government is not critical of these decisions, it has inherited the consequences of them. Having done so, the McGowan government, through the State Solicitor's Office, is vigorously defending the claim but the risk of the state not succeeding is too great to ignore.

I seek members' indulgence as I share with them a minimal amount of information in advance of the introduction of a bill. However, I assure members that the government will not seek to debate the bill tonight; rather, the Attorney General will provide briefings and we will seek to debate the bill on the next sitting day.

*Question to be Put*

**Mr W.J. JOHNSTON:** I move —

That the question be now put.

Question put and passed.

*Standing Orders Suspension Resumed — Motion*

**The SPEAKER:** As this is a motion without notice to suspend standing orders, it will need an absolute majority in order to succeed. If I hear a dissentient voice, I will be required to divide the Assembly.

Question put and passed with an absolute majority.

*Introduction and First Reading*

Bill introduced, on motion by **Mr J.R. Quigley (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

*Second Reading*

**MR J.R. QUIGLEY (Butler — Attorney General)** [5.00 pm]: I move —

That the bill be now read a second time.

The Iron Ore Processing (Mineralogy Pty Ltd) Agreement Amendment Bill 2020 seeks to deal with damages claims arising or potentially arising from proposals that were submitted by Mr Clive Palmer, Mineralogy Pty Ltd and International Minerals Pty Ltd pursuant to the terms of the Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002. Those proposals were submitted in August 2012 and June 2013 and relate to a project called the Balmoral South iron ore project. The August 2012 proposal was at first rejected, and then later significantly conditioned, by former Premier, Hon Colin Barnett. Those decisions led to Mr Palmer, Mineralogy and International Minerals now claiming billions of dollars in damages in an arbitration against the state.

There is a history to these damages claims of which members of this chamber and the other place need to be aware. The Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act came into operation on 25 September 2002 following royal assent on 24 September 2002, after having been considered by both houses of Parliament in June 2002. Attached to the act, by way of a schedule, was a state agreement entered into between what were Mineralogy-related parties and the state. On 14 November 2008, the parties to the state agreement varied the state agreement by the Iron Ore Processing (Mineralogy Pty Ltd) Agreement Amendment Bill—a bill that passed both Houses of Parliament in December 2008, and, after receiving royal assent, came into operation on 11 December 2008. The state agreement provided a process by which Mineralogy would, alone or with one of six co-proponents, one of which is International Minerals, develop projects for the mining, concentration and processing of iron ore in the Pilbara region.

The state agreement was in a form that was reasonably standard at that time, in particular as concerns the framework for the submitting of project proposals and their ministerial consideration for approval. As far as project proposals



are concerned, the state agreement provided that Mineralogy and any co-proponent would submit proposals for particular types of projects to the Minister for State Development. Such project proposals were, and are, required to be detailed, and address a large number of specific matters relating to the establishment and operation of the project. Once the minister receives such a proposal, the minister is, and was in this case, required to either approve the proposal, defer consideration of the proposal, or require as a condition precedent to giving approval to the proposal that the project proponents make reasonable alterations or comply with reasonable conditions.

This type of clause exists in most other state agreements, and in the ordinary course of conducting business with the state, a state agreement proponent comes to the state and discusses its proposal in draft form, including making appropriate changes in consultation with the state, before it is formally submitted for ministerial consideration and approval. There is good reason for this: the state and the state agreement proponent or proponents need to be aligned on the detail of the proposal, bearing in mind that the state is agreeing, by the very nature of a state agreement, to the efficient and effective development of the state's natural resources; that any such developments are maximised for long-term certainty and investment security to the mutual economic advantage of both project proponents and the state; and to ensure that the interactions between the project proponents and the community will achieve a level of development that will benefit all Western Australians. Indeed, these are some of the primary objectives that underpin the state's decision to enter into a state agreement with a project proponent.

Notwithstanding the standard practice of consultation undertaken between every other state agreement proponent and the state in relation to project proposals, Mr Palmer, Mineralogy and International Minerals chose not to adopt a consultative or cooperative approach. Instead, Mr Palmer and the Mineralogy parties submitted a proposal for approval in August 2012 with little engagement with, or prior warning to, the state. That proposal was for a project called the Balmoral South iron ore project—or BSIOP—which had an estimated lifespan of 28 years. It was a proposal to construct and operate infrastructure to produce and export 24 million tonnes per annum of iron ore concentrate. Under the proposal, it was proposed that the project would be developed in two phases. Phase 1 contemplated, under a licence granted to International Minerals by Mineralogy, the mining of one billion tonnes of iron ore from Mineralogy-owned tenements; and under phase 2 there would be a right to mine a further one billion tonnes. The BSIOP proposal aimed to commence in September 2012, with the first shipment in 2016. Mr Palmer, Mineralogy and International Minerals intended to sell the BSIOP to Chinese government-owned corporations, and, in fact, had even secured a letter of intent from the Industrial and Commercial Bank of China, one of China's largest banks, expressing willingness and interest in financing the project.

On 4 September 2012, just weeks after it had been submitted, the BSIOP proposal was rejected as invalid by Hon Colin Barnett. It was rejected because the proposal proposed to undertake works that were already approved to be undertaken pursuant to another project, which is under the same state agreement, and because the proposal failed to provide sufficient detail, clarity and firm commitments. The Department of State Development promptly wrote to Mineralogy and International Minerals identifying key issues to be addressed and recommended that a further version of the proposals be provided in draft form for further review. Mr Palmer was not happy with that ministerial decision, but he did not discuss the matter with the state, nor did he seek to amend his proposal to deal with what the then minister and his department considered to be the deficiencies. Instead, Mr Palmer, Mineralogy and International Minerals disputed that Hon Colin Barnett had the ability to reject the proposal. He did that by referring the matter to arbitration under the terms of the state agreement.

In 2013, while that arbitration was still on foot, Mineralogy and International Minerals submitted a further BSIOP. On 22 August 2013, Hon Colin Barnett, as Minister for State Development, wrote to Mineralogy and stated that this proposal had not met the state agreement's proposal pre-conditions and that the Department of State Development would write to identify the items that needed to be addressed. Soon after, the Department of State Development wrote to Mineralogy identifying the items that needed to be addressed. Mineralogy did not address these items or otherwise seek to progress this proposal.

That arbitration concerning Hon Colin Barnett's rejection of the August 2012 BSIOP proposal was heard by former High Court Judge Mr Michael McHugh, AC, QC, who handed down an award dated 20 May 2014. Mr McHugh found in favour of Mineralogy and International Minerals, declaring that while the BSIOP was a defective proposal, it was nonetheless a proposal that had to be considered by the minister in accordance with the terms of the state agreement; that is, the minister had no ability to simply treat the proposal as invalid. In another arbitration which is now underway, and which I will come back to—it is dealt with by this bill—Mr Palmer, Mineralogy and International Minerals have said that this rejection of the BSIOP proposal by Hon Colin Barnett was a breach of the state agreement for which they are entitled to damages, and they call it the "first damages breach". Members, this is a matter I will return to at a later point.

As a consequence of Mr McHugh's award, the August 2012 BSIOP proposal was considered further by Hon Colin Barnett, who was still the responsible minister. On 22 July 2014, he advised Mineralogy and International Minerals that the proposal would need to be altered and comply with 46 conditions. Those conditions

ranged from requiring Mineralogy and International Minerals to state that they would comply with various regulatory requirements, confirm they had access to adequate estimated ore reserves to sustain the proposed project and provide further technical plans and details. Again, Mr Palmer was not happy with that decision and now argues in the current arbitration that Hon Colin Barnett as minister, and therefore the state, further breached the obligations of the state agreement by imposing 46 conditions to giving his approval, and that this further breach also gives rise to a claim for damages. Mr Palmer, Mineralogy and International Minerals have termed this the “second damages breach”. Importantly, Mr Palmer, Mineralogy and International Minerals did nothing in relation to the August 2012 BSIOP proposal for a number of years after 2014, and so in August 2017, they were notified that the state was treating the proposal as having lapsed.

Mr Palmer, Mineralogy and International Minerals now seek to claim damages against the state for the decisions of the former minister. In relation to the first damages claim, which is the claim arising from Hon Colin Barnett’s September 2012 rejection of the August 2012 proposal, Mr Palmer, Mineralogy and International Minerals seek damages in the vicinity of \$US7.68 billion, or \$A10.72 billion using yesterday’s exchange rate. All these figures I am providing are based on yesterday’s exchange rate—that is, the rate from Monday, 10 August 2020.

Mr Palmer, Mineralogy and International Minerals are claiming further damages on top of that in the amount of \$US8.9 billion, or \$A11.37 billion, being the loss associated with being unable to sell any project required under the state agreement. Mr Palmer, Mineralogy and International Minerals claim a further \$A37.24 million for the wasted expenditure they say was incurred because of the then minister’s decision. Mr Palmer, Mineralogy and International Minerals also claim that they have lost the ability to claim royalties in the sum of \$US233.7 million or \$A326.18 million.

Interest from October 2012 is then claimed in the amount of \$US3.71 billion or \$A5.21 billion. In total, therefore, for the first damages claim, Mr Palmer, Mineralogy and International Minerals are claiming a total amount of \$US19.84 billion, which, again, based on yesterday’s exchange rate, amounts to \$A27.66 billion. In addition, Mr Palmer, Mineralogy and International Minerals seek further damages for the second damages claim, which is the claim arising from the then minister’s imposition in July 2014 of 46 conditions to approving the August 2012 proposal. The level of damages for the second damages claim is not yet quantified by Mr Palmer, Mineralogy and International Minerals; however, they seek interest from July 2014 on any amount awarded.

In addition to claiming damages for the first and second damages claim, Mr Palmer, Mineralogy and International Minerals also seek costs. The claim for costs is not yet quantified. Besides seeking damages and interest and costs arising from the first and second damages claims, Mr Palmer, Mineralogy and International Minerals seek a declaration that the 46 conditions imposed on the BSIOP proposal by Hon Colin Barnett on 22 July 2014 were not reasonable pursuant to the terms of the state agreement.

In summary, therefore, the claims that are being made against the state for breaches of the state agreement by the then minister amount to nearly \$A30 billion, an amount that does not include any amount for the second damages claim. To put that in context, the total net debt of the state of Western Australia is in the order of \$A35 billion to \$A40 billion, and the budget of the state of Western Australia is approximately \$A30 billion. To put it another way, if the cost of Mr Palmer’s claim were shared equally amongst all Western Australians, it would cost every man, woman, child and baby in Western Australia more than \$12 000; that is, each of the 2.5 million people living in Western Australia would pay Mr Palmer more than \$12 000. Mr Palmer wants Western Australia to pay him \$30 billion at a time when the state is in a state of emergency dealing with a global pandemic—a pandemic that Mr Palmer has stated is a “media beat-up”—and at a time when the people of Western Australia are most in need of our public money.

It is not in the interests of Western Australians to be exposed to a risk of having to pay Mr Palmer billions of dollars. The men, women and children of Western Australia need the members of both this chamber and the other place to protect them from claims of this nature and concentrate on economic recovery. In this regard, two weeks ago the McGowan government announced the \$5.5 billion WA Recovery Plan to drive economic and social recovery across the state, and create a pipeline of jobs for Western Australians. Obviously, if the claimants were to succeed in their damages claim at a level anywhere close to the amount sought, this would have dire financial consequences for the state of Western Australia and Western Australians. Even if Mineralogy and International Minerals succeeded in a fraction of their damages claim, this would have serious financial consequences for the state of Western Australia and Western Australians. For example, the McGowan government’s \$5.5 billion WA Recovery Plan represents only 20 per cent of Mr Palmer’s claim.

Successive governments, both Labor and Liberal, have been involved in the creation and administration of this state agreement. Both Labor and Liberal governments have found themselves dealing with Mr Palmer’s various claims against the state. Members of this chamber and the other place now need to work together on the matter for the benefit of the people of Western Australia.



The damages claimed by Mr Palmer, Mineralogy and International Minerals arise because of the decisions made by Hon Colin Barnett when he was Premier. Although the McGowan government is not critical of those decisions, it has inherited the consequences of them. Having done so, the McGowan government, through the State Solicitor's Office, is vigorously defending the claim by Mr Palmer, Mineralogy and International Minerals. The vigorous nature of the defence can be seen in a number of steps that have been taken by the state in an attempt to defeat the claims. Firstly, in September 2019, the state argued that Mr McHugh's 2014 award was final, and that as no award for damages was made at that time, there was no ability for Mr Palmer, Mineralogy and International Minerals to pursue a separate claim against the state. Secondly, there was an inordinate and inexcusable delay on the part of Mineralogy and International Minerals in pursuing their claim for damages, for they had taken no steps to pursue the matter since Mr McHugh handed down his award in May 2014.

These arguments before the arbitrator, Mr McHugh, were unsuccessful, and he ordered that there had not been inexcusable delay and that Mineralogy and International Minerals were not foreclosed from recovering damages from the state as a consequence of Hon Colin Barnett's decision to treat the Balmoral South iron ore project proposal as invalid.

This state then sought leave to appeal the decision by Mr McHugh to the Supreme Court of Western Australia in one relevant respect—namely, that Mr McHugh had erred in deciding that his 2014 award had not finally determined any damages arising from the minister's failure to consider the BSIOP proposal because he thought it an invalid proposal. Mineralogy and International Minerals applied to have the state's appeal summarily dismissed on the basis that the state was unable to utilise the appeal and review regime of the now-repealed Commercial Arbitration Act 1985 and was limited to the more limited review regime under the Commercial Arbitration Act 2012. This application was heard by Hon Kenneth Martin, Justice of the Supreme Court of Western Australia, who handed down his decision on 28 February 2020. In his judgement, Mr Justice Martin agreed with Mineralogy and International Minerals' contention that the Commercial Arbitration Act 2012 applied and dismissed the state's appeal. As I have said, Mr Palmer, Mineralogy and International Minerals are now pressing ahead with their damages claims before Mr McHugh, as arbitrator, in the amount of nearly \$A30 billion.

On 26 June 2020, Mr McHugh ordered that there be a hearing of the matter for 15 days commencing 30 November 2020 to enable him to consider his decision over the Christmas and New Year period, with a view to providing an award in the new year. Although very sound and respectable defences are available to the claim of Mr Palmer, Mineralogy and International Minerals, the state has been unsuccessful in the past in dealing with Mineralogy's claims relating to the August 2012 proposals, so a successful defence of the claim is not guaranteed. In addition, members, because the matter is being dealt with by arbitration, there are very limited opportunities to appeal any adverse decision. Notwithstanding the defences available to the state, the McGowan government is not prepared to risk the financial consequences to the state of an adverse arbitral award, and one in which the state of Western Australia and taxpayers could be exposed to billions of dollars. To do so would be fiscally irresponsible. Indeed, it would be fiscally irresponsible for members of both this chamber and the other place to risk a successful arbitral damages award in favour of Mr Palmer, Mineralogy and International Minerals. Consequently, the McGowan Government is taking the necessary steps to protect the state and the people of Western Australia from the rapacious nature of Mr Palmer, Mineralogy and International Minerals.

The bill is essentially divided into two aspects: one deals with disputed matters and the other with protected matters. Beginning with the disputed matters aspect of the bill, clause 9 provides that the August 2012 and June 2013 BSIOP proposals will have no further contractual or other legal effect to the extent that they in fact have such effect. If Mineralogy and International Minerals wish to pursue the BSIOP, they can submit new proposals in accordance with the state agreement.

Clause 10 terminates any arbitration which the state, Mineralogy and International Minerals are party to and which concerns a disputed matter.

"Disputed matter" is a term used in the bill and is defined to include Hon Colin Barnett's 2012, 2013 and 2014 decisions relating to the BSIOP proposals and any conduct of the state connected with those decisions and the Balmoral South project more generally. Clause 10 also invalidates the two arbitral awards of Mr McHugh.

Clause 11 provides that the state, its officers and agents will not have any liability of any sort to any person in respect of the arbitrations or connected with a disputed matter; that is, it provides protection against the first and second damages claims and any future claims that might be made against the state in relation to the BSIOP proposal or the state's actions in relation to the Balmoral South project more generally. Clause 11 also provides that no proceedings can be brought against the state to the extent that they seek to establish such a liability against the state and that any such proceedings that are in progress and not completed are also terminated.

Clause 12 prevents any appeal or similar action against the conduct of the state that is connected with a disputed matter.

Clause 13 removes the application of the Freedom of Information Act and document discovery and production processes from documents connected with disputed matters, given that the capacity to bring claims in relation to these matters is removed by the bill.

Clauses 14 and 15 provide further protection for the state by creating a statutory obligation on Mineralogy, International Minerals and Mr Palmer and any person who brings, or has an interest in, proceedings connected with a disputed matter to indemnify the state against such proceedings or loss and liability to any person connected with a disputed matter.

Clause 16 provides that if proceedings connected with a disputed matter are brought against the commonwealth or create a liability for the commonwealth, the state can also enforce its statutory indemnity to protect the commonwealth or cover any loss the state may suffer as a consequence.

Clause 17 prevents a liability of the state connected with a disputed matter being paid or enforced through various means.

Turning now to the protected matters aspect of the bill, clause 18 protects the state from collateral litigation and claims by providing that protected matters do not have certain legal effects, and clause 19 protects the state, its officers and agents against any liability and proceedings that may arise connected with a protected matter.

“Protected matter” is another key term used in the bill and is defined to include the preparation of this bill, the enactment of the legislation and its operation, and the making and operation of subsidiary legislation under the act and other related matters. The government seeks to enact extensive and broad protections to protect the state, its officers and agents against collateral litigation.

Clause 19 to 25 of the bill are essentially the same provisions as clauses 11 to 17 but in respect of protected matters rather than disputed matters.

Clause 26 of the bill deals with some miscellaneous matters and clarifies the consequences of the bill in terminating the current arbitration, including in relation to costs and confidentiality.

Clause 27 provides that, going forward, the minister’s consideration of proposals under the state agreement will not give rise to any capacity for damages or financial compensation to be awarded against the state.

Clause 28 protects persons who fall within the definition of “state authority” or “state agent”, or those who previously fell within those definitions, by requiring the state to indemnify those persons against any proceedings connected with a disputed matter or protected matter.

Clause 29 provides a general regulation-making power and clause 30 enables the Governor to make orders to deal with various circumstances, including any matters that may not be adequately or appropriately dealt with by the bill by having regard to the purpose and subject matter of the bill. This includes orders that may improve the effectiveness of the statutory indemnities, including by creating security interests over any type of property of an indemnifying person.

The McGowan government accepts that the bill is unprecedented. It contains a number of provisions and measures that are not usual, but Mineralogy and Mr Palmer are not normal and these measures are needed to best protect the interests of the state and the community. Western Australian governments, from both sides of politics, have always refrained from interfering in the operation of state agreements by statute. This bill does not represent a change to that general and longstanding policy. This bill does not give rise to sovereign risk. Since the 1950s, the state has entered into over 70 state agreements and it currently has over 50 state agreements on foot. In the history of state agreements, no other state agreement proponent has sought to challenge a minister’s decision about a proposal or taken the state to arbitration on any matter, let alone a minister’s decision to reject or comment on a proposal that has been submitted. Therefore, this bill does not create a risk to other current state agreement parties or to future investors. Other state agreement parties and proponents deal properly and appropriately with the state in the terms of their proposals.

I also wish to make clear that this bill does not override the primary provisions and rights of Mineralogy and International Minerals under the state agreement. This bill affirms the terms of the state agreement and leaves open to Mineralogy and International Minerals the right to submit proposals for the Balmoral South iron ore project should they wish to do so. This bill will remove the capacity for Mr Palmer, Mineralogy and International Minerals to pursue litigation and damages claims regarding prior decisions of the then minister and the state more broadly, or damages for any future decisions of the minister on any new proposals submitted, or purportedly submitted, pursuant to the state agreement. In this regard, it is noteworthy that if the Mineralogy state agreement were statutory so that the decisions of the then minister were administrative—not dissimilar to ministerial decisions relating to the conferral of environmental approval for projects under the Environmental Protection Act 1986—there would be no capacity for damages to be sought.



Members, there are at least four reasons that this bill must pass urgently through Parliament. Firstly, as I have stated, the arbitrator, Mr McHugh, has ordered that a hearing take place commencing on 30 November 2020. A significant amount of time, resources and costs will necessarily be expended by the state, as well as by Mineralogy and International Minerals, ahead of that hearing. In the event that this bill passes, that additional time and cost will be saved. Secondly, the claims made by Mr Palmer are without precedent and outside the convention and practice of state agreements. Thirdly, if the state were to not do anything at this point and instead continued to defend the matter and awaited a decision from Mr McHugh, it is entirely possible—if not probable—that the decision would be handed down during the caretaker government period. Lastly, as I have already indicated, it would be fiscally irresponsible for this claim to continue and for the state and all Western Australians to be exposed to the risk, or even the possibility of a risk, of having to pay Mr Palmer, Mineralogy and International Minerals what might be tens of billions of dollars.

I trust that all members of this chamber and those of the other place will recognise the necessity for this bill. I trust also that members will likewise recognise that the alternative to this bill is to risk both the state and all the people of Western Australia being exposed to an award of damages in the billions of dollars—damages that Mr Palmer says have arisen because of his frustrated attempts to sell the Balmoral South iron ore project to a Chinese-controlled entity. Now, because he could not sell the project to an overseas company, he wants to claim billions of dollars from Western Australia, and he does so notwithstanding that the resources are still in the ground. The McGowan government will not expose the people of Western Australia to that risk, and, in this bill, it has instead taken decisive action to protect the state.

I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.

Rule 29.02

**Annexure Certificate  
MM44**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM44" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

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**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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Hon Sue Ellery; Hon Nick Goiran; President; Hon Peter Collier; Hon Jacqui Boydell; Hon Rick Mazza; Hon Robin Chapple; Hon Aaron Stonehouse; Hon Colin Tincknell; Hon Robin Scott; Hon Michael Mischin; Hon Charles Smith

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**IRON ORE PROCESSING (MINERALOGY PTY. LTD.) AGREEMENT AMENDMENT BILL 2020**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

*Second Reading*

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [11.29 am]: I move —

That the bill be now read a second time.

The Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 seeks to deal with damages claims arising or potentially arising from proposals that were submitted by Mr Clive Palmer, Mineralogy Pty Ltd and International Minerals Pty Ltd pursuant to the terms of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act 2002. Those proposals were submitted in August 2012 and June 2013 and relate to a project called the Balmoral South iron ore project. The August 2012 proposal was at first rejected, and then later significantly conditioned, by former Premier, Hon Colin Barnett. Those decisions have led to Mr Palmer, Mineralogy and International Minerals now claiming billions of dollars in damages in an arbitration against the state.

There is a history to these damages claims, of which members of Parliament need to be aware. The Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act came into operation on 25 September 2002 following royal assent on 24 September 2002, after having been considered by both houses of Parliament in June 2002. Attached to the act, by way of a schedule, was a state agreement entered into between what were Mineralogy-related parties and the state. On 14 November 2008, the parties to the state agreement varied the state agreement by the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill—a bill that passed both houses of Parliament in December 2008, and, after receiving royal assent, came into operation on 11 December 2008. The state agreement provided a process by which Mineralogy would, alone or with one of six co-proponents, one of which is International Minerals, develop projects for the mining, concentration and processing of iron ore in the Pilbara region.

The state agreement was in a form that was reasonably standard at that time, in particular as concerns the framework for the submitting of project proposals and their ministerial consideration for approval. As far as project proposals are concerned, the state agreement provided that Mineralogy and any co-proponent would submit proposals for particular types of projects to the Minister for State Development. Such proposals were, and are, required to be detailed, and address a large number of specific matters relating to the establishment and operation of the project. Once the minister receives such a proposal, the minister is, and was in this case, required to either approve the proposal, defer consideration of the proposal, or require as a condition precedent to giving approval to the proposal that the project proponents make reasonable alterations or comply with reasonable conditions.

This type of clause exists in most other state agreements, and in the ordinary course of conducting business with the state, a state agreement proponent comes to the state and discusses its proposal in draft form, including making appropriate changes in consultation with the state, before it is formally submitted for ministerial consideration and approval. There is good reason for this: the state and the state agreement proponent or proponents need to be aligned on the detail of the proposal, bearing in mind that the state is agreeing, by the very nature of a state agreement, to the efficient and effective development of the state's natural resources; that any such developments are maximised for long-term certainty and investment security to the mutual economic advantage of both project proponents and the state; and to ensure that the interactions between the project proponents and the community will achieve a level of development that will benefit all Western Australians. Indeed, these are some of the primary objectives that underpin the state's decision to enter into a state agreement with a project proponent.

Notwithstanding the standard practice of consultation undertaken between every other state agreement proponent and the state in relation to project proposals, Mr Palmer, Mineralogy and International Minerals chose not to adopt a consultative or cooperative approach. Instead, Mr Palmer and the Mineralogy parties submitted a proposal for approval in August 2012 with little engagement with, or prior warning to, the state. That proposal was for a project called the Balmoral South iron ore project—or BSIOP—which had an estimated life span of 28 years. It was a proposal to construct and operate infrastructure to produce and export 24 million tonnes per annum of iron ore concentrate. Under the proposal, it was proposed that the project would be developed in two phases. Phase 1 contemplated, under a licence granted to International Minerals by Mineralogy, the mining of one billion tonnes of iron ore from Mineralogy-owned tenements; and, under phase 2, that there would be a right to mine a further one billion tonnes. The BSIOP proposal aimed to commence in September 2012, with the first shipment in 2016. Mr Palmer, Mineralogy and International Minerals intended to sell the BSIOP to Chinese government-owned corporations, and, in fact, had even secured a letter of intent from the Industrial and Commercial Bank of China, one of China's largest banks, expressing willingness and interest in financing the project.



Hon Sue Ellery; Hon Nick Goiran; President; Hon Peter Collier; Hon Jacqui Boyde; Hon Rick Mazza; Hon Robin Chapple; Hon Aaron Stonehouse; Hon Colin Tincknell; Hon Robin Scott; Hon Michael Mischin; Hon Charles Smith

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On 4 September 2012, just weeks after it had been submitted, the BSIOP proposal was rejected as invalid by Hon Colin Barnett. It was rejected because the proposal proposed to undertake works that were already approved to be undertaken pursuant to another project, which is under the same state agreement, and because the proposal failed to provide sufficient detail, clarity and firm commitments. The Department of State Development promptly wrote to Mineralogy and International Minerals identifying key issues to be addressed and recommended that a further version of the proposals be provided in draft form for further review. Mr Palmer was not happy with that ministerial decision, but he did not discuss the matter with the state, nor did he seek to amend his proposal to deal with what the then minister and his department considered to be the deficiencies. Instead, Mr Palmer, Mineralogy and International Minerals disputed that Hon Colin Barnett had the ability to reject the proposal. He did that by referring the matter to arbitration under the terms of the state agreement.

In 2013, while that arbitration was still on foot, Mineralogy and International Minerals submitted a further BSIOP. On 22 August 2013, Hon Colin Barnett, as minister, wrote to Mineralogy and stated that this proposal had not met the state agreement's proposal preconditions and that the Department of State Development would write to identify the items that needed to be addressed. Soon after, the Department of State Development wrote to Mineralogy identifying the items that needed to be addressed. Mineralogy did not address these items or otherwise seek to progress this proposal.

That arbitration concerning Hon Colin Barnett's rejection of the August 2012 BSIOP proposal was heard by former High Court Judge Mr Michael McHugh, AC, QC, who handed down an award on 20 May 2014. Mr McHugh found in favour of Mineralogy and International Minerals, declaring that although the BSIOP was a defective proposal, it was nonetheless a proposal that had to be considered by the minister in accordance with the terms of the state agreement; that is, the minister had no ability to simply treat the proposal as invalid. In another arbitration, which is now underway, and which I will come back to—it is dealt with by this bill—Mr Palmer, Mineralogy and International Minerals have said that this rejection of the BSIOP proposal by Hon Colin Barnett was a breach of the state agreement for which they are entitled to damages, and they call it the “first damages breach”. This is a matter I will return to at a later point.

As a consequence of Mr McHugh's award, the August 2012 BSIOP proposal was considered further by Hon Colin Barnett, who was still the responsible minister. On 22 July 2014, he advised Mineralogy and International Minerals that the proposal would need to be altered and comply with 46 conditions. Those conditions ranged from requiring Mineralogy and International Minerals to state that they would comply with various regulatory requirements, confirm they had access to adequate estimated ore reserves to sustain the proposed project, and provide further technical plans and details. Again, Mr Palmer was not happy with that decision and now argues in the current arbitration that Hon Colin Barnett as minister, and therefore the state, further breached the obligations of the state agreement by imposing 46 conditions to giving his approval, and that this further breach also gives rise to a claim for damages. Mr Palmer, Mineralogy and International Minerals have termed this the “second damages breach”. Importantly, Mr Palmer, Mineralogy and International Minerals did nothing in relation to the August 2012 BSIOP proposal for a number of years after 2014, and so in August 2017, they were notified that the state was treating the proposal as having lapsed.

Mr Palmer, Mineralogy and International Minerals now seek to claim damages against the state for the decisions of the former minister. In relation to the first damages claim, which is the claim arising from Hon Colin Barnett's September 2012 rejection of the August 2012 proposal, Mr Palmer, Mineralogy and International Minerals seek damages in the vicinity of \$US7.768 billion, or \$A10.78 billion. All these figures I am providing are based on the exchange rate as at Monday, 10 August 2020.

Mr Palmer, Mineralogy and International Minerals are claiming further damages on top of that in the amount of \$US8.19 billion, or \$A11.37 billion, being the loss associated with being unable to sell any project required under the state agreement. Mr Palmer, Mineralogy and International Minerals claim a further \$A37.25 million for the wasted expenditure they say was incurred because of the then minister's decision. Mr Palmer, Mineralogy and International Minerals also claim that they have lost the ability to claim royalties in the sum of \$US233.7 million, or \$A326.18 million. Interest from October 2012 is then claimed in the amount of \$US3.77 billion, or \$A5.24 billion. In total, therefore, for the first damages claim, Mr Palmer, Mineralogy and International Minerals are claiming a total amount of \$US19.99 billion, which, again based on the exchange rate as at 10 August 2020, amounts to \$A27.75 billion. In addition, Mr Palmer, Mineralogy and International Minerals seek further damages for the second damages claim, which is the claim arising from the then minister's imposition in July 2014 of 46 conditions to approving the August 2012 proposal. The level of damages for the second damages claim is not yet quantified by Mr Palmer, Mineralogy and International Minerals; however, they seek interest from July 2014 on any amount awarded.

In addition to claiming damages for the first and second damages claim, Mr Palmer, Mineralogy and International Minerals also seek costs. The claim for costs is not yet quantified. Besides seeking damages and interest and costs



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arising from the first and second damages claims, Mr Palmer, Mineralogy and International Minerals seek a declaration that the 46 conditions imposed on the BSIOP proposal by Hon Colin Barnett on 22 July 2014 were not reasonable pursuant to the terms of the state agreement.

In summary, therefore, the claims that are being made against the state for breaches of the state agreement by the then minister amount to nearly \$A30 billion, an amount that does not include any amount for the second damages claim. To put that in context, the total net debt of the state of Western Australia is in the order of \$A35 billion to \$A40 billion, and the budget of the state of Western Australia is approximately \$A30 billion. To put it another way, if the cost of Mr Palmer's claim was shared equally amongst all Western Australians, it would cost every man, woman and child in Western Australia more than \$12 000; that is, each of the 2.5 million people living in Western Australia would pay Mr Palmer more than \$12 000. Mr Palmer wants Western Australia to pay him \$30 billion at a time when the state is in a state of emergency dealing with a global pandemic—a pandemic that Mr Palmer has stated is a media “beat-up”—and at a time when the people of Western Australia are most in need of our public money.

It is not in the interests of Western Australians to be exposed to a risk of having to pay Mr Palmer billions of dollars. The men, women and children of Western Australia need members to protect them from claims of this nature and concentrate on economic recovery. In this regard, two weeks ago the McGowan government announced the \$5.5 billion WA Recovery Plan to drive economic and social recovery across the state and create a pipeline of jobs for Western Australians. Obviously, if the claimants were to succeed in their damages claim at a level anywhere close to the amount sought, this would have dire financial consequences for the state of Western Australia and Western Australians. Even if Mineralogy and International Minerals succeeded in a fraction of their damages claim, this would have serious financial consequences for the state of Western Australia and Western Australians. For example, the McGowan government's \$5.5 billion WA Recovery Plan represents only 20 per cent of Mr Palmer's claim.

Successive governments, both Labor and Liberal, have been involved in the creation and administration of this state agreement, and both Labor and Liberal governments have found themselves dealing with Mr Palmer's various claims against the state. We now need to work together on that matter for the benefit of the people of Western Australia.

The damages claimed by Mr Palmer, Mineralogy and International Minerals arise because of the decisions made by Hon Colin Barnett when he was Premier. Although the McGowan government is not critical of those decisions, it has inherited the consequences of them. Having done so, the McGowan government, through the State Solicitor's Office, is vigorously defending the claim by Mr Palmer, Mineralogy and International Minerals. The vigorous nature of the defence can be seen in a number of steps which have been taken by the state in an attempt to defeat the claims. Firstly, in September 2019, the state argued that Mr McHugh's 2014 award was final, and that as no award for damages was made at that time, there was no ability for Mr Palmer, Mineralogy and International Minerals to pursue a separate claim against the state. Secondly, there was an inordinate and inexcusable delay on the part of Mineralogy and International Minerals in pursuing their claim for damages, because they had taken no steps to pursue the matter since Mr McHugh handed down his award in May 2014.

These arguments before the arbitrator, Mr McHugh, were unsuccessful, and he ordered that there had not been inexcusable delay and that Mineralogy and International Minerals were not foreclosed from recovering damages from the state as a consequence of Hon Colin Barnett's decision to treat the BSIOP proposal as invalid.

This state then sought leave to appeal the decision by Mr McHugh to the Supreme Court of Western Australia in one relevant respect—namely, that Mr McHugh had erred in deciding that his 2014 award had not finally determined any damages arising from the minister's failure to consider the BSIOP proposal because he thought it an invalid proposal. Mineralogy and International Minerals applied to have the state's appeal summarily dismissed on the basis that the state was unable to utilise the appeal and review regime of the now repealed Commercial Arbitration Act 1985 and was limited to the more limited review regime under the consequential Commercial Arbitration Act 2012. This application was heard by Hon Kenneth Martin, who handed down his decision on 28 February 2020. In his judgement, Mr Justice Martin agreed with Mineralogy and International Minerals' contention that the Commercial Arbitration Act 2012 applied and dismissed the state's appeal. As I have said, Mr Palmer, Mineralogy and International Minerals are now pressing ahead with their damages claims before Mr McHugh, as arbitrator, in the amount of nearly \$A30 billion.

On 26 June 2020, Mr McHugh ordered that there be a hearing of the matter for 15 days commencing 30 November 2020 to enable him to consider his decision over the Christmas and New Year period, with a view to providing an award in the new year. Although very sound and respectable defences are available to the claim of Mr Palmer, Mineralogy and International Minerals, the state has been unsuccessful in the past in dealing with Mineralogy's claims relating to the August 2012 proposals, so a successful defence of the claim is not guaranteed. In addition, because the matter is being dealt with by arbitration, there are very limited opportunities to appeal

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any adverse decision. Notwithstanding the defences available to the state, the McGowan government is not prepared to risk the financial consequences to the state of an adverse arbitral award, and one in which the state of Western Australia and taxpayers could be exposed to billions of dollars. To do so would be fiscally irresponsible. Indeed, it would be fiscally irresponsible for us to risk a successful arbitral damages award in favour of Mr Palmer, Mineralogy and International Minerals. Consequentially, the McGowan government is taking the necessary steps to protect the state and the people of Western Australia from the actions of Mr Palmer, Mineralogy and International Minerals.

The bill is essentially divided into two aspects, one dealing with disputed matters and the other with protected matters.

Beginning with the disputed matters aspect of the bill, clause 9 provides that the August 2012 and June 2013 BSIOP proposals will have no further contractual or other legal effect to the extent that they in fact have such effect. If Mineralogy and International Minerals wish to pursue the BSIOP, they can submit new proposals in accordance with the state agreement.

Clause 10 terminates any arbitration which the state, Mineralogy and International Minerals are party to and which concerns a disputed matter.

“Disputed matter” is a key term used in the bill and is defined to include Hon Colin Barnett’s 2012, 2013 and 2014 decisions relating to the BSIOP proposals and any conduct of the state connected with those decisions and the Balmoral South project more generally. Clause 10 also invalidates the two arbitral awards of Mr McHugh.

Clause 11 provides that the state, its officers and agents will not have any liability of any sort to any person in respect of the arbitrations or connected with a disputed matter; that is, it provides protection against the first and second damages claims and any future claims that might be made against the state in relation to the BSIOP proposal or the state’s actions in relation to the Balmoral South project more generally. Clause 11 also provides that no proceedings can be brought against the state to the extent that they seek to establish such a liability against the state and that any such proceedings that are in progress and not completed are also terminated.

Clause 12 prevents any appeal or similar action against the conduct of the state that is connected with a disputed matter.

Clause 13 removes the application of the Freedom of Information Act 1992 and document discovery and production processes from documents connected with disputed matters, given that the capacity to bring claims in relation to these matters is removed by the bill.

Clauses 14 and 15 provide further protection for the state by creating a statutory obligation on Mineralogy, International Minerals and Mr Palmer and any person who brings, or has an interest in, proceedings connected with a disputed matter to indemnify the state against such proceedings or loss and liability to any person connected with a disputed matter.

Clause 16 provides that if proceedings connected with a disputed matter are brought against the commonwealth or create a liability for the commonwealth, the state can also enforce its statutory indemnity to protect the commonwealth or cover any loss the state may suffer as a consequence.

Clause 17 prevents a liability of the state connected with a disputed matter being paid or enforced through various means.

I turn now to the second aspect of the bill: protected matters. Clause 18 protects the state from collateral litigation and claims by providing that protected matters do not have certain legal effects, and clause 19 protects the state, its officers and agents against any liability and proceedings that may arise connected with a protected matter.

“Protected matter” is another key term used in the bill and is defined to include the preparation of this bill, the enactment of the legislation and its operation, and the making and operation of subsidiary legislation under the act and other related matters. The government seeks to enact extensive and broad protections to protect the state, its officers and agents against collateral litigation.

Clauses 19 to 25 of the bill are essentially the same provisions as clauses 11 to 17 but in respect of protected matters rather than disputed matters.

Clause 26 of the bill deals with some miscellaneous matters and clarifies the consequences of the bill in terminating the current arbitration, including in relation to costs and confidentiality.

Clause 27 provides that, going forward, the minister’s consideration of proposals under the state agreement will not give rise to any capacity for damages or financial compensation to be awarded against the state.

Clause 28 protects persons who fall within the definition of “state authority” or “state agent”, or those who previously fell within these definitions, by requiring the state to indemnify these persons against any proceedings connected with a disputed matter or protected matter.



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Clause 29 provides a general regulation-making power and clause 30 enables the Governor to make orders to deal with various circumstances, including any matters that may not be adequately or appropriately dealt with by the bill by having regard to the purpose and subject matter of the bill. This includes orders that may improve the effectiveness of the statutory indemnities, including by creating security interests over any type of property of an indemnifying person.

The McGowan government accepts that the bill is unprecedented. It contains a number of provisions and measures that are not usual, but Mineralogy and Mr Palmer are not normal and these measures are needed to best protect the interests of the state and the community. Western Australian governments, from both sides of politics, have always refrained from intervening in the operation of state agreements by statute. This bill does not represent a change to this general and longstanding policy. This bill does not give rise to sovereign risk. Since the 1950s, the state has entered into over 70 state agreements and it currently has over 50 state agreements on foot. In the history of state agreements, no other state agreement proponent has sought to challenge a minister's decision about a proposal or taken the state to arbitration on any matter, let alone a minister's decision to reject or comment on a proposal that has been submitted. Therefore, this bill does not create a risk to other current state agreement parties or to future investors. Other state agreement parties and proponents deal properly and appropriately with the state in the terms of their proposals.

I also wish to make clear that this bill does not override the primary provisions and rights of Mineralogy and International Minerals under the state agreement. This bill affirms the terms of the state agreement and leaves open to Mineralogy and International Minerals the right to submit proposals for the Balmoral South iron ore project should they wish to do so. This bill will remove the capacity for Mr Palmer, Mineralogy and International Minerals to pursue litigation and damages claims regarding prior decisions of the then minister and the state more broadly, or damages for any future decisions of the minister on any new proposals submitted, or purportedly submitted, pursuant to the state agreement. In this regard, it is noteworthy that if the Mineralogy state agreement were statutory so that the decisions of the then minister were administrative—not dissimilar to ministerial decisions relating to the conferral of environmental approval for projects under the Environmental Protection Act 1986—there would be no capacity for damages to be sought.

There are at least four reasons that this bill must pass urgently through Parliament. Firstly, as I have said, the arbitrator, Mr McHugh, has ordered that a hearing take place commencing on 30 November 2020. A significant amount of time, resources and costs will necessarily be expended by the state, as well as by Mineralogy and International Minerals, ahead of that hearing. In the event that this bill passes, that additional time and cost will be saved. Secondly, the claims made by Mr Palmer are without precedent and outside the convention and practice of state agreements. Thirdly, if the state were to not do anything at this point and instead continued to defend the matter and awaited a decision from Mr McHugh, it is entirely possible—if not probable—that the decision would be handed down during the caretaker government period. Lastly, as I have already indicated, it would be fiscally irresponsible for this claim to continue and for the state and all Western Australians to be exposed to the risk, or even the possibility of a risk, of having to pay Mr Palmer, Mineralogy and International Minerals what might be tens of billions of dollars.

I trust also that members will likewise recognise that the alternative to this bill is to risk both the state and the people of Western Australia being exposed to an award of damages in the billions of dollars—damages that Mr Palmer says have arisen because of his frustrated attempts to sell the Balmoral South iron ore project to a Chinese-controlled entity. Now, because he could not sell the project to an overseas company, he claims billions of dollars from Western Australia, and he does so notwithstanding that the resources are still in the ground. The McGowan government will not expose the people of Western Australia to that risk, and, in this bill, it has instead taken decisive action to protect the state.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper [4094](#).]

Debate adjourned, pursuant to standing orders.

*All Stages — Standing Orders Suspension — Motion*

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [11.59 am] — without notice: I move —

That so much of the standing orders be suspended as to enable —

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- (1) the house to sit beyond 5.20 pm until the question on the third reading of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 has been put and determined and, if applicable, standing order 137(2) and standing order 140(b) are suspended for that purpose; and
- (2) members' statements to be taken at a time ordered by the house.

I do not do this lightly. I had hoped that we could debate this bill over a few days; indeed, early yesterday morning, I reached out to the Leader of the Opposition and suggested that it could be done by the end of next week. However, Mr Palmer's public comments yesterday and his actions in the court demonstrate, in the government's absolutely firm view, that this bill needs to be passed swiftly. Yesterday in his public comments, Mr Palmer reiterated and reaffirmed, I think for all Western Australians, that he has no regard for the views of Western Australians and that he is continuing to actively pursue his claim against the state—a claim that will have devastating financial impacts on our state. It is critical that this bill be passed today without delay to minimise the window of opportunity that Mr Palmer and his companies have to attempt to thwart both the passing of the bill itself and its validity immediately following its enactment.

We have heard about the clear and present risk that the state now faces from Mr Palmer in his pursuit against the people of Western Australia. If the bill is not enacted and his self-serving claims are not extinguished, the damages exposure is quite breathtaking—\$A30 billion—and that is not factoring in the second yet-to-be-quantified component of his damages claim. The more time that we take, the more time that Mr Palmer has to manoeuvre himself strategically and use his army of lawyers to attempt to thwart or undermine this process. We saw yesterday that Mr Palmer has taken the first legal steps against the people of Western Australia to prepare to challenge the legislation. Yesterday morning, less than 24 hours after the bill was introduced, Mr Palmer's lawyers filed an application in the New South Wales Supreme Court seeking recognition and enforcement of the 2014 and 2019 arbitral awards.

Members, we are not talking about something that might occur in years to come. The arbitration in this matter has been set down for 30 November 2020 and the arbitrator has said that he wants to write his award over the break and deliver the award in the new year. We cannot expose the state or the people of Western Australia to that possibility. Accordingly, the threat of immediate further legal action by Mr Palmer today—that is today, not next week or the week after—cannot be discounted.

As I said, I do not do this lightly and I regret that we are in this position. The state finds itself in a very serious position and I urge members to support the motion to suspend standing orders to deal with this bill today.

**The PRESIDENT:** The Leader of the House has moved a motion without notice to suspend standing orders. I remind members that this motion requires an absolute majority.

*Point of Order*

**Hon NICK GOIRAN:** At the moment, members are being expected to agree to a motion that they have not been provided a copy of. It would not have hurt to email it, would it, or is that asking too much?

**The PRESIDENT:** Member, that motion has just been handed over and it will be distributed in due course.

*Debate Resumed*

**HON PETER COLLIER (North Metropolitan — Leader of the Opposition)** [12.04 pm]: I will say a few things and I will not take long. I thank the Leader of the House for her comments. I say at the outset that, yes, we did have an informal agreement that we would deal with the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 next week and that the Workers' Compensation and Injury Management Amendment (COVID-19 Response) Bill 2020 would be dealt with by Wednesday. With a bill of this magnitude, I feel we need more time than the five or 10 minutes between the second reading of the bill and the committee consideration of it to scrutinise the legislation. As has been said—it is almost a cliché that rolls off the tongue in these times—it is an extraordinary circumstance. I really get that, but this is an extraordinary bill. As the second reading speech states, we have never had a situation in which a state agreement has been in question or there has been such dispute over a state agreement. Apparently, there is no sovereign risk associated with the actions as a result of this bill.

We are being asked at this stage to trust the government. I understand that. I understand it is a very fluid, moving vehicle and it is very difficult for the government, but this is massive. Fundamentally, if we deal with this bill now, in its current form, without, with all due respect, a full understanding of the implications, it will be entirely on the head of the government if it all goes pear-shaped, and it quite logically could.

There are a couple of things. What I would like to have heard in the Leader of the House's comments was what will happen if we do not agree to this motion and we deal with the bill next week. The arbitration is not scheduled until the end of November. She stated that. I would like to have heard that this would have massive implications



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for the case—that is, that somehow the challenge by Mr Palmer would be seriously advantaged as a result of us dealing with the bill next week, when we would have much more time to forensically scrutinise what we are dealing with. I would prefer to have heard that it would seriously compromise the case of Mr Palmer if we allowed the interrogation of this bill to take place next week.

The opposition definitely does not want to compromise \$30 billion of Western Australian taxpayers' money. I make that quite clear. We want to do absolutely everything we possibly can to ensure that that occurs, but that will not occur if we let through flawed legislation and then find out that it will not work. If this motion is passed and we agree on the deliberation of this bill today and it is passed, ideally, sometime in the early hours of this evening, we want to ensure that the legislation will not expose not just the government of Western Australia, but all Western Australians because it is flawed. That is what I am saying. I am not saying it from a political standpoint; I am saying it as a proud, lifelong Western Australian. On behalf of Western Australians, we are being asked to trust the Western Australian government, given that its representatives in the Legislative Assembly and the Legislative Council have been given zero time to consider this legislation. That is my point.

With that, I have not heard an argument to the contrary. Having not heard that argument to the contrary, I still think that this legislation deserves a lot more respect than it has been given at the moment. For those reasons, the opposition will not support the motion.

**HON JACQUI BOYDELL (Mining and Pastoral)** [12.08 pm]: A lot of challenging issues have been dealt with by the Legislative Council during this term of government. I do not think anyone can deny that. Every single one of those scenarios has been difficult for every member of this house to deal with, but throughout those issues, we have collectively remained focused on the issue at hand, despite all the commentary going on outside of the chamber on the issue, and we have been able to consider what was before the house.

I think that members of this house are in an unprecedented position, as members of the other place were yesterday. I am sure that members of this house will certainly note the gravity of this situation. I think that the Western Australian community notes the gravity of this situation. There is no denying the level of community concern about the actions of Mr Palmer and Mineralogy and their response to the government in this arbitration and negotiation. I also acknowledge that, particularly this morning through media and social media commentary, concerns are growing on the other side of the fence about the response of the government to this issue. People are worried and nervous about how the government is managing this issue, and about somehow being exposed to the wrath of Mr Palmer and Mineralogy. It is incumbent upon us to provide some confidence on this issue to the community of Western Australia. I acknowledge, as Hon Peter Collier said, that this very sensitive, highly emotive and potentially disastrous economic situation for Western Australia is being dealt with expeditiously by this and the other house. I do not have any doubt that the government would like to manage this with more time to consider the legal advice before it and the options that can be taken. I do not envy the government being in that position. I have no doubt that the government understands the very grave situation that it is in.

There are a lot of issues about the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 to discuss. This suspension of standing orders motion is supported by the Nationals WA to allow members of this house to scrutinise all the concerns that have been raised with us in the last 24 hours and throughout the debate in the other place. We have a right to do that and I am sure that members of this house will do that. We are probably expecting a long day today. Mechanisms within the house will allow members to scrutinise every single clause, as we do with every bill, when we get to Committee of the Whole, hopefully later today. I assure members that it is incumbent upon them to carry out their due diligence, and I am sure that they will. We must also recognise that the community is relying on this house to make a decision in this matter on its behalf. Therefore, the National Party will support the suspension of standing orders.

**HON RICK MAZZA (Agricultural)** [12.12 pm]: I am not convinced of the urgency of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 going through today. My understanding is that the bill was introduced into the Assembly at 5.01 pm to make sure that the judiciary on the east coast was shut. It was explained to me in my briefing, which was only 24 hours ago, that the government was very concerned about this bill being seized by the courts. Therefore, it introduced it into the Assembly after the courts on the east coast had closed so that Mr Palmer did not have an opportunity to have the court seize it. That has been done. It is now within the Parliament, so why does it have to be forced through the upper house in one day? I am not convinced that it has to be. We are nearly four months away from the arbitration. We should have time to fully understand this bill before we debate it and go through the process of Committee of the Whole. Hon Jacqui Boyde pointed out that we have a duty to scrutinise this bill in extraordinary detail. How can we do that in the very short time we have had to consider it? We are looking at extraordinary circumstances. We are going to offend the rule of law and natural justice. Freedom of information and transparency are also going to be offended. We will not be able to do that. The law of contract will be offended. A contract that was freely entered into by the state under the Gallop government in 2002 will be

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changed. The separation of powers will be offended. This matter was within arbitration, which is a judicial system that the Parliament is interfering in.

We should take the personality of Mr Palmer out of this. I have not met and do not know Mr Palmer. The only assessment I have of him is the portrayal by the government and *The West Australian*. I do not know him. It makes me wonder whether, if it were \$30 million and not \$30 billion, the government would be going through the process of this extraordinary piece of legislation.

What really worries me about this is that I feel the government is in a state of panic. It is in an absolute state of panic. The comments of the Premier yesterday suggested that we have to get this through. He is panicked! The Attorney General was on 720 talkback radio this morning and I could hear the panic in his voice. We should have more time—at least next week—to fully go through this bill to make sure that we do not end up with a constitutional crisis in the years to come. There is every chance that this legislation, like the Bell Group legislation that the previous government tried on, might fail in the High Court. Then what? We will be in deeper. I think we need to settle down, take a deep breath and get away from the hysteria that has been built around Mr Palmer. The bill has been introduced into the Parliament and the court has not seized it at this time. Let us take some time to properly assess the implications of this bill. In many respects, we are in uncharted territory when it comes to usual commercial practice in our democratic society. All those values and pillars of democracy will be trashed with this bill. Basically, we will be saying to someone who has a contract with the state, “It looks like you’re going to win a case against us and therefore we’ll legislate to make sure that you can’t.” I have real problems with that. I would like more time to fully assess this bill and to be comfortable that I am fully informed when representing my constituents in this place, and that I am not being forced to make sure that this is done today in a panic situation. A valid reason has not been presented to me for why it needs to be done today. Therefore, I will not support the motion to suspend standing orders.

**HON ROBIN CHAPPLE (Mining and Pastoral)** [12.16 pm]: The Greens will be supporting the motion moved by the Leader of the House. I will not read out the motion. There are many reasons for that level of support. It devolves back to the history of the gentleman we are dealing with in this case. I have been in this chamber for 20 years and we have debated issues concerning this gentleman innumerable times. He has a penchant for litigation at every turn. Unless we deal with the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 expeditiously, I believe we will expose the state to greater potential litigation, whether it be from some of his subsidiaries in Singapore or many of the shell companies that he runs around the nation and the world. We will support the passage of this bill through to conclusion on the basis that we want to protect the state.

*Discharge of Order and Referral to Standing Committee on Legislation —  
Standing Orders Suspension — Amendment to Motion*

**HON AARON STONEHOUSE (South Metropolitan)** [12.18 pm] — without notice: I move —

To amend the motion of the Leader of the House by deleting all words after “That” and substituting —  
so much of the standing orders be suspended so that —

- (1) The Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 is discharged and referred to the Standing Committee on Legislation for consideration and report by no later than 15 September 2020.
- (2) The following members are co-opted onto the committee for the purpose of this referral —
  - (a) Hon Aaron Stonehouse; and
  - (b) Hon Michael Mischin.
- (3) With any necessary modifications, standing order 163 shall apply to a co-opted member.
- (4) The committee has the power to inquire into and report on the policy of the bill.

While that is being distributed, I will briefly speak to the motion. I will not say much because I do not want to hold up the proceedings of the house unnecessarily. I am mindful that what I am trying to do is likely to upset the Attorney General and the Premier. In fact, I expect that they will be very displeased and nasty comments will be directed my way and probably the way of anybody who supports me for making such an effort. I said earlier today that I expect the Attorney General to stamp his feet, go red in the face and become shrill and hysterical. Those types of theatrics may work on some in the media, but they do not work on me. I do not care what nasty or threatening language the Attorney General might use. I think we have a responsibility here, and I think that cooler heads really must prevail in a matter like this.



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The very public, and at times very childish, spat between Mr Palmer, the Premier and the Attorney General does not instil confidence in me that the government right now is acting rationally or thinking clearly. My fear is that the Attorney General and the Premier are acting desperately, perhaps, in this case and have not thought this through properly. Normally, there is a check and balance against that kind of behaviour, and it is called the Parliament. The Parliament has standing orders that ensure that it takes its time to properly consider legislation. There is a house of review specifically for that purpose. There are standing committees for the scrutiny of legislation specifically for that purpose. That gives us an opportunity to consult subject matter experts and seek independent legal advice, and it gives legislators the time to actually do their job and properly consider legislation and consult with their constituents and stakeholders. We will not be afforded that in this instance.

I know that some members would rather deal with this bill next week. That would certainly be better than dealing with it today in a few short hours. I think the Standing Committee on Legislation is well placed to deal with this kind of scrutiny; it has done it before. I know that the members of that committee work very hard. In the experiences that I have had when I have been co-opted onto or substituted for members of that committee in the past, I have seen the work that the legal advisers of that committee do and the experience of its members when it comes to complex legal issues. That is why I have included in my amendment to the motion Hon Michael Mischin, a very learned member who is very experienced in the law, and, of course, myself, because I take a particular interest in this matter.

The question that we will be dealing with in this bill is not a simple question of economics, arithmetic or even the silly feud between Mr Palmer, the Premier and the Attorney General. There are serious questions, of course, about justice, fairness and the principles that underpin our liberal democracy, as was said by previous speakers. As legislators, we have been put in a very difficult position because we cannot see all the information. The arbitration process to date has been confidential. I have been told by advisers during briefings that the rulings made by Mr McHugh during the arbitration were problematic, that there were issues with the rulings and that there are limited avenues for appeal. I have to take their word for it because I do not know. I have not seen those rulings and they cannot be provided to me. I have no idea what evidence has been presented by Mr Palmer or Mineralogy Pty Ltd or International Minerals Pty Ltd in these claims. I have no idea of the extent of the damages claimed. All this information is confidential; it is all being kept private. Parliamentary privilege may protect us to a certain extent, but unless these parties are willing to table that information and let us look at it and consider it as legislators so that we can do our jobs properly, we are literally being asked to legislate blindly. We are being asked to trust blindly in the Attorney General in this matter that he has it right. I am sure that the legal advisers and the State Solicitor at the time back then were certain that they had it right with the Bell case. Obviously, it proved to be a little more difficult than that. There really can be no certainty when it comes to legality. We can never be 100 per cent sure, but I would at least like the opportunity to consider it properly.

We have seen this with bills in the past when so-called emergency or priority legislation is rushed through. Any time I have seen rushed legislation, it has always been bad legislation. We have had bills in here with typos and mistakes and bills that were deemed to have fallen foul and offended commonwealth legislation. It has been only through committee scrutiny that we have been able to identify those problems. Sometimes we have been able to improve bills. Certainly, the attitude of members here would be that no-one wants the state to be liable for \$30 billion in damages—of course; that goes without saying—but does the government have it right? Can we improve this and do it differently? Can we be assured that the government is on the right track? The hearing is scheduled for 30 November. A reporting date of 15 September would give us more than enough time. I would not be surprised if the committee was able to deal with this in a couple of weeks and have a report ready to go before 15 September. I think that everybody appreciates that time is of the essence.

Lastly, this morning the Attorney General said there was no time for a namby-pamby committee. That is quite funny. It makes me think that the Attorney General is unaware of the work that the Legislative Council does and the work that the committees do. “Namby-pamby committee”! We are meant to trust the Attorney General’s judgement in this matter. In the other place yesterday, when the bill was brought on for debate at about 1.36 pm, the member for Scarborough, the Leader of the Opposition, was supportive of the bill, and the members, in their contributions in the other place, all said that they supported the bill and were happy to see it passed quickly. That was, of course, before the Legislative Council dealt with its motion on notice yesterday. It was not until about 5.00 pm that the Legislative Council made the Legislative Assembly aware of the motion and the resolution that was passed in the Legislative Council. I remind members that the message from the Legislative Council to the Legislative Assembly was —

That this house —

- (a) notes the false and misleading claims of the Attorney General on 28 May 2020;
- (b) notes his repeated failure to provide full, frank and reliable information to the Parliament;

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- (c) expresses its concern about the suitability of the member for Butler to continue as Western Australia's first law officer; and
- (d) acquaints the Legislative Assembly accordingly.

Members of the Legislative Assembly were placing their trust in the Attorney General and the government at that time. That was well before 5.00 pm when that message was relayed to the Legislative Assembly. The Attorney General may be right, and the advice he is getting may be accurate, robust and convincing, but I cannot be convinced of that at this point until I have had the opportunity to properly range over it. I implore members to carefully consider the amendment before us. It would allow us a brief pause to relax, put an end to the hysterics and carefully scrutinise this legislation and make sure that we are not making things worse, perhaps, for Western Australia.

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [12.27 pm]: The government will not support the amendment. There is a real and present risk that if we give Mr Palmer more time, he will use that time and his considerable resources to thwart our efforts to protect Western Australia. There is no panic. There is no desperation. There is no silly feud. There is no hysteria. There is, as has been evident in every decision that we have made—for example, in respect of the pandemic—methodical, considered decision-making based on expert advice. There is a single-minded determination to protect Western Australia against a single individual with more money than anyone in here will ever see and who has form for using that money to litigate as the default position. It is critical that the bill be passed urgently. We do not want to provide Mr Palmer with the opportunity to take steps in the courts, which he started yesterday, to protect his position. We know that he will take those actions. He has already taken steps to secure his claim in the courts in New South Wales and Queensland, and also in the Federal Court. One of those matters, the New South Wales proceeding, is listed for 28 August. The State Solicitor's Office is also monitoring court registries to see whether Mr Palmer is seeking an expedited hearing. There is a real and substantial risk that if we delay consideration of this bill by referring it to a committee, no matter whether that committee is for two weeks or two months, we are risking the finances of the state of Western Australia. We cannot support this amendment.

**HON PETER COLLIER (North Metropolitan — Leader of the Opposition)** [12.30 pm]: I am sorry, Leader of the House, but I have to say that once again I am a little disappointed with that response. The Leader of the House did not say anything that would gauge the urgency of this issue. One thing she did say was that everything the government has done has been meticulously timed, and it has been. The Attorney-General read in the bill in the other house at 5.01 pm. I understand that that was to prevent Mr Palmer from launching court action. I understand exactly why the government did that, because once the bill had been read in, that completely nullified any court action that Mr Palmer could take. The Leader of the House did not refute that. I have not heard anything contrary to that. I would be fascinated to know whether that is the case because that is what we have been fed. We have been asked to believe the government—to trust the government. The Leader of the House just said it herself—everything has been done meticulously. If that was not the case, we would have had to sit all night on Tuesday and get the bill through both houses to prevent any action on Wednesday. That did not occur. I am saying that, yes, this is significant. I am not being political. I am, believe it or not, speaking on behalf of Western Australians. This is a vital thing. As I said, we are being asked to put this on a trust-us mentality.

We have given the government numerous opportunities to respond to that. Yesterday, in the other chamber, Hon Liza Harvey alluded to the notion of the bill going to a committee in the upper house to make sure that the legislation was watertight so that Mr Palmer's challenge could be knocked for six. She was ridiculed and scoffed at by the Premier. It would have been a good opportunity for that man to show a bit of statesmanship in his response and say, "No, we can't do it for this reason, that reason and the other reason." We heard the Attorney General on radio talking about the bill going to a "namby-pamby" committee. It is that disrespect that we spent an hour and a half talking about yesterday. I wish that you guys, the Premier and the Attorney General would just once give this chamber a modicum of respect.

All Hon Aaron Stonehouse is asking for is not to stymie the legislation, but to delay it ever so slightly so that we can make sure that this challenge against Mr Palmer is watertight. That is what he is asking. He is not asking for all of it to be watertight. All we want is to know why it is being rushed through. What the Leader of the House said just now does not convince me at all. The stakes are higher on this issue than any of us have ever faced on any issue. The stakes are \$30 billion for Western Australians. What happens if this bill gets through and is challenged in the High Court, and Mr Palmer is successful and we lose? You guys cannot just say, "Oops! We wish we'd thought about that. We wish we'd sent it off to a committee for just one month." That is all Hon Aaron Stonehouse is asking for. People with clear minds could look at the bill. They could bring in the Attorney General and the State Solicitor as witnesses and go through the bill and say, "Yes, this is problematic and this is problematic, and this will make it watertight." It would be wonderful if we could do that in a bipartisan way and say, "Yes, let's do this. Let's make sure that this legislation is absolutely watertight. It wasn't rushed through the Parliament in less



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than 24 hours.” That is what will happen if we combine the LA and the LC, and it will come out as absolutely flawed legislation. We must make sure that the bill is absolutely watertight.

The opposition will support this referral of the bill. We are doing it. I am sure that the Premier and the Attorney General will go out there and lambaste us yet again without looking at why we are doing it. We are not doing it for political purposes. We are doing it because we think it is the right thing to do. We are doing it because we think this piece of legislation—which we have been told ad infinitum for the last 48 hours is massive—is the biggest thing that we have ever seen. That is true. It is a massive piece of legislation. We are doing it because we believe that this legislation should be treated with the respect that it deserves; that is, when it goes to the Standing Committee on Legislation, that committee can look at the legislation, find any flaws in it and bring it back, and then every single member in this chamber can collectively look at Mr Palmer and say, “We gotcher, mate! No matter what.”

I would absolutely hate it—I would absolutely loathe it—if that man won because this bill was flawed. I would hate it. Would it not be terrible for that man from Queensland to take \$30 billion out of our coffers only because we did not have the moral fortitude to send this bill to a committee for 30 days to find out whether something was missing? Would that not be terrible? I am telling members that we have an opportunity right now to resolve this. We have an opportunity to say to Mr Palmer, “We’re going to make sure you are hit to the boundary, mate. You’re not welcome in Western Australia. Stay in Queensland. We’re going to keep our \$30 billion.”

That is all I will say right now. I promise the Premier and the Attorney General—I implore them yet again to please start showing this house a bit of respect—that by supporting this motion, we are not doing it for political purposes; we are doing it for Western Australians.

**HON RICK MAZZA (Agricultural)** [12.36 pm]: Consistent with the comments that I made earlier on the suspension of standing orders, I am very concerned that we are trying to get this bill completed today without proper scrutiny. We are flying blind on a very significant piece of legislation that could have absolutely catastrophic consequences.

I also listened to some of the talkback radio this morning and heard the comment about the namby-pamby parliamentary committee. That is quite offensive. A lot of work is done in committees, particularly the Standing Committee on Legislation, which I know works very diligently and professionally to identify issues that could exist within certain pieces of legislation. Flaws have been found in some legislation that has gone to that committee and that legislation has never seen the light of day again. We could find ourselves in that situation with this legislation, which has been prepared in back rooms under a cloak of secrecy to make sure that Mr Palmer was not aware of what was going on. We found out about this very, very recently, and we are supposed to be across the legislation.

It has been suggested that every single Western Australian supports the government on this piece of legislation to hold back Mr Palmer, who was portrayed yesterday on the front page of *The West Australian* as Dr Evil, with his little cat. I understand the catastrophic and grave consequences of \$30 billion being lost in an arbitration, but, as the Leader of the Opposition pointed out, I also want to make sure that if we pass this legislation, we ensure that it is watertight. Some members of the public have raised concerns about this legislation. I listened to two callers on talkback radio this morning, both of whom were very, very worried about the consequences of this legislation. In fact, in today’s letter to the editor, Mr David Dwyer, a constituent of the Agricultural Region in Esperance, in part, says —

This appears to have panicked the State Government to rush retrospective legislation through to protect the State Treasury and in effect the Opposition is blackmailed into conditional support.

Members of the community are very worried about where this is going to lead to, and it would pay us to take pause and have a short, sharp inquiry by the Standing Committee on Legislation. We have been told that the court cannot seize it at this point in time because it has been introduced in the dead of night in the other place to make sure that Mr Palmer was not able to have it seized by the court. Therefore, we should take time now to pause and ensure that this is done right, that there are no flaws in it and look at it with a fresh pair of eyes.

With that, I support this referral to the committee and I hope that other members of this place feel the gravity and responsibility to ensure that we are fully apprised of this before we embark on forcing through the Parliament, at breakneck speed, a piece of legislation that is the most significant that I have ever been involved in. The voluntary assisted dying legislation was portrayed as being the most significant piece of legislation that we will ever deal with in our careers in Parliament. I think that this legislation could trump that. We had a lot of time on the voluntary assisted dying legislation. There was a lot of community consultation, briefings and a hell of a lot of background to getting us to the point of passing that legislation, but for this one we have had 24 hours, and we

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have to trust that the Attorney General and the Premier have got it right. I do not have that trust, so I support the referral to the committee.

**HON ROBIN CHAPPLE (Mining and Pastoral)** [12.41 pm]: In many cases, we the Greens are people who would like to see legislation referred to a committee. But, as the Leader of the Opposition said, it would be terrible if we delayed this in any way, shape or form so that it allowed this gentleman, who is a notorious litigant—with all of his sub-corporations that he has around the world and \$2 companies everywhere—to start a series of litigation in the time frame that we give him.

I am not concerned about the competency or otherwise of the Attorney General. I listened to the advice of Clayton Utz and the State Solicitor's Office and the fact that this piece of legislation has had 13 drafts. It has been tested and tested and tested—not in the public domain, because it could not be in the public domain because of the litigious nature of this gentleman.

We will not be supporting the referral of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 to the Standing Committee on Legislation because we are concerned for the wellbeing of the state, and any delay threatens the economy of this state.

**HON JACQUI BOYDELL (Mining and Pastoral)** [12.42 pm]: I indicate that the Nationals WA will not be supporting the referral of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 to the Standing Committee on Legislation. As I said earlier, this is a very difficult situation for all members of this house to deal with. I understand that. I do not disagree with any of the comments that have been made by the contributors so far about this bill; a number of issues have concerned me greatly.

Earlier, when I alluded to the commentary coming from outside this chamber on this issue, I include in that the Premier and the Attorney General. The Premier and the Attorney General have a long history—over the last three years of this term of government—of threats, of disrespect, of falsehoods being told of the actions of members of this house and of issues that we as members of this house have dealt with. It concerns me, on another level, that they seem to have no understanding of the operations of this house or indeed that this house of review has given the government, during these three years, some stability in the way it has approached legislation. As Hon Rick Mazza alluded to, a number of pieces of legislation have been brought to this house that had serious flaws in them and if it were not for the work of this house, the government would have been exposed legally because of those pieces of legislation.

Earlier, I appealed to members to say that we have to remain responsible, calm and focused on the job before us—that is, to not respond to the threats of the Premier, who promised a rolled-gold level of transparency of government, by the way, at the outset and prior to him forming the government, or indeed the threats of the Attorney General, whose actions were discussed during the debate yesterday when this house expressed its concerns about the way he has conducted himself as the state's first law officer. The Attorney General needs to take responsibility for how our people judge him and his actions as the Attorney General, and at some point he will be held accountable to that, I am sure. Therefore, I am disregarding the commentary of the Attorney General and the Premier, as I have done previously when they have threatened this house and members within it.

Regardless of what the Attorney General may think of the legislation committee or the processes of this house, that is not my motivating factor on why I would or would not support a referral to committee. I do not care what the Attorney General's personal view is on the committee, so I share that view with Hon Aaron Stonehouse. We will get on and do our job, as we have done previously. The reason we will not support a referral to committee is that this is a grave issue for the state. We need to get on and deal with these issues and raise them in this chamber during Committee of the Whole House. Let us have those debates and scrutinise the legislation.

I make one final point that goes to the future of how states and governments deal with state agreements. The very nature of state agreements and the lack of transparency around them add to members' uncertainty in dealing them and that does not provide the Parliament an opportunity to properly scrutinise them. In this case, that is being felt intensely by members because this legislation was introduced exceptionally quickly. The government chose a course of action; we have to scrutinise that course of action as quickly as we can in the interests of the state of Western Australia. As members, we have not had the option to choose how to deal with this issue, but the government has, so it is now up to the government to legitimise that choice and it is up to us as members of this chamber to scrutinise that choice. Therefore, we will not be supporting the referral to committee.

**HON NICK GOIRAN (South Metropolitan)** [12.47 pm]: In one month and two days it will be the fifth anniversary since these comments were made in the Legislative Council, and I quote —

I understand why the government is trying to step in and stop the ongoing litigation. I do not know whether this bill will do that. That is something that the committee may turn its mind to as well. We have



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not asked the government to look at policy. We have agreed that we will not look at policy. We have also agreed that this bill will come back into this place on 10 November. That means that, hopefully, it will be brought up for debate in the house in the week starting 17 November and we can endeavour to get this bill back to the Assembly because it rises in late November. That is the agreement that we have put in place. We understand that this is a very complex bill, and it should be sent to a committee. If we were to open up this bill to policy, we would probably go down all sorts of interesting rabbit holes going back 20 years plus, and it would probably be very colourful and involve a range of other matters. Therefore, we want to keep this quite tight, given that the committee has only a very short time in which to engage in its inquiry, call on the stakeholders, hold hearings and put in evidence, and hopefully make recommendations to the government to address the concerns that have been canvassed by all the stakeholders.

Madam President, this speech, given almost five years ago, continues —

We do not often get the opportunity in which there is an agreement; normally, we are battling very hard to persuade government to refer a bill to the Standing Committee on Legislation for examination. It shows a maturity on the part of this government when dealing with such complex legislation that it has agreed so swiftly.

Those remarks were made by Hon Kate Doust on 15 September 2015 when speaking on behalf of the then opposition on the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015. I particularly draw members' attention to the government backbenchers at that time. At that time, I was a government backbencher, and I rose and supported the comments made by Hon Kate Doust and agreed as a government backbencher to a referral of the Bell litigation to the Standing Committee on Legislation. I say that to government backbenchers at this time because I have an immense amount of sympathy for them on the motion currently before the house. They are left in an extremely difficult position. It is on the public record that very few members were privy to the sequence of events that has occurred over the last week. It is abundantly clear to me that that would include government backbenchers. I have a great deal of sympathy for them because that was exactly the same position that I was in five years ago. The big difference is that at that time, I decided that my responsibility and my duty to the people of Western Australia and to the Legislative Council was higher than the view that might be expressed by some of my colleagues in government at the time, and I supported vocally, on the public record, the necessity for that legislation to go to a committee. So far today I have heard nothing from any government backbencher on this matter.

I have a lot of sympathy for the motion that has been moved by Hon Aaron Stonehouse. It is entirely consistent with how the Labor Party dealt with the Bell Resources bill some five years ago. The Leader of the House and others might point out that the comments made by the opposition some five years ago stated that the scope of the inquiry would not include the policy of the bill, and that would be quite right. Certainly, I would have no problems if the government wanted to move an amendment to the motion before us to ensure that the committee did not have the power to look into the policy. If the government's major point of contention was whether the committee had that capacity or not, I would not want that to be a stumbling block, if that was going to be the way forward. But it is already clear from the remarks of the Leader of the House that the government will be opposing the motion and has learnt absolutely nothing from the episode five years ago.

The only explanation that has been provided by the Leader of the House today is what she has referred to as a real risk of delay. In other words, notwithstanding the fact that it was apparently the view of the government as recently as yesterday that it would be okay for us to deal with this bill next week, apparently, that has changed substantially over the last 24 hours, and there is, according to the Leader of the House, a real risk of delay. I put this to members, particularly to the Leader of the House.

Incidentally, I do not know how long an opportunity some members have had to consider this bill. The first opportunity I had to consider this bill was at approximately 10 o'clock this morning, because, as the Leader of the House in particular will be aware, I have been otherwise engaged in other legislation before the house that the government had previously professed was urgent. However, having had a look at the bill at approximately 10.00 this morning, my point to the Leader of the House is: if this 64-page bill of hers, which consists of some nine clauses, is so fragile that we have to deal with it today, we cannot possibly deal with it on Tuesday next week because it is so, so fragile, the government has lost already. What a joke! As if this bill will live or die on whether it gets passed today! What do we think Mr Palmer is going to be doing during the course of today? If it is actually as urgent as the Leader of the House says, and apparently there is a real risk of delay, why did the government let the Greens have their non-government business today? The Leader of the House could have stood up at 10 o'clock this morning, moved a suspension then, and we could have dealt with it straightaway.

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According to the government, there is a real risk of delay. What rubbish. If this bill is so fragile that the government needs it to be dealt with today and is asking us to suspend all proper process and to sit here as long as we need to tonight to give it some form of scrutiny, the government has lost already. The government has already let Mr Palmer win. Well done, Leader of the House! She and the government have so much to be proud of with their conduct in recent times. I said to someone recently that the McGowan government in recent times has been consistently overreaching, and now it is out of control. Now, the Leader of the House will not even agree for the bill to go to a committee. Hon Aaron Stonehouse, whose party consists of one member in this place, is expected to get across all this legislation. The Leader of the House will not even do him the courtesy of sending it to a committee for a mere 32-day period—just over a month—but when she was in opposition, she wanted the Bell Resources bill to be considered for about two months, and we all know how that ended up. But, according to the Leader of the House, it is crucial that we have this legislation passed immediately today.

I listened with interest to the contribution by Hon Robin Chapple. He made the point—he is quite right—that, ordinarily, the Greens would support the referral of a bill to a committee. He is absolutely correct; I have seen the Greens do that on many occasions. He said that he was persuaded by the fact there is apparently a real risk in delaying this legislation, yet I did not see the Greens offer to give up their non-government business this morning. We have spent the best part of an hour and a half dealing with other matters that are apparently more important. Is there a real risk of delay or not? If there is a real risk of delay, no problem. Let us get on with it.

I have said many times: bring in a piece of legislation at any time, give me no notice, and I am quite happy to scrutinise it. I am very happy to do it. I understand other members will need to have briefings, consult with stakeholders and all the rest of it, but I have absolute confidence in my ability to be able to do it at no notice anytime—but that is not the point. The point is that there should be proper processes undertaken by the house. All 36 members of this place need to be able to understand it. It is no good to give members a bill with no notice on a matter that goes to the heart of state agreements—I will deal with this later today when we get to the second reading speeches—with significant interference with state agreements, the rule of law, sovereign risk and the like, but the government is saying, “No, we can’t possibly see it go to a committee. We could see the Bell bill go, but not this one here. It absolutely cannot be done.”

Members, frankly, at the end of the day, I know how this is going to play out. What is going on at the moment is actually a pathetic charade for democracy. It is a pathetic display, and I distance myself entirely from this process. I absolutely support Hon Aaron Stonehouse’s bid to have this go before a committee, which is consistent with how Labor Party members wanted this type of extraordinary legislation dealt with when they were in opposition, but they are such hypocrites that they will not allow this to happen with this bill, and their only defence is to say that there is a real risk of delay, which in itself demonstrates that the bill is going nowhere fast. They have already lost the case against Mr Palmer.

Later today, I will say more on the issues of quantum and the like. I just ask members to seriously show some sense of pride for their performance and to support the obvious motion by Hon Aaron Stonehouse, or otherwise proceed as was originally intended by the government and deal with this matter next week, when members have had an opportunity to consider the bill.

**HON COLIN TINCKNELL (South West)** [12.59 pm]: Madam President, I have listened with interest this morning and this afternoon. I have heard people say that this is not about political gain, but I think I have been here long enough to know that it is. When I became a member of this house, I was very proud to become a member of this house, because this is a house of review. I made a promise to the people who elected me into this house to properly look at each piece of legislation and make decisions based on the information.

*Sitting suspended from 1.00 to 2.00 pm*

**Hon COLIN TINCKNELL:** As I mentioned before the lunch recess, One Nation members were in this house in 2002 during the Gallop government when this state agreement was debated and it was suggested it should go to a committee. Years later, I imagine that we will not be changing our view and we will obviously be supporting the amendment to the motion.

Let us forget about Clive and take Clive away from this. The legislation is fundamentally undemocratic and will set a precedent that facilitates corruption. That is what it will do. It is retrospective legislation to remove the rights of an individual. That is what we are doing. As a member of this house, I cannot see how I can be any part of that. All those years ago the Labor government signed a legally binding agreement, but 18 years later it wants to legislate it away. That is what is happening.

When people say that there are no politics at play here, there is; that is just rubbish. Members and parties in this chamber will vote a certain way on this motion because of their beliefs about longstanding agreements with mining



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companies on state agreements. To my mind, there is no doubt that politics are very much at play in this house. When I hear that rhetoric, realising that I am a member of the house of review, I think: hold on, I made a promise to the people who elected me and my fellow member that we would scrutinise each piece of legislation. Scrutinising legislation under the bullying tactics of the Leader of the Government in this house, who said that we have to do it today and it has to be done tonight and that we cannot send it to a committee or debate it even next week, is absolutely ridiculous. That is not what this house is about. This house scrutinises legislation and we need time to do that properly. We need to consult with legal practitioners, we need to talk to people and we need to look at the bill. It is a substantial bill and that cannot be done under pressure in one night. When the Voluntary Assisted Dying Bill came to this house, we were told it was perfect; 50 or something amendments later, it went back to the lower house. Again, the government is telling us that this legislation is perfect and we must pass it now. I do not see that. I know that when we rush things, mistakes are made. I believe that mistakes have been made in the lower house and, unfortunately, like Hon Nick Goiran, I think a major mistake will be made in the upper house when the final vote on this legislation is taken either tonight or tomorrow morning. Who knows, maybe it will be tomorrow night if we sit continually until this legislation has been debated and voted on.

I cannot in good conscience support the government getting this done tonight and that is why I fully support the amendment to the motion. As I said, my responsibility to the people of Western Australia is greater than what may be playing out in the media or in the public. We have heard no good reason why it needs to be done in a hurry, just that it has to be. I sometimes wonder whether the government is worried about public perception. If members listen to 6PR and other stations, they will hear people saying that the government is wrong to do this. The government has got this wrong. Maybe “Mr 89 per cent” is worried about that. I think that is also coming into play here. When they say politics has nothing to do with it—rubbish. It has everything to do with it. It is about this legislation going through quickly. But we need to properly scrutinise this bill. Hon Aaron Stonehouse is correct and this amendment to the motion should be supported. It is the wise and the correct thing to do. When members look at their own conscience, they should make sure that they have done everything they can to get this right. If we rush this process, there is a pretty good chance a mistake will be made. I have a feeling mistakes will be made in this house either tonight or tomorrow morning.

Amendment put and negatived.

*All Stages — Standing Orders Suspension — Motion Resumed*

**The PRESIDENT:** Members, that amendment to the motion has been defeated and we return to the earlier motion moved by the Leader of the House to suspend standing orders. The question is that that motion be agreed to. Those of that opinion say aye and to the contrary no.

Question put.

**The PRESIDENT:** I think the ayes have it. Members, as I referred to earlier, this motion requires an absolute majority. Having counted the numbers in house, there is an absolute majority, and so that motion has been agreed.

*Point of Order*

**Hon NICK GOIRAN:** Madam President, I just ask whether the most recent sequence of events is in accordance with the standing orders. I am sure that I heard at least one dissenting voice.

**The PRESIDENT:** Yes, of course. Thank you for reminding me. My error; I was treating it as a normal call for division. I should not have done that. The member is correct; there was a dissentient voice.

*Debate Resumed*

**The PRESIDENT:** There being a dissentient voice, it is necessary for the house to divide.

*Division*

Question put and a division taken, with the following result —

Ayes (19)

Hon Martin Aldridge  
Hon Jacqui Boydell  
Hon Robin Chapple  
Hon Tim Clifford  
Hon Alanna Clohesy

Hon Stephen Dawson  
Hon Colin de Grussa  
Hon Sue Ellery  
Hon Diane Evers  
Hon Laurie Graham

Hon Alannah MacTiernan  
Hon Kyle McGinn  
Hon Martin Pritchard  
Hon Samantha Rowe  
Hon Charles Smith

Hon Matthew Swinbourn  
Hon Dr Sally Talbot  
Hon Alison Xamon  
Hon Pierre Yang (*Teller*)

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Noes (10)

Hon Jim Chown  
Hon Peter Collier  
Hon Nick Goiran

Hon Rick Mazza  
Hon Michael Mischin  
Hon Robin Scott

Hon Tjorn Sibma  
Hon Aaron Stonehouse  
Hon Colin Tincknell

Hon Ken Baston (*Teller*)

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Pairs

Hon Darren West  
Hon Adele Farina  
Hon Colin Holt

Hon Simon O'Brien  
Hon Dr Steve Thomas  
Hon Donna Faragher

Question thus passed with an absolute majority.

*Second Reading Resumed*

Resumed from an earlier stage of the sitting.

**HON PETER COLLIER (North Metropolitan — Leader of the Opposition)** [2.12 pm]: Thank you, Madam President. I have just received something that the Premier has just tabled in the other place regarding the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. Sorry, I do not know what it is, but it is to do with this bill. Could someone follow up on that, thank you.

Not to take too much time on this bill, but I intend to make a few comments about the bill's implications and state at the outset that the opposition will not oppose the bill. We appreciate and acknowledge not only the significance of the bill's potential financial implications for the state of Western Australia, but also, on the other side of the ledger, the implications of the precedent it sets. Never before has such an action been taken by a proponent of a state agreement—never before. That is why this is such a significant issue. It, essentially, deals with the damages claims by Mr Clive Palmer against the terms of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act 2002, which stem back to a previous Labor government. However, the genesis of that was well before that in terms of the iron ore deposits in the north. The claims for the current action were submitted in August 2012 and June 2013 and they relate to the Balmoral South iron ore project—BSIOP—which then had a life span of 28 years. This claim was first rejected and then significantly conditioned by the then Premier, Colin Barnett. That rejection was based on 46 conditions, and it is important to remember that. That is where it stemmed from. As a result of that decision, Mr Palmer is making claims for billions of dollars from the state of Western Australia for what he deems is lost revenue. From all accounts, and certainly if we accept the information in the second reading speech, Mr Palmer has not adopted a cooperative approach during this process in any attempts by both governments to try to settle the issue.

It needs to be recognised also that Mr Palmer and Mineralogy intended to sell the BSIOP project to Chinese government-owned corporations. As I said, former Premier Colin Barnett rejected the proposal because it proposed to undertake works that were already approved to be undertaken pursuant to another project that is under the same state agreement, and that cannot be done. Also, the proposal failed to provide sufficient detail, clarity and firm commitments. They were the 46 conditions the then Premier agreed to. In a number of public comments the current Premier has made since this has become public, he has acknowledged that Colin Barnett's decision was the correct decision.

There has been no communication over the ensuing years with both governments and Mr Palmer, even though the ruling from former High Court Judge Michael McHugh found in his favour in May 2014. As I said, Mr Palmer is now seeking considerable damages against the Western Australian government for those 2012 decisions. He is seeking \$10.72 billion from this decision, another \$11.37 billion from the loss associated with being unable to sell any project required under the state agreement, interest of \$5.21 billion and so on. The total impact then is close to around \$30 billion. In essence, the claims being made against the state for perceived breaches of the state agreement are to the tune of \$30 billion.

The second reading speech is quite comprehensive. I will not go through all the clauses yet again. As I said, this has been done to death, particularly over the last couple of days. However, I encourage members to avail themselves of the second reading speech, particularly clauses 11, 12, 13, 14, 15, 16 and 17 about the specific areas of the bill that attune to the claim by Mr Palmer, and also regarding freedom of information. I have to say that the freedom of information provision raises the hairs on the back of my neck somewhat, Leader of the House. I would like a bit more information on why the freedom of information provision is broad based. Again, in a period of openness and transparency, not just from this government but the Western Australian government as a whole, the notion of putting a line through freedom of information raises some concerns, particularly given the short time we have had to consider

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this legislation. How wideranging is it and what implications does it have for other areas? Who will it exclude from an FOI perspective?

The second reading speech indicates that this bill does not give rise to sovereign risk. That is something I mentioned in my earlier comments. Again, we can assume from the government's perspective and from the second reading speech that that is sacrosanct, but I would like it confirmed, please, that there is no sovereign risk associated as a result of this bill. The second reading speech states —

Since the 1950s, the state has entered into over 70 state agreements and it currently has over 50 state agreements on foot. In the history of state agreements, no other state agreement proponent has sought to challenge a minister's decision about a proposal or taken the state to arbitration on any matter, let alone a minister's decision to reject or comment on a proposal that has been submitted. Therefore, this bill does not create a risk to other current state agreement parties or to future investors. Other state agreement parties and proponents deal properly and appropriately with the state in the terms of their proposals.

That is nice and comforting, but I want clarification and I will perhaps interrogate the sovereign risk issue a little further in the Committee of the Whole House. Again, it is a sacrosanct issue. I have had some communication with the Chamber of Minerals and Energy, which, as I understand it, is quite comfortable with this bill, but the sovereign risk aspect of it is something that I would like to pursue a little bit further. It also states —

This bill affirms the terms of the state agreement and leaves open to Mineralogy and International Minerals the right to submit proposals for the Balmoral South Iron Ore project should they wish to do so. This bill will remove the capacity for Mr Palmer, Mineralogy and International Minerals to pursue litigation and damages claims regarding prior decisions of the then minister and the state more broadly, or damages for any future decisions of the minister on any new proposals submitted, or purportedly submitted ...

Quite frankly, the opposition does not have any issues with that, but we are concerned about ensuring that every single t has been crossed and every i dotted by the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill and that it will unambiguously solve the problem. As I mentioned when we debated the referral motion, that is good if we take the government at face value. I am sure that its legal brains have been providing it with advice on the bill. But as I said, I would hate to think that we will get down the road and the man from Queensland, Mr Palmer, has a win. That would be the worst outcome. I do not care about it from a political standpoint; I just care about it from a Western Australian standpoint. Again, I am sure that we have some legal minds on this side who will interrogate the bill even further during Committee of the Whole to ensure that there is no ambiguity in it, that the government is absolutely sure that this legislation is going to resolve the issue, that there will be no issues with regard to a High Court challenge, that the government is rock solid on its advice and that this bill solves the problem.

I will make other comments about the lead-up to this legislation and the 2002 state agreement, because I want to make sure that people understand that this agreement, like every state agreement, had bipartisan support.

**Hon Robin Chapple** interjected.

**Hon PETER COLLIER:** No, bipartisan support.

**Hon Robin Chapple** interjected.

**Hon PETER COLLIER:** I will always remember Hon Robin Chapple for one thing; that is, he has consistently prosecuted arguments against state agreements. I respect him for that. I do not agree with him, but I respect him for it.

**Hon Robin Chapple:** You need to read the debate in 2002, which I will allude to shortly.

**Hon PETER COLLIER:** That is before the member had a sabbatical.

**Hon Robin Chapple:** Yes.

**Hon PETER COLLIER:** On Tuesday, 11 June 2002, during consideration in detail on the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Bill 2002, none other than Hon Colin Barnett stated —

There was some debate on clause 1 several weeks ago. At that time I drew attention to the full title of the Bill, which is about implementing an agreement between the State and Mineralogy Pty Ltd. However, I questioned all the other parties to this agreement. Austeel is the name of the project, but the agreement also involves Balmoral Iron Pty Ltd, Bellswater Pty Ltd, Brunei Steel Pty Ltd, International Minerals Pty Ltd and Korean Steel Pty Ltd. That is a most impressive set of names. However, they all essentially seem to be associated with the one address.



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**Hon Robin Chapple** interjected.

**Hon PETER COLLIER:** Was that an unruly interjection?

**The ACTING PRESIDENT (Hon Martin Aldridge):** Order, members! This is going to be a very long debate and we are just commencing it. Can we please concentrate and try to resist interjections?

**Hon PETER COLLIER:** Thank you, Mr Acting President. I will not take up too much of the house's time. It continues —

That is clear in the schedule, which states the address as Mineralogy House, Level 8, 135 Wickham Terrace. I have never been to Wickham Terrace in Queensland, but it seems that a remarkable number of major international mineral houses are located at Level 8, 135 Wickham Terrace. I asked about the status of those companies. I did not do so in a flippant way. I imagine they are there for various marketing, agreement or subsidiary arrangements that Mineralogy Pty Ltd may wish to enter into. The point I made then and restate now is that I do not believe that the State of Western Australia should enter into and ratify through the Parliament agreements that are essentially with shelf companies.

Mr Brown, the minister at the time, stated —

In the interim period I have had the opportunity to further check on the matter raised by the Leader of the Opposition. In speaking to the main proponent, Mr Clive Palmer, about the structure of the agreement and the use of what are effectively shelf companies, I was assured that this arrangement was agreed between him and the former Minister for Resources Development. That former minister is now the Leader of the Opposition.

They had a bit of a tete-a-tete on that, but then Hon Colin Barnett responded —

It is true that the negotiations about the Fortescue magnetite deposits—the Mineralogy project—have been going on for several years. It is true that I, as a former minister, and the department had agreed to most of the provisions. However, I want to place on the record that, while Mr Palmer had a range of shelf companies that were continually variable, I did not recommend the signing of this agreement. During my time as minister I considered it to be premature. Time will tell whether this is so today —

I will say it is. It continues —

It is significant that the former Government did not sign this agreement, and I assure members, as a member of Parliament, that I would not have brought an agreement that included a whole host of shelf companies into this Parliament to be ratified. If Mr Palmer, or Mineralogy, wish to have subsidiary arrangements, or to hive off part of the project, there are mechanisms that he can legally use to do that. That is his corporate business, which he can do with co-proponents, investors or people supplying equipment and technology, or to whom he may be marketing iron ore or its derivative products. It is not for the State, nor this Parliament in particular, to give status, through legislation, to shelf companies. I do not criticise; I can understand why Mr Palmer may want a series of shelf arrangements, but we are effectively adding value and status to shelf companies by ratifying the Bill in this way. I will not go on and on about that, but I assure the minister that I would not have brought to this Parliament a Bill containing an agreement between the State of Western Australia and shelf companies.

That is pretty much coming home to roost now. At the time, there was some considerable support for Mr Palmer and the bill, and on 12 September 2002 it was provided by a former member of this chamber—someone whom I really respected as a member of Parliament—Hon Ken Travers. He was the parliamentary secretary at the time and he stated —

I thank members opposite for their support of this Bill. In the light of the debate, it is worth reminding members that this Bill, and the agreement that goes with it, has been in the developmental process over a considerable period. Members will note in *Hansard* that my speech in the second reading debate stated that —

Negotiation of the Mineralogy agreement was first approved in 1994 and was essentially completed in 1998. At that time, the minister of the day advised Mineralogy that approval would be sought from Cabinet for parliamentary drafting and for the agreement to be executed once he was satisfied that commercial negotiations in regard to at least one project were successfully completed and the project proponents had made substantial progress in obtaining the various government approvals.

I urge members to go back and read those points.

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There is no doubt that we have been successful in attracting developments to Western Australia with a number of those developments under state agreements. One of the reasons for that success is that this State is seen to have a low sovereign risk. Sovereign risk is a broader term than the term “insurrection” or “civil war”. It is also about companies having confidence that if they negotiate and reach agreement with a Government, a new Government will not begin the negotiations all over again. If the agreement were absolutely horrendous, that would happen. However, this Government believes that the agreements and negotiations have been good ones. I agree with the Leader of the Opposition that we cannot go back and keep the good bits of the agreements that have been agreed to over a long period and throw out the bits that we do not like. That is not negotiating in good faith by anybody’s measure. Members must keep these matters in perspective.

The Keating review referred to state agreement Acts and doing away with them. The Government is examining that issue and the recommendations of the Keating review. At the time of the review, two projects had been involved in the process for a considerable time; this one and the laminated veneer lumber plant. This State would be far worse off if it was to suddenly walk away from processes into which companies had put considerable time and effort.

The company involved in this agreement is an Australian company. Mr Clive Palmer has been trying to put these projects together and he has managed to bring together the support of a range of international companies, which are outlined in my second reading speech. The professional officers in the department believe that all the prerequisites are in place for the state agreement Acts to be supported. We hope that Mr Palmer is successful in this proposal. We believe he will be but circumstances always change. However, a team has been brought together to get the first proposal up and running. We need to support people like Mr Palmer who are prepared to have a go. In the other place, the minister certainly wished every success for people who try to create jobs in Western Australia.

**Hon Aaron Stonehouse:** Happy days.

**Hon PETER COLLIER:** They certainly were. As I said, my whole point in doing that was not to make light of anything that Hon Ken Travers said. However, what Hon Ken Travers said is exactly what I have been expressing today. Everything could be fine and we think everything is wonderful, a deal has been done, every t is crossed and every i is dotted, but it all falls into a heap unless we get it meticulously right. That is why I hope this legislation is watertight.

I have a lot more to do, but I am conscious that a large number of people want to speak on this motion. I might get a chance during Committee of the Whole to go through a few of the other things. I would like to identify a number of other areas with regard to the bill, but I would like to spend a lot more time in the committee stage rather than wasting time reading in newspaper articles et cetera in my second reading contribution.

As everyone knows, the stakes with regard to this legislation are extremely high. The ramifications are absolutely profound and that is why we must get it right. As I said, the government situation remains pretty much: “Trust us.” We do want a positive outcome. We like to trust the government and assume that we will get a positive outcome. I like to think that the government is confident that the bill will achieve a positive outcome for Western Australia. That is what I genuinely like to think. I have asked this a couple of times now: when the Leader of the House responds—I know there are no guarantees, even in the black and white area of law—I want her to explain to me and to the house why she or the government feels that this legislation will provide a positive outcome against this action by Mr Clive Palmer for the people of Western Australia. That is fundamental to this whole bill. In normal circumstances, I do not think anyone in this chamber, including members opposite, would ever, ever consider the prospect of bulldozing through this place a bill of this magnitude in the short space of time that we have had over the past three to four hours, and certainly in this Parliament over the past two days. It would be unheard of. But I am very conscious that this is an extraordinary circumstance. We are from the upper house; it is in our DNA. The notion of rolling things through does not sit kindly with us; it just does not. We see the nonsense that members in the other place send up to us. It was the same when I was sitting in that chair opposite. They would send us rubbish legislation and moan and groan because we would send it to a committee, fix it, send it back to this place, and then send it back to them, and they would accept the amendments in five minutes. This happens time and again, and pretty much every single piece of legislation that comes to this chamber ends up with some form of amendment. It is done so, in the end, in good faith, and it is accepted by the government. This legislation is as complex as we will ever find, but the stakes are higher than anything that any of us have ever dealt with in terms of the implications for Western Australia, and I really hope that the government is watertight on this. I know the house has made its decision about referring it to the committee, so that opportunity no longer exists, but we will have an opportunity in the committee stage of this bill. If we are going to keep it as tight as we possibly can for the government and for everyone in this chamber, it would be helpful to have a watertight guarantee from the Leader of the House, as much as she possibly can, that the government is very, very confident in its space.



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As I said, the intent of the opposition with this bill is to ensure that the government is successful in defending the action from Mr Clive Palmer, that Mr Clive Palmer stays in Queensland, and, quite frankly, that we are never again placed in a situation in which a state agreement is brought into such disrepute. With that, the opposition will not oppose the bill.

**HON AARON STONEHOUSE (South Metropolitan)** [2.35 pm]: I will be very quick. I have no intention to hold up this debate unnecessarily. I have made some of my points already. The bill we are dealing with today, the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020, does some pretty remarkable things—some pretty extraordinary things. It strips a private citizen of some of their most fundamental and basic rights. It strips away their right to natural justice. It strips away their right to procedural fairness. It forces them to indemnify the state. It up-ends some of the most bedrock principles on which our liberal democracy is based. It is the kind of legislation that we should not pass lightly.

Of course, earlier today the house determined that we will deal with this bill today in a few short hours because it is so urgent. However, I have just learnt that according to *The Australian*, Clive Palmer has successfully registered his arbitration claims in the Queensland Supreme Court, so is it too late? I do not know; that is unclear to me at this point. I look forward to getting some answers from the government on that because apparently that is precisely what we were trying to avoid by expediting this bill. It is so important, of course, that mid-debate we broke for an hour for lunch. Maybe it is not as urgent as we thought—who knows?

These are not problems for me to worry about at this point. I have my objections to this, but ultimately this falls to the government. This is on the government's head. If we are back here in a few years and we are dealing with a situation in which Mr Palmer has raised a constitutional challenge and the High Court has ruled in his favour, that will be on the government. What will be the consequences then? If this \$30 billion figure is based partly on interest accrued over the past few years, what will it be in a few years after this is litigated in the High Court and after a constitutional challenge is settled there? We have been denied the opportunity to properly explore those kinds of issues, so we have to legislate blindly.

My objection gets down to this, and I feel silly that I have to spell this out; I really do. It feels ridiculous that I have to say this, but I will say it now: someone's popularity, how much somebody is liked or disliked, is not a determining factor in whether they have access to equality under the law. This idea really should not be radical. Unfortunately, just by saying that, one will be ridiculed. One will be criticised in the press and abused and hounded for saying something like that. It is not a complex idea; it is not a radical idea. It is an idea we have had for a few hundred years now at least under our system of government. Everybody is entitled to natural justice and everybody is entitled to procedural fairness, even people like Clive Palmer, who is apparently loathed across Western Australia and loathed by the Premier and the Attorney General. Even people like him have rights. To pass legislation like this, to retrospectively take away his right to arbitration, his right to justice and his right to procedural fairness, is something that I cannot be a party to. I cannot be a part of something like that in good conscience.

I will not stand in the way of this bill. If this is the way the government wants to go, and if the opposition and other parties support it, fair enough. I understand that I am in the minority here. I will not stand in the way of it if that is what they want to do. However, mark my words: if we are back here in a few years and this has only made things worse and we are staring down the barrel of a High Court ruling in favour of Mr Palmer over a constitutional challenge, we had an opportunity to look at these issues and the government rejected that opportunity. It declined that opportunity. There is not much more I can do. I will have some questions in Committee of the Whole House, but for now I suppose we might as well get on with this. As bitter and painful as it is, I suppose we have more work to do.

**HON JACQUI BOYDELL (Mining and Pastoral)** [2.40 pm]: I rise to add the perspective of the Nationals WA on this Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020, to allow some debate and clarify some issues that I think all members, let alone the people of Western Australia, are seeking some answers to. The year 2020 seems to be one of extraordinary legislation and unprecedented circumstances, and this most certainly is a piece of legislation that sets those two challenges before members of this house today. After, really, a 48-hour period from when the Premier and the Attorney General advised the Legislative Assembly that they would seek this course of action on behalf of the government, we find the bill being debated in the Legislative Council today. That in itself is an unusual circumstance; nonetheless, during the pandemic the chamber has dealt with pieces of COVID-19 legislation in that manner. As nimble as members are in supporting the government's response to the pandemic, this bill is something entirely different, so I will take some time to step out the National Party's view. I will highlight some of the concerns that the National Party has always held with state agreements, which members will not be surprised about, and the sovereign risk aspect that one could either agree or disagree with. The Premier and Attorney General taking the action that they have in this case maybe provides some uncertainty and therefore a sovereign risk to the state.



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The Attorney General's office briefed the National Party on Tuesday night, and our party met on Wednesday morning at 11.30 to discuss this bill. It was an interesting and in-depth conversation about how to deal with something like this, which none of the members of our party have had to deal with previously, and I doubt any members of the other place or this house have had to either. I say from the outset, with all the concerns that I will raise and that other members have raised already, that the Nationals will support the progress of this bill through the house, but I want to put on the record, as I did earlier today, that it does not sit comfortably with me and my National Party colleagues. Unfortunately, there are times and extraordinary circumstances when the passage of legislation through the Parliament is not perfect and we do not always get adequate time to properly scrutinise the bills before us. That is the nature of the Parliament, and sometimes the people of Western Australia have to rely on the Parliament dealing with those extraordinary circumstances in a responsible manner, considering the response the government has chosen to take in this case, and to ensure we do not place the state of Western Australia in an untenable position. I think that is at the forefront of the minds of all members as we debate this bill. Unfortunately, we find ourselves in that circumstance today. This is not perfect, and there will be other times in the future when debate on legislation is not perfect and we will not have the comfort of the amount of time desired to scrutinise legislation. That is just the way that it is, unfortunately.

Since coming to opposition 2017, the National Party and, indeed, the Legislative Council, has played an important and sometimes difficult role in dealing with extraordinary circumstances with some really sensitive social issues in the community and responding in a timely manner to issues facing the state. As I alluded to earlier today, we have had to keep our heads while those around us are trying to pull us in many different directions. That is really difficult and that is why it can be really hard to be a member of Parliament. But we have been able to do it as members of this chamber, and that is what we are being asked to do today as well. There will be many armchair critics that tell us we got our decision wrong, but it is up to the members of this house to make their decisions and vote. We have that vote in this house today.

We have had no time to interrogate this bill, seek any legal advice or test the strategy that the government has chosen—I emphasise—to pursue, and I understand the government had a couple of different options to pursue. I hope that is the case, and I ask the Leader of the House to clarify that in her response to the second reading debate. Members of this house and the other place, particularly from the opposition, have not had the available resources of government. I hope that members, including backbench members of this government, have given themselves some comfort that their executive of government has got this decision on the path it has chosen right. We, as members of the opposition, have to put some trust in that decision, but we also have to scrutinise it today. I think the Leader of the House has heard very loudly the concerns of members on this side of the chamber about how the government came to that decision, what the other options available were and why this course of action was chosen. As has been highlighted previously, should there be an appeal by Clive Palmer or Mineralogy in this case, this debate will be referenced, and I think it is very opportune for the government to be able to put on record why it chose this decision and why it is asking members of the opposition to support it. I think it is important to examine the circumstances under which we are debating this legislation today and the way the opposition has been brought in to contribute to and participate in this debate. I want to make it very clear for the record of the debate in the future and also for people outside this house just what extraordinary circumstances the members of this house have been under in having to consider this legislation today.

From the outset, I find the claim made by Mr Palmer to be quite extraordinary. There is no doubt that the majority of people I have had contact with about this topic share a similar view, and a similar disdain, that one person, no matter who they are, would seek that sum of money from the state. I think that rests very uneasily with people. It is simply extraordinary for Mr Palmer to behave in the manner in which he has. I also recognise the contact I have had from people in Western Australia, and my electorate in particular, who say that Mr Palmer has a right to access our legal and justice system, and I agree with that, but it cannot be denied that the extreme nature of the demands that Mr Palmer has put on the state government have seen many Western Australians come to this issue with disdain. The government has therefore—rightly or wrongly; it is its decision to make—put forward the argument that because of the extraordinary nature of Mr Palmer's claim and his behaviour, the remedy and the response to that problem is justifiably extraordinary as well. I want to be really clear about what this legislation means and what we are being asked to agree to in supporting this bill. I am sure that the Attorney General will do his best, and has tried to do his best, to suggest that this could be seen as a normal process that might be done again, and that it is just something we have to deal with. No-one I have spoken to about this legislation believes that it is in any way a normal process, and they do not want to see it happen again, so it is indeed a sensitive issue for the government in respect of the way in which it is managed. Many people will be waiting with bated breath on the words of the Attorney General, I am sure.

The Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 will remove the ability of Mr Palmer, Mineralogy and International Minerals to pursue their claim through the court system. That is a serious step to take, because it is a fundamental right of every Australian citizen. The one aspect of this legislation that most people who

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have contacted me do not agree with is this decision of the government. The bill will amend a state agreement act. In principle, I do not disagree that governments should have the capacity to amend state agreements—I have said that many times in this place—but the way in which a state agreement is amended is, I guess, a matter for the government.

The Attorney General says that the bill does not give rise to sovereign risk and does not create any risks for current state agreements or the parties involved in those state agreements, or for any future investors in the state, and he says that with great conviction. However, just because he says that, it does not make it true. I have also had contact with the Chamber of Minerals and Energy of Western Australia, which told me that it understands the complex situation the government finds itself in, that it understands the government's actions in dealing with this complex issue, and that it does not believe that this legislation will affect future investment in Western Australia. I hope that is correct because sovereign risk, as put by the government, is about instability around the negotiation of state agreements in the future. Time and again this government has said, "Oh, no, you cannot possibly review state agreements because you will create a situation where sovereign risk is an issue for the state." If the government is going to unilaterally change a state agreement and deny the proponent any legal action in response, there is no greater sovereign risk than that.

There are concerns, and will be concerns, for future proponents of state agreements. The 50 or so proponents who are currently in state agreements with the state of Western Australia might be a little uneasy today. Members in this place have had to view the government's decision-making from the outside looking in, because we have not been given access to the legal advice and internal conversations the government has had with the State Solicitor's Office. Although we are, in effect, closer—we are not as removed as the people of Western Australia—we are looking at the optics of this decision-making from outside and it might appear to industry that the government has just decided that it does not like Mr Palmer and his actions so it is going to take away his capacity to arbitrate or negotiate a legal process by amending his state agreement, which will mean that he cannot take any of those actions. I do not think a reliable, responsible government would do that if it wanted to see investment come into the state.

I reiterate that the Attorney General may try to say that this is not a case of sovereign risk, but just saying that does not make it so. The government needs to provide industry with some confidence that it will not take this action every time it does not happen to like a decision made by a proponent of a state agreement. That is a very dangerous space for any government to be in and it is not the sort of statesmanlike, nation-building behaviour that the people of Western Australia want to see from their community leaders. Although there may not be any shockwaves being felt in the industry at the moment, that could build in the future if the government does not provide some confidence in that space.

This government, in particular, has made a point of avoiding conflict with the mining sector and of avoiding the contemplation of any changes or reviews of state agreements at all during this term of government, except in the case of Mr Palmer. That is unusual, and needs to be highlighted, I think.

**Hon Robin Chapple:** It was also done with Lang Hancock many years ago.

**Hon JACQUI BOYDELL:** I am talking about this government.

That raises the question: if the government of the day does not agree with an outcome or an action, might it also be subject to a change to an act of Parliament to which it does not agree? We find ourselves in very tenuous territory. My Nationals WA colleagues and I can speak with some experience on the issue of the review of state agreements, because the Nationals WA bore the full brunt of a campaign against our proposal before the last state election to amend legacy state agreements. We remember very clearly the concerns raised by industry about any notion or proposal to change state agreements without consultation with the proponent with whom the agreement was struck; yet that is the situation that faces us today.

The third matter in this legislation that might cause concern and that may, indeed, raise some eyebrows is that it creates a general regulation-making power and provides the Governor with the ability to make orders to deal with various circumstances, including any matters that may not be adequately or appropriately addressed by this bill. That is unbelievable. I said to someone yesterday, "Just when I think things won't get any weirder, they get slightly weirder." That is an exceptionally concerning aspect of this bill for any legislator, because we are basically abrogating our responsibility for decision-making. That is a really extraordinary position to find ourselves in. We are essentially allowing the government to write and enact its own rules without the requirement to revisit Parliament. To me, that raises some really serious concerns.

This is a serious matter on which, I hope, many lawyers will work to provide their solutions, but it may well be that future governments will face unforeseen circumstances as a result of today's decisions. That part of the bill is not something that any Parliament would ordinarily contemplate agreeing to. As I said at the outset, we find ourselves in yet another extraordinary and unprecedented time in respect of the legislation before the house. I do not believe any Parliament at any other time would consider or contemplate agreeing to it.



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I also understand that the government has contemplated Western Australia's relationship with free trade agreements, and whether we or the commonwealth government might be in breach of those agreements. I therefore ask the Leader of the House in her response to provide some commentary and clarity around the government's decision-making and whether the government thinks there will be breach of free trade agreements for either Western Australia or the commonwealth. That is obviously an area of concern, particularly to industry, and there may be ramifications for Western Australia. Obviously, because the commonwealth is involved, that is an issue not just for Western Australia; it could potentially become a national or international issue.

There are some really serious parts to this legislation. I am not dismissing the principle of this whole piece of legislation. I am sure we will interrogate those parts of the legislation during Committee of the Whole. In contemplating what we are doing today, if the Leader of the House were to give members an opportunity to discuss those points and have those questions answered, that would be a good outcome.

I will not take up too much more of the house's time, but I want to go back to why the government has come to this point. The government has previously taken the position that it will not review state agreements unless both the proponents and the government agree and came together and negotiate that. Therefore, it would be exceptionally interesting to know why the government feels that it can do that in the case of Mr Palmer and Mineralogy. We in this Parliament have a duty to protect the Western Australian public. We have a responsibility to protect the finances of the state. We need to ensure that the state does not go bankrupt, or that the people of this state are not subject to higher taxes and charges for generations to come. I understand that it has been the absolute and paramount responsibility of the government to ensure that does not happen. This house also has a responsibility to ensure that does not happen. The government is asking members to support the option that it has chosen in response to this issue. Therefore, we will need to seek some of those answers during Committee of the Whole. We have a responsibility to support the government in its decision-making, because, at the end of the day, the responsibility rests with the government. In times to come, that may prove to be a good thing, or it may prove to have some challenges. The National Party will be supporting the bill, and I look forward to the contribution of other members when we get to scrutinise the legislation further during Committee of the Whole.

**HON RICK MAZZA (Agricultural)** [3.03 pm]: I also wish to speak on the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. The barbarian is at the gate. Earlier in the week, Mr Palmer was King Kong hanging off Dumas House, yesterday he was Dr Evil, and today he is a cane toad. What is the state going to do about that? We pretty much slam the doors shut, pull down the shutters, and hope he goes away.

We have been presented with this extraordinary legislation, which we have had a very short time to go through. The claim by the Attorney General is that the risk to this state is between \$30 billion and \$45 billion. However, we have to ask ourselves: how did we get to this position? Mr Palmer would need to substantiate his loss. He cannot just make an ambit claim and say he is out of pocket \$30 billion. He must be able to substantiate that claim. This matter has been before arbitration a couple of times to date. Mr Palmer obviously has some very real claims against the state, for the state to take the extraordinary step of the legislation that is before us. I think this is extraordinarily embarrassing for Western Australia. I do not know that we will be able to quantify the reputational damage that we will end up with over this. Already on Sky News last night I heard Western Australia referred to as a banana republic, because we do not follow our state agreements. A state agreement is no different from any other contract.

**Hon Alannah MacTiernan:** Do you think we should pay them \$30 billion?

**The ACTING PRESIDENT:** Order, members! As I expressed earlier, this will be a long debate this evening, and it would help if everyone in this chamber heard the second reading contribution in silence and listened to the member on his feet.

**Hon RICK MAZZA:** We are now presented with this extraordinary bill, which goes against all the established processes that we have in a democracy that recognises and respects the rule of law. I would imagine that a state agreement, like any other contract, comprises a series of clauses that have particular requirements for each of the parties who enter into that contract. The contract itself, which was established by the Gallop government in 2002, was obviously deficient. It was flawed. It has allowed Mr Palmer in this case to make a claim against the state at this level. I am very, very concerned that Mr Palmer might be successful. The damage to the state would be irreparable. I can understand why the state government is in a state of panic and trying to get this bill through.

The second reading speech refers to some of the clauses of the bill. It states —

Clause 10 terminates any arbitration which the state, Mineralogy and International Minerals are party to and which concerns a disputed matter.

We are going to legislate to get rid of the arbitration. It states also —



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Clause 11 provides that the state, its officers and agents will not have any liability of any sort in respect of the arbitrations ...

We are going to legislate indemnities to protect officers of the state and the state itself against prosecution. It states also —

Clause 12 prevents any appeal or similar action against the conduct of the state.

We are going to legislate that there will be no appeals process. It states also —

Clause 13 removes the application of the Freedom of Information Act.

So we cannot even know what went on as far as this legislation is concerned. It is all very cloak and dagger. It states also —

Clauses 14 and 15 provide further protection for the state by creating statutory obligation on Mineralogy, International Minerals and Mr Palmer and any person who brings, or has an interest in, proceedings connected with the disputed matter, to indemnify the state against such proceedings ...

Anybody who brings proceedings—Mr Palmer or one of his companies—will have to indemnify the state against those proceedings. This is extraordinary stuff.

Further into the second reading speech, it states that Mr Palmer and his companies are not “normal”. What is normal? I think some of the members of the government who are promoting this could also be considered not normal. That is an extraordinary claim to make.

I have grave concerns about the very draconian and oppressive clauses in the bill. This is unprecedented. I am also very concerned about how this might play out in the High Court constitutionally. It is okay for the government to say, “We’ve got all the bases covered. We’ve got an army of lawyers swarming all over the bill to make sure there are no cracks anywhere.” However, it is very difficult to determine the outcome of litigation. That is one of the reasons this bill is before us. In the briefing I had yesterday, the concern was that we do not know how this might play out; and, if it plays out against the state, we are in deep trouble.

It would follow that even with this bill, if the matter goes to the High Court, there is still no guarantee that it will not go against us or that the very problems we have before us now will not be magnified tenfold. I do not know what the cost to the state in legal fees is so far or what the ongoing cost will be to continue to defend the state against the barbarian at the gate, because the litigation could go on for years and years. There are certainly lessons to be learnt out of this. At this point in time, I think the collateral damage will be with us for a long while, regardless of whether this bill passes and protects for a time.

I have not had the opportunity to go through the fine detail of the bill; however, I am sure we will spend a long time going through it in Committee of the Whole. There are some very good legal minds sitting on the benches of this Parliament who I am sure will skilfully work through the legislation. I look forward to hearing some of the issues that will be raised and will assist where I can, because this is a very complex bill. Mr Acting President, at this point in time, I will not indicate whether I support or do not support the bill. I am sitting on the fence and am interested to hear from other members to assist me with coming to a decision on something I have not had a lot of time to digest.

**HON ROBIN SCOTT (Mining and Pastoral)** [3.10 pm]: I rise to speak on the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. I do not know anything about the rules and regulations for changing a state agreement, but I know Clive Palmer. In fact, I had a ride in his Rolls Royce over in Maroochydore. The man is a self-made billionaire and he is not stupid. A person cannot be stupid and a billionaire—they are at either one end or the other. He is a very astute businessman and he knows when to fight and when to flee. He is no lawyer, but he does not have to be, because he has the means to hire the best lawyers in the country. Yesterday, I had a 15-minute briefing from the government. To be honest, the briefing gave me no confidence. It seems to me that we have a suck-it-and-see defence. The defence has so many layers that if Mr Palmer manages to break through one of the defences, we will all take a step back to the next level of defence. If we keep poking this guy with a stick, it will strengthen his will to win this legal fight.

I do not want my grandchildren’s children to have to pay a \$30 billion debt; however, changing the goalposts midgame is also wrong and would give other stakeholders no confidence into the future. Labor is changing a state agreement, not the law. Our laws are laid out and it is the law and the lawyers who will decide who wins and who loses. I will not be supporting this amendment bill the way it is laid out. Thank you.

**HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition)** [3.13 pm]: I rise to make a few comments of a relatively general nature about the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020.

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**The ACTING PRESIDENT (Hon Martin Aldridge):** Order, member. I am sorry to interrupt; can I confirm that you are the lead speaker for the opposition?

**Hon MICHAEL MISCHIN:** I understand that Hon Peter Collier is the lead speaker.

**The ACTING PRESIDENT:** The Leader of the Opposition has a separate time entitlement, so you can elect to be the lead speaker for the opposition.

**Hon MICHAEL MISCHIN:** In that case, I am the lead speaker, although I do not think I will take up as much time as will be available to me.

I have a number of concerns to raise. Perhaps we should start off by admitting that extraordinary circumstances require extraordinary measures in order to deal with them. It is not every day that the state of Western Australia faces alleged bankruptcy at the hands of a private litigant, if we are to accept what the government has told us—in particular, the Premier, who is not noted for being circumspect or moderate in his views when he has his blood up, and the Attorney General, who, as we know through reputation and we acknowledged yesterday, tends to exaggerate, get emotional, indulge and engage in hyperbole; loves rhetoric; and is prepared to say just about anything to make his case. So, yes, we accept that there may be occasions when the government needs to take extraordinary measures in order to meet an existential threat. It concerns me and, if I gauge the temper of the chamber correctly, the non-government side of the chamber that the attempt to meet this existential threat, if in fact there is one, has not been done with the cooperation of the parties that have a responsibility to represent their constituencies in this Parliament and the interests of the state in that regard.

The bill was introduced into the other place a couple of minutes after close of business in the eastern states in order to avoid a problem, apparently. It has taken some months of clandestine preparation under considerable security, for obvious reasons, if I understood correctly from the briefing I had this morning. However, those who have to make the decision on whether we support this extraordinary measure have not been brought into the government's confidence, nor was the cabinet, it appears. I understand that the Legislative Assembly on Tuesday evening had more notice that this bill would be introduced than cabinet had before deciding whether it would be introduced. That is astonishing. It appears that cabinet had to take the word of the Premier and the Attorney General to move this extraordinary measure.

Hon Nick Goiran and I had a briefing on this bill only this morning. Hon Nick Goiran has been occupied with other matters of an urgent nature that this government has brought forward and that the opposition and this chamber generally have attempted to accommodate in order to meet the problems that the government is facing on behalf of the state. However, I have not even seen a blue bill for this legislation. One was sent to me by email at 11.36, I think it was, this morning. I have not had a chance to print out the 110 pages. We were given an explanatory memorandum but no great detail about time lines or the history behind this matter. We are told that there have been arbitration rulings but we cannot see them because they are confidential. I accept that. We are dealing with matters on the run. I understand that members of this house, or at least members of the Liberal Party, have had about three verbal briefings over the last couple of days. On not one occasion has the Leader of the Opposition, as I understand it, let alone the leaders of any other party responsible to their constituents, been brought into the Premier's confidence and told, "Look, we've got a problem. This problem affects the people we represent—the state of Western Australia." On the other hand, we were presented with a bill, an explanatory memorandum and a lot of hyperbole in the second reading speech, and told that this is really essential legislation that has to be passed as soon as possible. We cannot even have a committee look into it because it is so urgent because this evil man who is suing the state and trying to bankrupt it—apparently that is his objective, according to the government—might do something.

Let us get down to basics. This bill affects a litigant against the state. We can leave aside who it is for a moment. There is a state agreement; it is a contract. The state entered into that contract. For all the talk about the nasty, self-serving litigant who is looking for his own advantage, that is what parties to an agreement and a contract do. When people contract, they expect their share. If they do not get it, there is usually a process by which it can be arbitrated according to law or they sue in the courts. We do not say, "This is a little bit self-serving. The person suing me for not completing my end of the bargain or not fulfilling the obligations of an arbitration is not a nice guy; therefore, we should stop him from getting it." If there is a systemic problem with state agreements and what has happened in this case, it needs to be addressed. Demonising one of the litigants is not the way that a state operates as a model litigant. One of the things that concerns me is the matter of principle. The principle is that this particular litigant, Clive Palmer, is a bad guy and therefore any measure should be taken to avoid paying him a dollar, which is what the Attorney General has said: "He won't get a dollar out of WA", never mind making a commercial settlement and using a rational approach to any of this. It is a matter of principle: "We don't like Clive Palmer; he is a political opponent; he is an eastern stater—even worse—and he is suing the state of WA under a contract we don't like because it is not operating to our benefit. Guess what? He might actually win because he has a good



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case; therefore, we have to do something to stop him.” That is what this amounts to. It appears that for some reason—we do not know exactly what because we have not had an opportunity to look into or have access to the material the government has—the state has got itself in a position in which it looks as though it is on the losing side, so it will change the rules. It will not just change the procedural rules and the like and give itself an opportunity to have a fair hearing; it is seeking to actually eliminate the rights of one of the parties to a contract. By reason of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill before us, it is seeking to ensure that any action that person takes to pursue their rights, selfishly or otherwise, will have to be indemnified by him, and that any action by anyone on the state’s part, even if it is criminal, will be indemnified and absolved. It is extraordinary stuff.

As I say, extraordinary times need extraordinary measures. I would be happy to look into this to consider and understand it. But that is what we are being denied, and it was reinforced to me at the briefing I had this morning. I thank the advisers from the State Solicitor’s Office and the adviser from the firm Clayton Utz for their information. I do not doubt what they are saying, but we need time to absorb and digest this and come to a view about which bits can or cannot be agreed to and whether they should or should not be agreed to as a matter of principle. That is what we are being denied.

We are told that this is not a precedent. The only way we can stop something from being a precedent is not doing it in the first place. What does it mean to say that this is not a precedent for anything else? Does it mean that the government has no intention over the next six months, during this term, to do something like this to someone else who is suing it, when it might cost the government money? Is that the precedent? Or is it saying that the Labor Party will never do this again if it is in government? Or is it saying that if at some time in the future a Liberal government is faced with a similar situation and takes this measure, the Labor Party will say, “Hey, you can’t do that”, and we will say, “Well, you did it back in 2020”, and the Labor Party will say, “Yes, but that wasn’t a precedent, because we said so”? Is that the way it will work?

There is no sovereign risk. The Leader of the House, the Premier and the Attorney General have said so, so it must be so. The Chamber of Minerals and Energy will not have a problem. I am sure it will not, unless one of its members faces the same situation in a couple of years. Just because the government says there will be no sovereign risk, does not mean there will not be one. I would have thought there would be. Is the principle of this bill simply that the government is worried—there is no certainty about it even in the second reading speech; it just might happen—that it might lose and there may be a payout of money it does not really want to spend? I do not accept for a moment that it will be anything like \$30 billion. I cannot imagine the opportunities from this mine are more than the state’s gross domestic product. However, if that is the case, we need to fix the problem, not leave it open for the future. There has been no evidence that it has been considered in that light.

We are told about the risk of this being delayed and properly scrutinised by this Parliament. We have heard that no delay is possible. All right; that needs to be explained further. If I understand it, part of the difficulty that the government has faced—this is what has brought it to a head—is that there have been programming orders by an arbitrator who has so far not agreed with the state’s position to resolve this matter in a hearing towards the end of November. The state is concerned that it is not able to put its case properly and it is worried about the decision that might be made. That is a risk with litigation and we do not eliminate it by ensuring that there is indemnity for the state in every case. But maybe we should, if that is the solution. It seems to me that this is likely to happen again. To say that this has not been done before by any party to a state agreement is all very well. It is up to them whether they enforce their rights, but I have not heard anyone tell me that despite the demonisation of this person. I should add that I have never met him and I do not particularly want to meet him. I have no interest in what he is doing. I do not like it, but that is by the by. If he has legal rights that he is trying to enforce, simply saying that he is someone that the Premier, on behalf of the state of Western Australia, has declared war against, hardly takes us anywhere. That makes it personal and that does not help in assessing the gravity of what is being proposed other than to fight this matter in the arena of public opinion rather than in a court of law, which is where it appears that Mr Palmer is trying to take it to deal with it. It appears that the state does not like that—I can understand that—and feels disadvantaged and the solution is to eliminate any possibility that he can exercise his rights into the future and retrospectively.

We are told that it would be fiscally irresponsible. That is what seems to be the touchstone for these sorts of measures in the future: “It will potentially cost the state an enormous amount of money; therefore, we need to stop it.” However, it does not prevent the problem. Hon Robin Chapple has argued against state agreements for decades. So be it. I think there is merit in the idea that was floated at one stage that a parliamentary committee ought to review state agreements as a matter of course. But if there is a problem with state agreements, they need to be fixed to ensure that this sort of thing does not happen again, not simply because people have not enforced their rights under them.

I will wind up by quoting something that was said in this Parliament. It is not an un-analogous situation. I will give some further details in a moment. It was legislation that also affected the rights of litigants. This member started by saying —



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The hypocrisy of this government knows no bounds.

...

... the government has no regard to the principles involved—the principles of the rule of law, an independent judiciary, and a civil society in which disputes between contracting parties are decided by an independent court system ...

The actions of the government in this case stand in stark juxtaposition to the recommendations of the royal commission into WA Inc. The independence and proper functions of the three branches of our democracy should be respected and adhered to: an executive branch that sets and executes policy; a legislative branch, which we all form part of here in this chamber, which debates the policy as presented in bills; and any disputes arising from that are to be determined by an independent judiciary.

Just think for a moment whether the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill meets any of those principles. The member continues —

Any government that decides to resolve disputes between citizens and corporations in this manner —

He was talking about the bill at the time —

can hardly lay claim to the title of a conservative government that respects the rule of law and a well-ordered system for the resolution of disputes between citizens.

This arbitration process is something that the state appears to have agreed to, and now does not like the way it is going. He continues —

It is completely putting aside one pillar of our democracy and saying, “It doesn’t matter; we have the numbers.”

It is a —

... brutal piece of legislation. It extinguishes property rights, not on just terms, but on terms that suit the government of the day ... In a very real way the government is outing the judiciary from the process of justice, as is happening with this bill before the chamber.

And by —

... outing the judiciary without any regard to justice, the government has no regard to justice.

...

... The core message that came out of WA Inc is that the government of the day bypassed and sought to out one of the important three pillars of our democracy. The government of the day decided to bypass this chamber—the legislature—and set up a number of off-budget entities through which dealings were done that this Parliament did not scrutinise or approve. The executive found ways to achieve its ends outside the true democratic process of coming to this Parliament and seeking authorisations and appropriations—indeed, that is why we are here today, in a sense. The big criticism made by the WA Inc royal commissioners was that the executive had bypassed the judiciary, which is one of the three pillars upon which our democracy is founded, the others being the executive and the legislature.

It is as though nothing has been learnt from that because we have a government today that says the solution to its problems is to bypass one of the other pillars of our democracy—the independent court system, or judiciary—and bring to this Parliament a bill that will cast aside all the contractual rights that the government of the day had entered into, with legal advice ...

The government is now saying that the way to deal with this is to bypass the regular way in which disputes are settled and take all the pieces off the table and institute the government’s own liquidation process.

That was the now Attorney General back on 17 June 2015, railing against something that was brought in by the last government that was modest by comparison to this. Every member of the Labor Party complained about how the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015 extinguished rights, how it was disrespectful to the dispute resolution system and how it affected the rights of litigation speculators. Over a period of some 20 years, litigation speculators were entering into agreements and trying to overturn them and then appealing and commencing proceedings in other countries and jurisdictions and sucking up the corpus of the amount that was in dispute between agencies of the state and sometimes myriad shelf companies. That was apparently very unprincipled. I remind members that back then, the government, of which I was a part—that was a bill that I was managing in this place—agreed to have that bill referred to the Standing Committee on Legislation of this chamber, even though there were risks with it, in order to satisfy the members of this chamber and allow them to do their job.

Hon Sue Ellery; Hon Nick Goiran; President; Hon Peter Collier; Hon Jacqui Boydell; Hon Rick Mazza; Hon Robin Chapple; Hon Aaron Stonehouse; Hon Colin Tincknell; Hon Robin Scott; Hon Michael Mischin; Hon Charles Smith

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It was referred in about mid-September for a month's report, it sought an extension and it reported mid-November. This is nowhere near as complicated as that.

I need to be satisfied and the government will need to tell members of this chamber and future generations and governments why this bill cannot have proper parliamentary scrutiny. We are being asked to take the government, once again, on face value. Once again we are being asked to listen to a Premier who has declared "war" on a litigant, a political opponent, and made allegations as if it will be a certainty that up to \$30 billion or more will be recovered. The Premier is now seeking to eliminate any prospect of someone who is in the process of enforcing the rights under a contract with the state and within the laws of the state, from having access to that process the state was agreeable to, and the judicial process, because the state does not want to pay that money, says that it cannot afford it and is worried that it might lose. The Attorney General, despite all the large talk back in 2015, thinks that a parliamentary committee doing its job and fixing up the legislation that he has put forward in a way that it has done until now, is "namby-pamby", presumably, rather than being histrionic, hysterical, exaggerating, emotional, irrational and demented.

Although we will not be opposing this legislation, because we are assured that it is in the state's interest, be it on the government's head. It will not be forgotten if this goes pear-shaped, and, if this is challenged, this government will have to account for it. I am most concerned about some of the provisions in this bill that seem to be able to cover up any prospect of finding out what the true story is behind the way it has come to us by limiting freedom-of-information access and the like. This is like a doctor burying his mistakes. If the government has mismanaged this—I do not much mind, frankly, whether it was the last government or the one before that or this one—and if there have been problems, such as criminal offences committed, that are going to be absolved, and if there are defects in process, we are entitled to know about it. I hope that there will be at least that level of accountability in due course.

**HON CHARLES SMITH (East Metropolitan)** [3.36 pm]: I rise briefly to make a short statement on the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. The whole world currently finds itself in a precarious state of chaos. Until now, Western Australia has been reasonably immune, and at last politics in WA is getting interesting just as the Parliament is coming to an end—what a shame. The coronavirus pandemic has caused unprecedented change in the world, but as Perth is an isolated city, we have been lucky enough to have avoided a catastrophic outbreak. We, like everywhere else, however, are feeling that heavy pinch of the whole country's lockdown.

The dispute that Mr Palmer has with our state is an unfortunate case of politicking gone mad. Generally speaking, I have no issue with Mr Palmer and his desire to undertake work in WA if that work is lawful and employs Western Australians. I am happy to support almost anything, any endeavour, that provides work and educates and trains Western Australian locals first. However, due to the national lockdown and the conditions of each of the states, Mr Palmer should have been a little more tactful in his approach, particularly given that his home state has closed its borders as well. But it is not those borders that he is after; Mr Palmer is after WA's borders. Although he may be correct in his public statements that there may be constitutional implications with these lockdowns, he has perhaps taken the worst course of action at the worst time to have that question answered, especially with the overwhelming popular support of the state and its people to remain closed and essentially an island.

The Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 is the Labor government's attempt to legislate away the state's liability. As some other speakers have said, it is somewhat similar to what happened with the Bell case and how it was struck down in its entirety by the High Court, which is a concern of mine and other members of this house. Should Mr Palmer take the state to the High Court over this legislation, contrary to the advice that I have been given, he may be successful, and the implications for the state would be anyone's guess. It could put us in a worse state than the alleged \$30 billion that he is after. Be that as it may, in any other circumstance, I and maybe others would probably not vote for a bill like this. I will talk about the rule of law, justice, section 109 of the Constitution, order, good governance and our legal traditions, all of which have been somewhat trampled on. However, today the Western Australia Party and I will be supporting the bill.

Australia is hurting and because of that Western Australia is hurting. Just recently, the Australian Bureau of Statistics released its labour price index for the June quarter of 2020, which once again revealed plummeting wage growth across the entire country as the shutdowns take effect. WA's wage growth still stands at an anaemic 1.6 per cent, the worst in the entire country. The very last thing we need in WA is a COVID-19 outbreak, because that would put the entire state on life support, if it is not already. The very last thing we need is politicking that bankrupts this state. Although I have some appreciation of Mr Palmer's concerns, he has chosen the worst action at the worst time. WA cannot afford this and, frankly, it would be unfair if the billionaire were to bankrupt the state because he did not get his way. WA needs to keep itself afloat economically. That money would be better suited in the hands of Western Australians rather than a mining elitist billionaire.

**The ACTING PRESIDENT (Hon Martin Aldridge)**: I give the call to Hon Robin Chapple.

**HON ROBIN CHAPPLE (Mining and Pastoral)** [3.42 pm]: Thank you, Mr Acting President.



Hon Sue Ellery; Hon Nick Goiran; President; Hon Peter Collier; Hon Jacqui Boydell; Hon Rick Mazza; Hon Robin Chapple; Hon Aaron Stonehouse; Hon Colin Tincknell; Hon Robin Scott; Hon Michael Mischin; Hon Charles Smith

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**The ACTING PRESIDENT:** Hon Robin Chapple, could you confirm whether you are the lead speaker for your party?

**Hon ROBIN CHAPPLE:** Yes, I am.

**The ACTING PRESIDENT:** Thank you.

**Hon ROBIN CHAPPLE:** Many comments have been made around the chamber and I do not really want to go over them. There have been some very valid contributions so far. Quite clearly, we are faced with a very unusual situation that my colleagues and I would not normally entertain. Having said that, there are issues afoot that need our undivided attention. I will bring some lighthearted relief to the debate by reflecting on what happened in 2002. I will move to that shortly.

Quite clearly, a number of litigation risks are associated with the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. We will be able to tease those out during Committee of the Whole and clarify how tight the controls are. One of the reasons for the covert way this legislation was introduced was the need to stop litigation pre the passing of the bill, which was a possibility. There is also the potential for using free trade agreements. As members know, Clive Palmer has moved his corporation from New Zealand to Singapore to avail himself of free trade aspects and, in that regard, we are concerned that that might be a process. I am advised by the briefing people from the State Solicitor's Office and Clayton Utz that they have looked at that potential and have looked at ways to deal with that in this legislation. We will deal with more of that later during Committee of the Whole.

I want to go into a bit of history. I think Mr Palmer has been operating in this state since 1986 when he acquired tenements from Hanna Mining, which was way before he entered into the potential for a state agreement act with the state. He was acting fairly randomly at that stage, too, because on a number of occasions he tried to set up different mining operations with his Cape Preston deposit. He did not really understand how the Mining Act 1978 worked. Instead of making an application for a development through a state agreement act, he took out a mining lease over the whole of the Burrup Peninsula. The lease was not granted, but his intention was to set up a giant factory on the Burrup Peninsula to get the magnetite from the Cape Preston area, slurry it with water, build a pipeline up to the Burrup and dry it out and beneficiate the magnetite there for shipping from the Burrup Peninsula. I was around when he tried to do that and given that the Burrup Peninsula is rather special as far as I am concerned, I had a fair bit of involvement in trying to stop him, as members can imagine. He has played around in this area for quite a long time and made a number of proposals; in fact, he advertised in the newspaper a number of proposals for exactly the same project in a number of different locations. They were exactly the same project, but he had the idea of hedging his bets—"I'll try one here, try one there and try one there"—but it was actually the same project. His proposals were submitted to the Environmental Protection Authority. We raised this back in 2002 when we were dealing with the legislation, which, I think, honourable Leader of the House, was before my sabbatical. I was in charge of the legislation at the time. In February 2001, Channel Nine conducted an interview with Mr Palmer about his Austeel Mill project and Mineralogy to determine where the money was for all his developments. During the interview, Mr Palmer could not identify where the money was. He said that it was there and then it was not there and that it was somewhere else. We brought that to the debate in 2002. He trotted out a number of commitments as if he had the capital. Those commitments were from a variety of corporations and banks around the world and from different companies, many of which he owned. He was getting commitments from companies that he owned that they would fund his project should he get a state agreement act. It was bizarre. He was asked by the reporter, if he was doing this, how much money his company, Mineralogy, had put into any of these developments, and he replied with a laugh, "Well, that is confidential, Michael." The interview very much went along that line of trying to find out where the money was. A company in Singapore called Marubeni, which was a shipping group, was supposed to have the money, and that ended up being owned by Mr Palmer as well, so it did not have the money either. This interview went on for quite some length. I read that interview into *Hansard*, and it is a very telling bit of information.

We went on to debate the 2002 state agreement act. At that time, I was very, very concerned about the due diligence of the state in entering into a state agreement act with a proponent who did not seem to have the money. Austeel was a company supposedly party to the deal, and there was Balmoral Iron Pty Ltd, Bellswater Pty Ltd, Brunei Steel Pty Ltd, International Minerals Pty Ltd and Korean Steel Pty Ltd. As has already been said, Hon Colin Barnett was quizzical about why these companies had the same address as Mineralogy. They were basically going to be partners to the development, but they were all Clive Palmer or his wife. It was mentioned in this chamber by Hon John Fischer that it was thought that those companies were subsidiaries, but, no, they were individual structures set up to give some credibility to the idea that many corporations were coming together to develop the proposal. In fact, the companies involved in Mineralogy were companies called Closeridge Pty Ltd, Fidelis Nominees and Eskglade, which were the shareholders in the development, and they were actually all owned by either Mr Palmer or his wife, Sue Palmer. We went on with the debate.

On 18 October 1994, here in the house, my colleague Jim Scott raised questions about the companies' validity and strength. There were different developments. There were going to be 23 million tonnes per annum at Balmoral, a gas-fired power station somewhere else and a 440-megawatt power station at Cape Preston. On the same day as



Hon Sue Ellery; Hon Nick Goiran; President; Hon Peter Collier; Hon Jacqui Boyde; Hon Rick Mazza; Hon Robin Chapple; Hon Aaron Stonehouse; Hon Colin Tincknell; Hon Robin Scott; Hon Michael Mischin; Hon Charles Smith

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all this was coming out, there was going to be an iron ore mine at Bilanoo that would use exactly the same figure of 23 million tonnes coming out of Balmoral. I would love to use some unparliamentary words at this point, but it was a cluster something or other! I would think that if a government was going to enter into a state agreement act with a corporation that did not seem to know what it was doing and had no money that could be shown, something would have been done about it.

As members know, and as the honourable Leader of the Opposition has said, we do not like state agreement acts—yes! We do not like them because we end up with a situation like this. All state agreement acts should always be investigated thoroughly by this chamber at their inception. In that regard, I want to turn to a bit of very interesting information. I have heard several people here today say that maybe we need to review state agreement acts before they come in. On Wednesday, 30 May 2001, in this chamber, Hon Kim Chance, Leader of the House, moved that standing order 230 be amended. This amendment, under new paragraph (ca), stated —

A bill that has a schedule containing the text of an agreement to which the State is a party that, upon its enactment, would ratify and give statutory effect to that agreement stands referred to the *Environment and Public Affairs Committee* when debate is adjourned under paragraph (a);

This meant that all state agreement acts would be referred to a committee—in this case the Environment and Public Affairs Committee. I think there were some ideas about where it should go. This was moved by the Australian Labor Party and supported by the Liberal Party. On 6 August 2002, the Governor prorogued Parliament, pursuant to section 3 of the Constitution Act 1889. The effect of that prorogation was that Parliament commenced a new session on 14 August 2002, and all existing business before the Council was removed from the notice paper. I have the notice paper from 14 August 2002. The proposals never came to light again, which was a real shame, because if we had done that, it would have meant that the Mineralogy state agreement would have gone off to a committee and maybe we would not be here today.

**Hon Colin Tincknell:** Twenty years ago?

**Hon ROBIN CHAPPLE:** It was 20 years ago, absolutely. In a debate, I think Hon Norman Moore blamed us for introducing that amendment to the standing orders, but it was actually Hon Kim Chance, and I have that standing order here.

Having been here for a while gives me some insight into why we should never basically allow state agreement acts to progress through this place without some due diligence. They are our resources, the state's resources, and we need to be mindful that those resources are used for the benefit of the state and that state agreement acts are dealt with by a committee. I note that after the Keating report, the position of Hon Kim Chance, the then Leader of the House, was that maybe we did not need any further state agreement acts and that maybe they just needed to be agreements rather than ratified through the house. The ratification through the house provides a bit of a problem, and that is where we are today. There were some interesting comments about that when we sought to refer that bill, the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Bill 2002, to a standing committee. I moved —

That Order of the Day No 13 be discharged and the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Bill be referred to the Standing Committee on Environment and Public Affairs for consideration and report.

I did that on 12 September 2002, and I have to say that as usual there was great division in this place. We were joined by our good friends One Nation in that. It was One Nation and the Greens standing up for sensibleness.

**Hon Peter Collier:** Why did you change your mind today?

**Hon ROBIN CHAPPLE:** Sorry?

**The ACTING PRESIDENT:** Members! This is not a discussion. You have the call, Hon Robin Chapple. Direct your comments to the Chair, thank you.

**Hon ROBIN CHAPPLE:** I will do, Mr Acting President.

But, actually, the interjection gives me some ability to respond. This is not a state agreement act in the terms that we would normally have concern about. This is an amendment to a state agreement act that should never have occurred in our view, so we are standing here in support of the government on the basis that it was a mess and it needs to be fixed. I do not like to see this state held to ransom by somebody who has more money than sense. In that regard, that is why we are here today, supporting the government's position.

There were some interesting comments in that debate. Hon Ken Travers was in charge of the passage of the legislation at that time; he said —

The crux of why the Bill should not be referred is because it is a very small Bill with only five clauses.

Hon Sue Ellery; Hon Nick Goiran; President; Hon Peter Collier; Hon Jacqui Boydell; Hon Rick Mazza; Hon Robin Chapple; Hon Aaron Stonehouse; Hon Colin Tincknell; Hon Robin Scott; Hon Michael Mischin; Hon Charles Smith

That is the problem. The house only ever sees and discusses the state agreement bill, which is always only four or five clauses. We see the intent of it, because that is attached, but we cannot modify that or question it, and we have no oversight of it. The issue for us has always been that there has to be some ability to make sure, on behalf of the community and the state in general, that we are entering into agreements with the right people, at the right time, for the right reasons. The problem has always been that the Department of State Development—or the Department of Resource Development, as it was formerly known—has the ear of the Premier of the day, who is invariably in charge of the department. It was very interesting back in 2002 because the Department of State Development could not even be brought before the estimates committee because it was not then constituted as a department. That body had at that time 103 staff advising the Premier: “We’ve got this project going here; we’ve got this project going there.” I think there were eight projects going on at the Burrup Peninsula, because the Department of State Development said that they would go there. The government spent \$180 million building an infrastructure corridor that nobody has used, because State Development provided it with the information—“We’re here for the state”.

When the Department of State Development eventually was allowed to come before the estimates committee—this is really telling—one of the first questions I asked was, “Your job is to encourage industry and development in the state?” They replied, “Yes.” I then asked, “Have you ever encouraged or brought industry to the state?” There was a big, long pause, and then they said, “No.” We just waited for people to roll up—103 staff—and then helped them through the process. This entity suddenly had the ear of the Premier, whomever it might have been in whichever political period, and was able to promote developments, and that was the case with Palmer. He went to the Department of State Development and said, “I want a state agreement act”, and the department, without any due diligence, went back to the Premier of the day and said, “We’ve got another state agreement for you, mate; sorry, Premier.” Everyone got excited and they sent it up to this house. We asked for a bit of due diligence but it did not occur, so we are here today, literally 20 years later, dealing with a cluster.

I have received some very good briefings in this process and I will leave a lot of my questions to the Committee of the Whole. I am fairly confident about the legislation after the briefings I have had. I note that there have been 13 drafts of this bill and that Clayton Utz has operated as a black hat in this process, which means that it has the job to, in essence, assume that Mr Palmer’s lawyers have the intent to tear down the legislation. I think the 13 drafts have arisen because chinks were found in the armour, and they needed to be fixed up. I am fairly confident that Clayton Utz has done its best, but I make it clear that this will not stop Mr Palmer. He will litigate. If we had Fort Knox, he would still litigate. The key issue for us is: are we going to be successful in actually stopping his advances on the state budget and on the finances of the state? I hope so. I have to rely fairly heavily on the advice that has been provided by the State Solicitor. Hopefully, other members of the house and I will be able to tease out some of the issues to ensure that, as best we can, we protect the state into the future. It is not my money; it might be my kids’ money and it might be the state’s money. Any benefit we get out of royalties, if Mr Palmer is successful, would turn us into a fiscal basket case. Thank you.

**HON NICK GOIRAN (South Metropolitan)** [4.05 pm]: I rise to contribute to the second reading debate on the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. I am grateful to the members who have had the opportunity to speak before me this afternoon because, if nothing else, it has given me an opportunity to prepare some of my questions for the Committee of the Whole House. It is entirely unsatisfactory for a member to have to try to do that while trying to pay attention to the debate, but those are the conditions that the McGowan government requires us to operate under. That is, in a sense, entirely unconventional, but, nevertheless, that is what is required of us at this time.

The most important question for members to consider at this time is not so much about their views on Clive Palmer. The most important question that members need to consider at the moment is not necessarily even whether they are in agreement with the intent or the motivation behind the bill before us. The most important question for Legislative Councillors to ask themselves at the moment is: will the bill currently before us be effective? If it is not going to be effective, this is entirely a waste of time. I very much suspect that that is precisely the situation we find ourselves in. The Leader of the House will, in due course, have wasted an entire day of sittings for the people of Western Australia.

As I indicated earlier today, the bill that the Leader of the House wants us to agree to is apparently so meek and fragile that any sort of delay whatsoever is considered to be a risk. For the reasons I outlined earlier today, we know what a joke that actually is, given that the Leader of the House preferred for us to deal with non-government business and have lunch earlier today; who knows what other breaks might transpire over the course of the day. That is the level of urgency of this bill, notwithstanding the fact that the Leader of the House and the government pleaded with us to make sure the bill was dealt with today. That is how fragile the document before us at the moment is. One wonders what confidence we can have that the bill before us will actually be effective.

I distance myself entirely from the government’s motivation for this legislation, which I think is best described by comments made by the Attorney General of Western Australia along the lines of, “This is a complicated game of legal chess.” I distance myself from those inappropriate remarks by the Attorney General, who is supposed to be



Hon Sue Ellery; Hon Nick Goiran; President; Hon Peter Collier; Hon Jacqui Boydell; Hon Rick Mazza; Hon Robin Chapple; Hon Aaron Stonehouse; Hon Colin Tincknell; Hon Robin Scott; Hon Michael Mischin; Hon Charles Smith

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the chief law officer in Western Australia, because it is not appropriate for any government—that is, the executive, one of the three arms—to utilise Parliament for what the Attorney General has described as a complicated game of legal chess. Nevertheless, that is the approach and motivation of the Attorney General, and that has the full support of the Leader of the House in this place, who is responsible for the bill that is before us.

This is all the more interesting given that only yesterday, a significant majority of members of this place indicated in effect that they have no confidence in the Attorney General of Western Australia. A significant majority of members of this place said that we note “his repeated failure to provide full, frank and reliable information to the Parliament.” What confidence can we therefore have, in those circumstances, that this fragile piece of legislation before us has any prospect of being effective?

The questions and issues that should be considered by responsible lawmakers at this time include whether the passage of the bill in an unamended form might create a risk to the state, and, indeed, whether the passage of the bill might represent a sovereign risk. Some members have already spoken about that, and the Leader of the House has given her view in the second reading speech, which I will touch on in due course. In addition, members ought to consider whether the passage of the bill before us is consistent with the state acting as a model litigant, and, most importantly, whether this fragile bill before us will be able to withstand a chapter III constitutional challenge.

I would like to spend some time going through some of the matters that the Leader of the House drew to our attention earlier today when she introduced the bill and gave her second reading speech. In normal circumstances, members would have a full calendar week to consider these matters, but of course we have been given a matter of a few hours. The first thing that I found of particular interest in the speech given by the Leader of the House is that the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Bill 2002 came into operation on 25 September 2002. I have not had the time to do a word search on how many times the Leader of the House has been obsessed with mentioning the name Colin Barnett, but I did note that there was no mention in her speech of who was the Premier in 2002 who brought this entire agreement act into existence. I wonder whose great idea it was to enter into an agreement with Mr Palmer in the first place. The Leader of the House may answer that question in her reply; otherwise, we may need to repeat that question in the debate at clause 1. I suspect, on past form, that it will be the latter.

I note the remark by the Leader of the House in the second reading speech —

Notwithstanding the standard practice of consultation undertaken between every other state agreement proponent and the state in relation to project proposals, Mr Palmer, Mineralogy and International Minerals chose not to adopt a consultative or cooperative approach.

In this respect, I thank the Leader of the House for drawing that to our attention. That is consistent with information that I received at a briefing earlier today, at about quarter past 10, noting that the time now is almost quarter past four. If what the Leader of the House has said, and what I was also told in the briefing, is indeed true, that is plainly an act of bad faith by Mr Palmer. It is absolutely unacceptable. All members should condemn that type of approach. It is entirely inconsistent with the spirit in which state agreements should be conducted. In many respects, what is happening today is in large part due to the bad faith approach taken by Mr Palmer. However, that does not justify the state, which is supposed to be a model litigant, also acting in bad faith, which is precisely what is occurring at this time.

I note that later in the second reading speech, the Leader of the House refers to Mr McHugh. The person to whom the Leader of the House refers in her speech is the arbitrator who is handling the matter at the present time, and who handled an earlier arbitration award that I understand was dated 20 May 2014. The Leader of the House stated —

Mr McHugh found in favour of Mineralogy and International Minerals, declaring that while the BSIOP was a defective proposal, it was nonetheless a proposal that had to be considered by the minister in accordance with the terms of the state agreement; that is, the minister had no ability to simply treat the proposal as invalid.

Debate interrupted, pursuant to standing orders.

[Continued on page 4915.]

*Sitting suspended from 4.15 to 4.30 pm*



Rule 29.02

**Annexure Certificate  
MM45**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**


Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM45" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

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**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**


Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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# Current register of political parties

Updated: 10 March 2021

In accordance with Part XI of the Commonwealth Electoral Act 1918, the political party whose details appear below was registered on 12 December 2018. The current particulars of the party, as amended on 31 January 2020, are:-

<b>Name of party</b>	Clive Palmer's United Australia Party
<b>Registered abbreviation</b>	Clive Palmer's UAP
<b>Parliamentary party</b>	Yes
<b>Registered Officer of party</b>	Clive Frederick Palmer Level 17 240 Queen Street BRISBANE QLD 4000
Party wishes to receive election funding payments.	
<b>Party Correspondence Address:</b>	GPO Box 1538 BRISBANE QLD 4001
<b>Deputy Registered Officers:</b>	
<b>Registered logo:</b>	
<a href="#">Print party extract</a>	

Rule 29.02

**Annexure Certificate  
MM46**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM46" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

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**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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• in United Australia Party News (<http://www.unitedaustraliaparty.org.au/category/united-australia/>)



### Media release



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## AEC confirms Clive Palmer's United Australia Party remains registered

The Chairman of Clive Palmer's United Australia Party, Clive Palmer, said today the Australian Electoral Commission had admitted its wrongdoing in suggesting the party was not eligible to remain registered.

In correspondence to Mr Palmer from Joanne Reid, the AEC'S Assistant Commissioner Disclosure, Assurance and Engagement it stated: "I am now writing to you to advise that, as a delegate of the Electoral Commission, I have determined that Clive Palmer's United Australia Party continues to meet the eligibility requirements set out by the Electoral Act to remain on the Register."

In October last year the AEC issued a notice of intention to deregister the party, claiming it had failed a membership test to determine whether it had at least 500 members, sparking a legal challenge from Mr Palmer.

"It seems clear that these AEC public servants designed their comments before the last state election to distract voters," Mr Palmer said.

"There was never any finding that our party has less than 500 members. It was a lie as we have many thousands of members.

"The problem is that there are too many lefties in the AEC, they are not loyal Australians.

"They need to be politically neutral, they overstepped the mark with the original decision. The AEC should be impartial and not politically motivated," Mr Palmer said.

"The AEC knew we were compliant with our registration and that we had thousands of party members, however they tried to politicise themselves to gain relevance.

"The officers who made the original bad decision need to be politically neutral, they are bureaucrats and should do their jobs instead of dealing in controversy," Mr Palmer said.

**ENDS**

Rule 29.02

**Annexure Certificate  
MM47**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM47" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

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**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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# Premier wants WA a Clive-free zone

**EXCLUSIVE**  
**PETER LAW**

Mark McGowan says the State Government will fight Clive Palmer's High Court challenge of the constitutional validity of WA's hard border closure.

The Queensland-based billionaire yesterday revealed to *The West Australian* that he would launch the legal action after he was this week denied entry to the State.

Mr Palmer, whose Mineralogy company owns an Applecross mansion and has its headquarters in the CBD, said he wanted to fly to Perth to see Federal Liberal Senator Mathias Cormann.

The meeting was to discuss the 33 million doses of the anti-malarial drug hydroxychloroquine Mr Palmer donated, which he

believes will help in the fight against COVID-19. He said he also had business related to Mineralogy's mining interests in the Pilbara.

The magnate said he sought an exemption from the border closure to allow him to fly on his private jet from Queensland to WA but on Thursday was told his application had been rejected by WA Police.

The United Australia Party leader has instructed his legal team to challenge the border closure in the High Court on the grounds it breached Section 92 of the Constitution, which states "trade, commerce and intercourse among the States ... shall be absolutely free".

He also pointed to comments made by Australia's Deputy Chief Medical Officer Paul Kelly that there was "no medical reason" to stop interstate travel.

"They're working on the papers now and solicitors are collecting the evidence. It'll be heard in the High Court under

the original jurisdiction," Mr Palmer said.

"The evidence is very damaging. Really there is no case for Western Australian to be able to close its borders on health grounds. The evidence from the Australian Government will clearly show that.

"They are prohibited from doing so under the Constitution, they just don't have the power."

Mr Palmer, pictured, said police told him he could apply for an exemption at the discretion of WA Police Commissioner Chris Dawson that would require him to detail his movements and "possibly be followed", which he described as "unacceptable".

The businessman said he hoped that if his court action was successful, it would result in WA's hard border being torn down altogether to allow free movement into the State.

But Mr McGowan is standing firm, saying: "We'll fight him in the High Court, all of our legal advice says putting

in place the rules to protect our State based upon health grounds is justified and so we've done it for the right reasons to protect the people of WA."

United Australia Party has yet to commit to standing candidates at next year's State election, but Mr Palmer said Mr McGowan's popularity would suffer if the border remained closed and warned, "at the next State election I'll get rid of him".

"Although FIFO workers are able to come to Western Australia, I wasn't. I think part of the reason was that I was going to meet with our political party representatives who want to stand in next year's State election and McGowan obviously doesn't want me to meet with them," he said.

Senator Cormann confirmed he had a meeting request from Mr Palmer.

He also said he wants State borders reopened as soon as possible.

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Rule 29.02

**Annexure Certificate  
MM48**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM48" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper

Law firm: Clayton Utz

**Address for service:**

Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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## ANALYSIS

## How Clive Palmer's United Australia Party is set to make its mark on the 2021 WA election

By Jacob Kagi

Posted Sat 4 Jul 2020 at 8:23am, updated Sat 4 Jul 2020 at 10:20am



Premier Mark McGowan has every reason to be wary of Clive Palmer entering the WA election campaign. (ABC News)

It's not just the reopening of Western Australia's border that Clive Palmer looms large over.

While the mining magnate waits to hear if his [constitutional challenge to WA's border](#) will force Sandgroppers to open up to the rest of the country, there is an opportunity approaching for Mr Palmer to exert even greater power over the state's future.

Less than nine months out from the state election, political watchers are waiting to see how Mr Palmer attempts to exert his influence.

Both major parties in WA firmly believe that is a matter of "how", rather than "if".

The Queenslander's \$60 million federal election spend might have netted him nothing in terms of seats in Parliament, but that does not mean it had no impact.

### Does Palmer hate McGowan more than Shorten?



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Ask most Labor insiders and they will tell you the blitz of billboard, television and print advertising contributed in no small way to negative public views about Bill Shorten.

And Mr Palmer might have even more of a dislike for Mark McGowan than he did for Mr Shorten — so they are not expecting him to accept four more years of a WA Labor Government without something of a fight.



Clive Palmer's United Australia Party took aim at the Labor party during the 2019 federal election, calling Opposition Leader Bill Shorten "shifty". (*United Australia Party*)

The Palmer-McGowan feud, if you can describe a relationship that way between two men who have never even met, stems in large part from a long-running, litigious and ugly battle over iron ore interests in the Pilbara.

Mr Palmer has long been at loggerheads with his Chinese former partner in that operation, a dispute Mr McGowan views as highly costly to the state.

Mr McGowan threatened to intervene through legislation, which angered Mr Palmer greatly.

Fast forward 12 months and the Mineralogy boss had his application to enter WA during the border closure refused, prompting the High Court challenge that threatens to tear down the state's metaphorical wall separating it from the rest of the country.

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"The continued closure of the WA border is unconstitutional and political grandstanding from Mark McGowan," Mr Palmer tweeted this week.

## Election spend limit may not curb Palmer

Now, Mr Palmer has made little secret to the fact he has an eye on the WA election.

Nothing appears to be set in stone, but he has said he "isn't ruling out" running candidates for his United Australia Party and part of the reason for that vetoed trip west was said to be to talk to possible nominees.

But, as Mr Palmer weighs that up, the McGowan Government has earmarked major electoral law changes that will place some limits on how much he is able to spend.



Clive Palmer's United Australia Party may target Upper House seats in WA. (AAP: Kelly Barnes)

The proposed laws would limit election spending, allowing a political party that ran in every seat to splash out \$8.125 million while limiting other entities to \$2 million.

The Government has firmly denied it, but critics argue Labor has one target in mind.

"I have no doubt this legislation is targeted at Clive Palmer," Opposition Leader Liza Harvey said.

## Cash splash cost WA Nationals

But if Mr Palmer is the target, it will only limit him so much.

Were he to find candidates to run in every seat, it would realistically allow him to spend more than \$10 million on the campaign.



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On top of the party being allowed to spend the maximum \$8.125 million, it is understood an entity associated to him — such as Mineralogy — would be able to spend \$2 million as well.

To put that into perspective, were Mr Palmer to spend \$10 million it would be more than twice as much as the blitz the Chamber of Minerals and Energy ran against the WA Nationals' proposed mining tax.

That was a cash splash defeated Nationals leader Brendon Grylls argued had cost him his seat and devastated his party's electoral chances.



Brendon Grylls says a Chamber of Minerals campaign against the WA Nationals' proposed mining tax cost him his seat at the 2017 WA election. (ABC News: Andrew O'Connor)

"I think there probably will be some questions asked, such as 'is our democracy working well?' when policy ideas can be not beaten up by your political opponents, but by vested interests who wouldn't like the outcome," Mr Grylls said in 2017 about the CME's spending.

Then there is the whole matter of whether the Upper House agrees to the spending caps, a question under some doubt.

### Upper House seats in contention

On top of the generous proposed spending limits, WA's electoral system also allows minor parties which win a relatively small share of the vote a somewhat realistic chance to win a seat — so if Palmer does run candidates, Upper House success is not out of the question.

Voting reforms have severely limited the chances of small parties riding a wave of preferences into Federal Parliament, but WA has not followed suit.

In 2017, micro parties such as Fluoride Free and the Daylight Saving Party nearly picked up seats with minimal votes but a good preference deal.





The Fluoride Free party came close to winning seats in the last state election, and in the absence of electoral reform, micro parties could be poised for success in next year's poll.

*(Fluoride Free WA)*

That does not guarantee anything for Mr Palmer, but with the right preference deal it could give his party a chance to snare a powerful position or two in the Upper House to cause enormous headaches for a potential re-elected Labor Government.

Whether Labor succeeds in its alleged targeting of Mr Palmer through spending caps or not, he will have the chance to have considerable influence over the state election campaign if he chooses to do so.

Rule 29.02

**Annexure Certificate  
MM49**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

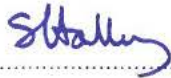
Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM49" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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The West Australian  
Wednesday, August 5, 2020

## PAGE 13 OPINION

# Clive's State card is marked

Palmer angered WA about border but may still fight election



JENNA CLARKE



Transparency and clarity is what WA voters should expect from all sides and players.

MORE OPINION  
PAGE 68

Voting is a lot like being at a nightclub when the Macarena comes on. No one (especially in Australia) has any idea what the hell is going on but we know what to do when prompted. We move through the motions of the famous 1990s dance moves with little to no concept of what it's about then scratch our heads when it's all over asking: "Hang on, what was that? I didn't understand a word of it."

It's akin to how most of us feel when we head to the ballot box to tick boxes on pieces of paper that sometimes stretch for metres.

Unless you're a psephologist or huge West Wing fan you probably couldn't care less about the minutiae of political elections. Phrases like "marginal seat", "swing" and "preferences" make as much sense as that Spanish song which sounds fun but is really just a catchy tune about a woman who cheats on her boyfriend to get back at him for joining the army.

Like the song, in politics nothing is what it seems and cheating is frowned upon.

Which brings us to another c-word, Clive, Palmer. The guy Premier Mark McGowan loves to hate. Why? Because our popular leader is a winner no matter what the High Court decides when it hands down its verdict on our hard border in the coming months.

It stays up — he tried to protect us. It comes down — well, he tried to protect us.

It also helps that West Australians now are finally getting a good look at Palmer. Some may see the colourful Queensland character as flaky; he's persistent and

nothing seems to stop him. He's the personification of dandruff and West Aussies do not stand for bad hair.

As a business mind he's pretty cluey.

His private company Mineralogy pulls in about \$100 million every 12 weeks in royalties from WA. But while some people have hobbies like fishing or golf, Palmer's extracurricular interests include creating giant dinosaur theme parks and throwing cats amongst the political class.

Last year he spent \$80m contesting the Federal election. While his return on investment didn't score him many seats in Parliament, he had a greater impact behind the scenes in the murky, confusing world of voting preferences.

That's the stuff that happens "below the line" and what you see on how to vote cards when you line up to get your democracy sausage on election day.

On a two-party-preferred basis, 69 per cent of United

Australia Party preferences flowed to the Liberal-National Party and 31 per cent went to Labor at last year's Federal election.

It's a result which appears to have whet Palmer's appetite to take part in more parochial democratic processes around the country, including the WA election in March next year.

Yesterday Palmer's spokesman told me: "The party executive is considering the prospect of running but needs to confirm this with its WA members."

The spokesman then claimed Palmer's *raison d'être* for challenging McGowan's hard borders was to corral his political troops.

"Clive Palmer tried to enter WA to meet with his members, however, the WA Premier and Attorney-General stopped this from happening."

"To take that action they have restricted political liberty ... a serious matter for any elected Australian government official."

"All Australians must protect the freedom of speech we enjoy," the flack said.

However, he declined to confirm if he even had any WA-based foot soldiers and a writ filed on behalf of Palmer in the High Court back in May disputing the "constitutionality" of the WA hard border made no mention of his political party.

When asked about his WA policies, platforms and voting preferences I was told: "All of those questions will be revealed over the next few months if the party runs."

Political analyst Dr Martin Drum said a Palmer-endorsed candidate would "cop an enormous pasting" and predicted all sides of politics would steer clear of preference deals with the Queensland-based mining magnate's party.

"There's a long period of time between now and the election ... But I just doubt people are going to forgive Clive Palmer anytime soon," Dr Drum said.

While WA Labor would rather swallow razor blades than break bread with Palmer, nationally the Libs have previously aligned with him. But WA Liberal State director Sam Calabrese and Opposition Leader Lisa Harvey were emphatic when asked if they are considering teaming up with UAP.

"There will be no preference deal with Clive Palmer," Harvey said.

It's the most direct position the Opposition has taken in months, potentially aided by the Federal Government's backflip on their support for Palmer over the weekend.

Transparency and clarity is what WA voters should expect from all sides and players in the lead up to the next election and if a Palmer-infused campaign gives us that then game on.

Jenna Clarke hosts *The West Live*, which streams daily on [thewest.com.au](http://thewest.com.au) from 8.45am



## Poor password management makes cyber attacks easy as ABC

It has become the top cybersecurity threat in workplaces right across the country — the bad password hygiene of you and your time-starved colleagues.

In a study released a few weeks ago, a computer engineer and researcher analysed a dataset of about 170 million leaked passwords from around the world.

The research revealed that more than seven million people logged in using "123456" to access accounts — catapulting it to top spot of the 100 most commonly used passwords globally. Not far behind were "123456789" and other popular



choices that bring a smile larger than life to every cyber crook: "password", "password1", "111111", "12345" and "abc123".

According to the study, just 12 per cent of passwords featured a special character, 29 per cent used alphabet characters only and 13 per cent of all logins used numbers exclusively.

For years, bosses have asked their workers to use more

complicated passwords that include characters from the alphabet as well as punctuation marks, other symbols and numbers.

Many workers took the advice by taking their existing password and capitalising the first letter or, in some cases, adding the number one at the end of it.

And instead of having a different and more complicated password for each of up to 10 or 20 sites, some simply chose two or three complicated passwords (think: "wx98f@%\$41AbZ1") that they ended up writing down and using across multiple sites. For the average hacker,

that is like putting on a buffet of opportunities.

Hackers don't sit around and guess passwords. They use sophisticated hacking programs, which are loaded with electronic dictionaries of typical passwords, to navigate their way into our digital lives.

Perhaps a dose of cybersecurity training might make more workers aware of something called a password manager — a relatively secure and convenient way of storing multiple complicated logins with a single complicated password.

Cyberattacks are increasing and COVID-19 has provided

wackers with a vulnerable new market to penetrate — those who work from home. Home wi-fi networks are often not well-secured yet are shared by multiple users and devices.

And videoconferencing platforms that have become part of the WFH movement come with their own security issues.

Taking solid steps to improve password hygiene will not prevent every cyberattack. But it will make life considerably more difficult for cyber villains.

Professor Gary Martin is chief executive at the Australian Institute of Management WA



Rule 29.02

**Annexure Certificate  
MM50**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM50" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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Red Wiggle Simon Pryce and partner Lauren Hannaford welcomed son Asher William Pryce.

## A happy bundle of blue for the red Wiggle camp

The Wiggles are set to have another new fan with Red Wiggle Simon Pryce welcoming his first child.

The entertainer announced the news on Instagram yesterday, revealing that his wife — fitness influencer Lauren Hannaford — had given birth to a boy named Asher William Pryce.

"I am so overcome with emotion and overwhelming feelings of love that it's impossible to put in to words everything I am feeling right now," he wrote.

"Lauren and I are so fortunate, happy and

blessed to have you in our lives. In an instant, I can't imagine my life without you being here."

In her own post, Hannaford explained their naming decision. "Asher means happy and blessed ... and that is exactly what we are to have you, our gorgeous boy," she wrote.

The post was flooded with congratulatory messages, including fellow Wiggles stars Emma Watkins, who wrote "Congratulations to you both", and Lachlan Gillespie, who wrote: "Oh Mr Simo congratulations to you both. How beautiful."

## Another Megxit from all social media

The Duke and Duchess of Sussex have reportedly sworn off social media because of all the "hate" they received on platforms like Twitter and Facebook.

Prince Harry and Meghan, who amassed more than 10 million followers on Instagram as working royals, will now use other media as part of their new "progressive role" in America.

One source close to the couple said they had "no plans" to use social media to promote their Archewell Foundation and were "very unlikely" to return to the platforms in a personal capacity.

Just two weeks ago, they used a charity's social media

account to publicise their Christmas card and were happy for Spotify to use their social media platforms to promote their new podcast.

The couple now intend to use video messages and television interviews to promote their new foundation and public appearances.



# PALMER DODGES WA POLL

## But Labor expects ad blitz

PETER LAW

Clive Palmer's political party will not contest the State election, meaning the mining magnate won't face WA voters at the ballot box after his failed attempt to demolish the hard border.

However Premier Mark McGowan said he still expected Mr Palmer would attempt to punish Labor with a multimillion-dollar advertising blitz in the run-up to the March 13 poll.

Mr Palmer's United Australia Party had until last week to apply for registration as a political party with the WA Electoral Commission ahead of the election.

Two of UAP's former candidates had already jumped ship to stand as candidates with the secessionist WAxit Party, previously known as the Small Business Party.

It comes after UAP failed to win a single seat at the Queensland election in October, despite Mr Palmer's Mineralogy mining company pumping \$4.6 million into its campaign.

Mr McGowan said Mr Palmer, pictured, was not welcome in WA and West Australians would welcome his decision not to contest the election.

"But there is no doubt he will do whatever he can to support the Liberals and Nationals at the election," Mr McGowan said.

"The Liberals and Nationals need to guarantee they will not accept any money or support from Clive Palmer. Unfortunately, his

decision to not run in the election doesn't mean he won't spend millions of dollars running a negative advertising campaign against the State Government.

"He will still want to attack the WA Government after we stopped him from taking down our hard border, and he will support the Liberal Party, who backed him all the way. The Liberal Party backed Clive Palmer and now Clive Palmer will back the Liberal Party."

WA Liberal leader Zak Kirkup said: "I can absolutely guarantee we won't accept any money or support and I hope every party follows our lead to show Mr Palmer he isn't welcome here in WA."

Mr Palmer didn't explain why UAP would not contest the State election other than to say he didn't want to cause the Premier "any more stress". Mark McGowan can breathe easy that we won't be standing," Mr Palmer said.

Mr Palmer's legal challenge of the hard border failed in the High Court in November and his legal team has indicated an attempt to jail the Premier for contempt of court would be dropped.

However, the businessman is still seeking damages of \$28 billion against the State Government over a Pilbara iron ore project and his defamation action against Mr McGowan continues.

One Nation leader Pauline Hanson has blamed "unpredictable travel conditions" for scrapping a plan to visit WA during the election campaign.



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**Annexure Certificate  
MM51**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM51" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

---

**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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National WA [WA election](#)

# Clive Palmer says Mark McGowan can 'breathe easy', United Australia Party will not contest election

By [Lauren Pilat](#)

January 10, 2021 – 1.25pm



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The United Australia Party will not contest the West Australian state election in March, party chairman Clive Palmer has confirmed.

The mining billionaire, who lost his legal bid last year to have WA's hard border deemed unconstitutional, said Premier Mark McGowan “could breathe easy”.



Clive Palmer and Mark McGowan. ALEX ELLINGHAUSEN/TREVOR COLLENS

284  
“He (Mr McGowan) has recently spoken about worrying signs and concerns regarding support for Clive Palmer’s United Australia Party if we ran,” Mr Palmer said.

“Mark McGowan must be under enormous pressure so I don’t want to cause him any more stress during the festive season.”

Mr Palmer accused the WA Premier of repeatedly attacking him, saying Mr McGowan was still facing defamation actions.

“I have had my lawyers write to him over Christmas saying that I will remove those actions even though everyone knows he is guilty,” he said.

“Christmas is a time for forgiveness and mercy walks hand-in-hand with justice.

“The Liberal Party in WA has the chance to be better than it has been and stand on its own feet.”

Despite being 10 days into the New Year, Mr Palmer said Christmas was a time of forgiveness in the media statement released on Sunday in which he also advised Mr McGowan to take some time off.

“I wish the people of WA the best for the New Year and that they continue to benefit from my investment in the great state,” he said.

“Mark, I recommend that you take some time off over this period, relax and enjoy yourself.”

Mr Palmer spent \$84 million on the 2019 federal election and his company Mineralogy reportedly put about \$4.6 million into his party ahead of the 2020 Queensland election.

Electoral reforms promised by Labor to be in force before 2021 – which were tabled late in the government’s first term, not made a priority, and never passed parliament – had proposed limiting third party advertising spending in an election to \$2 million.

A spokeswoman for Mr McGowan said West Australians would never forget that Mr Palmer tried to pull down the border against health advice and is still trying to take the state for \$30 billion.

“Clive Palmer should withdraw all his legal actions against WA and the Premier,” she said.

“The Liberal Party sided with Clive Palmer and now he will do whatever he can to support the Liberals and Nationals at the election.”

“The Liberals and Nationals need to guarantee they will not accept any money or support from Clive Palmer or his companies. It’s the least Western Australians deserve.

“Clive Palmer he not ruled out spending millions of dollars running a negative advertising campaign against the state government, similar to his previous ads Western Australians had to endure.”

Liberal leader Zak Kirkup took aim at Mr Palmer, saying “growing up in Midland, you get to know” his type.

“The bloke who gets rich off other people’s hard work,” he said. “Our democracy is not a plaything for Clive Palmer or any other shallow millionaire who has nothing better to do with his time and money.

“It’s a serious business in which West Australians get to have their say over who has a better plan for the state. That sure as hell isn’t Clive Palmer.”



**Lauren Pilat**



Lauren is a casual journalist at WAtoday who reports on education and general news.



Rule 29.02

**Annexure Certificate  
MM52**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM52" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:

.....  
Witness

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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ABC NEWS

## Clive Palmer says his United Australia Party will not contest WA state election

by Herlyn Kaur

Posted Sun 10 Jan 2021 at 10:54pm, updated Mon 11 Jan 2021 at 12:50pm



Clive Palmer says the WA Premier can "breathe easy" now that his party will not run in the poll. (AAP: Kelly Barnes)

Queensland billionaire Clive Palmer says his United Australia Party will not contest the WA state election in March.

In a statement released on Sunday, Mr Palmer said his party would not field any candidates and that he would be withdrawing [a defamation case against Premier Mark McGowan](#).

Mr McGowan's office said it was yet to receive any notice of the claims having been removed.

Mr Palmer's decision comes [after United Australia Party \(UAP\) failed to win a single seat at the Queensland state election in October](#), and after [he lost a legal bid in November to have WA's hard border deemed unconstitutional](#).

In his statement, Mr Palmer said Mr McGowan could "breathe easy" knowing his party would not be standing.

### Key points:

- Clive Palmer says he'll also drop a defamation case against the Premier
- The Premier's office called on him to withdraw "all his legal actions"
- WA Liberal leader Zak Kirkup has welcomed Mr Palmer's decisions

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A spokeswoman for Mark McGowan said Mr Palmer had not ruled out running a negative ad campaign against the Government. (ABC News)

"Mark McGowan must be under enormous pressure so I don't want to cause him any more stress during the festive season," he said.

"The WA Premier has repeatedly attacked me and still faces defamation actions. I have had my lawyers write to him over Christmas saying that I will remove those actions even though everyone knows he is guilty.

"Christmas is a time for forgiveness and mercy walks hand in hand with justice.

"The Liberal Party in WA has the chance to be better than it has been and stand on its own feet."

A spokeswoman for Mr McGowan released a statement saying West Australians would "never forget that Clive Palmer tried to pull down the border against health advice and is still trying to take the state for \$30 billion".

"The Liberal Party sided with Clive Palmer and now he will do whatever he can to support the Liberals and Nationals at the election," the statement said.

"Clive Palmer [has] not ruled out spending millions of dollars running a negative advertising campaign against the State Government, similar to his previous ads Western Australians had to endure."

#### **Want more WA news?**

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The spokeswoman also said Mr Palmer should withdraw "all his legal actions against WA and the Premier".

### Liberals 'won't be taking' Palmer help

WA Liberal Party leader Zak Kirkup said while his party had done deals in previous elections with the UAP, he was glad the party would not contest the election.

"I think it's important that Mr Palmer and any other shallow millionaire who has too much time or money on their hands doesn't try and use the WA democracy as a plaything," he said.

"The Liberal Party won't be taking any money or support from him and we hope every other political party in WA makes the same commitments so that we can show Mr Palmer the reality that he isn't welcome in our state."

Mr Kirkup said he was also in support of Mr Palmer's intention to drop his defamation action against the Premier.

"What we see from the likes of Clive Palmer is continual hot air and bluster and very little substance, so I welcome Clive Palmer's continual withdrawal from West Australian and I hope Australian politics," he said.

"This is what we expect from Clive. He says one thing and often does another. It's up to us here as the major political parties to stand united against Mr Palmer's influence."

(Hint: You'll have to [go back to the home page](#) to do this)



Rule 29.02

**Annexure Certificate  
MM53**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM53" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

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**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
**Contact:** Bryony Dewar-Leahy  
**Email:** bdewarleahy@claytonutz.com  
**Ref:** 60020/17189/81011768

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## Clive Palmer has no plans to contest WA election

7NEWS Perth





## Clive Palmer has no plans to contest WA election

Video will play in 3 ■ STOP AUTOPLAY

0:28 | 7NEWS Perth



Police yet to reveal if anybody will receive \$5M reward in bikie



Push for Ken Wyatt to be G-G



WA Virus watch



Fire damages Oyster Bar at Elizabeth Quay



Chris Dawson speaks after alleged sniper charged



Man accused of shooting dead Rebels bikie gang boss in court



Clive Palmer's United Australia Party will not contest the March State election

# Queensland billionaire Clive Palmer 'won't spend one dollar' on WA State election

Michael Ramsey | PerthNow

January 12, 2021 12:19AM

## TOPICS

[State Politics](#)[Clive Palmer](#)[Mark McGowan](#)[Zak Kirkup](#)[Perth](#)[WA News](#)[State Election 2021](#)

Clive Palmer has declared he won't spend a single dollar on the upcoming West Australian election while taking aim at the "inept" state Liberal leader.

The billionaire's ongoing feud with Premier Mark McGowan had raised expectations he would campaign against the Labor government's re-election, having bankrolled radio and television advertisements targeting the premier last year.

But Mr Palmer, who has ruled out running candidates at the March poll, says he has no plans for another advertising blitz.

"I don't intend spending one dollar in the Western Australian election," he said in a statement on Monday.

Mr Palmer's United Australia Party splashed more than \$89 million on his failed bid to return to federal parliament in 2019.

The McGowan Government last year introduced legislation that would have capped individual donations on election campaigns, but failed to get it through parliament before it was prorogued.

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📷 WA Premier Mark McGowan. Credit: Simon Santi/The West Australian

Mr Palmer confirmed he still intends to pursue defamation proceedings against Mr McGowan, who has launched his own counter-claim.

He said his solicitors had written to representatives of the premier and Attorney-General John Ouiglev offering to withdraw a



contempt claim against them in the High Court “in a spirit of reconciliation and forgiveness”.

The contempt challenge relates to extraordinary legislation passed in WA's parliament in August to amend a 2002 state agreement with Mr Palmer's Mineralogy company and terminate arbitration between the two parties.

It is designed to block Mr Palmer from claiming almost \$30 billion in damages over a decision by the former state government not to assess one of his mining projects.

Mr McGowan on Monday said he still expected Mr Palmer to launch a “major” advertising campaign against the government.

Newly-installed WA Liberals leader Zak Kirkup welcomed Mr Palmer's decision not to run in the election, saying “our democracy is not a plaything for Clive Palmer or any other shallow millionaire who has nothing better to do with his time and money”.





📷 Liberal leader Zak Kirkup. Credit: Daniel Wilkins/The Sunday Times

Mr Palmer responded with a lengthy diatribe, predicting the 33-year-old first-term Opposition leader would lead the Liberals to further electoral ruin.

“Western Australian voters are better to vote for Labor than to vote for someone who just copies the Labor Party and offers no policy or alternative,” the mining magnate said.

“Mr Kirkup does not have to worry about me donating to the Liberal Party or anyone else donating while he is leader. No-one could support such a no hoper.”



Rule 29.02

**Annexure Certificate  
MM54**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

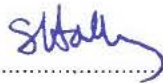
Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM54" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:



Witness

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**Filed on behalf of:** The respondent  
**Prepared by:** Nicholas Cooper  
**Law firm:** Clayton Utz  
**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**  
**Tel:** (02) 9353 4000  
**Fax:** (02) 8220 6700  
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The Weekend West  
May 4-5, 2019

NEWS 17

## HOW THERON FINALLY FOUND INNER PEACE



Charlize Theron has candidly opened up about finally feeling "at peace" with herself after "getting stuff out of her system" in her 20s and discovering therapy in her 30s. The Long Shot actress, 43, revealed that she felt a pressure to experience life by travelling the world and taking drugs as she discussed packing her life into a rucksack and backpacking across Turkey for four months. During an interview with Marie Claire, Charlize also admitted that by doing these things she felt ready to settle down and have kids without regrets that she hadn't experienced enough.



# Dirty socks lead to arrest

EXCLUSIVE  
FRANCESCA MANN  
GERALDTON GUARDIAN

DNA taken from smelly shoes and socks left at a Geraldton crime scene have led to police charging a 40-year-old man with aggravated burglary and stealing.

Police allege Murray Joseph Frayner Clinch entered a unit through an unlocked laundry door, removed his shoes and socks and placed them on the bench but left them behind as he fled when the resident, who had been asleep on the couch, woke up.

Mr Clinch did, however, allegedly get away with a handbag containing a purse, debit cards, a laptop, college books and car keys.

But when Mr Clinch appeared in Geraldton Magistrate's Court on Monday, his lawyer said he would be pleading not guilty to the

charges as the pungent footwear had themselves been stolen from outside his client's house in March.

Sgt Carey Owen told the court police positively identified Mr Clinch thanks to DNA from his socks. "He's well known to police in Geraldton and he has a lengthy record," Sgt. Owen said. "This is a strong State case and only his DNA was found. We're opposing bail."

Mr Clinch has also been charged with trespassing on a property in Utkarra, stealing coins and chewing gum from a car, criminal damage, possessing drug paraphernalia, and disobeying a summons.

He is yet to enter pleas for those charges.

Magistrate Chris Micoevich requested a home detention report be prepared.

Mr Clinch will reappear in the same court later this month.

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## STOP THE TAKEOVER OF OUR COUNTRY BY FOREIGN POWERS

James McDonald  
SENATE TEAM LEADER



www.unitedaustraliaparty.org.au

Eighty kilometres south of Karratha, a Chinese Communist-owned company, with the help of the Labor Party, constructed a private jet airport.

The airport is close to the coast approximately 30 kilometres from the huge port at Cape Preston, where over 16 million tonnes of products are exported to China every year.

The airport runway (below) is similar to the military runways in Queensland and the Northern Territory, where Australia's fighter aircraft are based. Australia may not be able to repel military aircraft if they landed from carriers offshore.

A superior military force could effectively control all of Western Australia's resources in the Pilbara and North-West Shelf gas reserves.



All state-owned companies require Foreign Investment Review Board approval before they can acquire an airstrip or a port. In this case the Chinese Communist Government-owned company bought a pastoral lease, then built an airport. We can't trust our politicians to do what is in Australia's best interests.

No Australian company could control a port or build a private airport in China. It simply wouldn't be allowed to happen, but we allow it here.

The United Australia Party will establish a Senate Committee to delve into the role played by Chinese Government-owned companies in our economy and politics.

Stand up and defend your country. Vote United Australia Party.

How to vote for the United Australia Party: Go to [www.unitedaustraliaparty.org.au/endorsed-candidates](http://www.unitedaustraliaparty.org.au/endorsed-candidates) to download the how-to-vote card for your local candidate & the Senate.

## Let's get something done for a change. Vote United Australia Party



### MAKE AUSTRALIA GREAT. PUT AUSTRALIA FIRST

Authorised by Clive Palmer, United Australia Party, 240 Queen Street, Brisbane, QLD 4000

UAP19TOSPAVA

Rule 29.02

**Annexure Certificate  
MM55**

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 912 of 2020

**Clive Frederick Palmer**

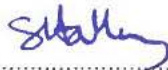
Applicant

**Mark McGowan**

Respondent

This is the **Annexure** marked "MM55" referred to in the affidavit of Mark McGowan sworn at Perth, Western Australia on 26 March 2021.

Before me:

.....  
Witness

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**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

**Address for service:**  
Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000

**Contact details:**

Tel: (02) 9353 4000  
Fax: (02) 8220 6700  
Contact: Bryony Dewar-Leahy  
Email: bdewarleahy@claytonutz.com  
Ref: 60020/17189/81011768

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ADVERTISEMENT

# A Chinese Communist Government-owned company bought Merredin Airport from the Labor Government for just **one dollar**. Did you know?

Would Australia be allowed to own an airport in China?

In the Pilbara, not too far from Karratha, an airport has been established by a Chinese Communist Government-owned company. Further south in Merredin, 260kms from Perth, a Chinese Communist Government-owned company bought Merredin Airport from the Labor Government for just **one dollar**. China can now fly from the Pilbara, to Merredin, to Perth. Did you know any of this? Labor tries to keep you in the dark. Protect our sovereignty.

## Protect and defend Australia. Vote United Australia Party

**LET'S GET SOMETHING DONE FOR A CHANGE.  
VOTE UNITED AUSTRALIA PARTY**

[www.unitedaustraliaparty.org.au](http://www.unitedaustraliaparty.org.au)



Go to [www.unitedaustraliaparty.org.au/endorsed-candidates](http://www.unitedaustraliaparty.org.au/endorsed-candidates) to download the how-to-vote card for your local candidate & the Senate

## MAKE AUSTRALIA GREAT. PUT AUSTRALIA FIRST

Authorised by James McDonald, United Australia Party, 240 Queen Street, Brisbane, QLD 4000