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## Details of Filing

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Form 59
Rule 29.02(1)

# Affidavit

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

Affidavit of: Clive Frederick Palmer

Address: Level 17, 240 Queen Street, Brisbane QLD 4000

Occupation: Company Director

Date: 27 January 2021

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Filed on behalf of Clive Frederick Palmer, Applicant
Prepared by Michael John Sophocles
Law firm Sophocles Lawyers
Tel 02 9098 4450
Email mjs@sophocles-lawyers.com
Address for service Level 23, 52 Martin Place, Sydney NSW 2000

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I, Clive Frederick Palmer of Level 17, 240 Queen Street, Brisbane QLD 4000, Company Director, say on oath:

**Personal Background**

1. I am the plaintiff in this proceeding.

2. I am an Australian businessperson and a former Australian politician.

3. I am a director of a number of Australian companies, including Mineralogy Pty Ltd (**Mineralogy**) which I founded in or about 1985 and to which I refer further later in this affidavit.

4. I was Adjunct Professor at the Faculty of Law and Business at Deakin University in Victoria from 1 August 2002 until 1 August 2006 and again from 12 February 2009 until 1 February 2011.

5. In addition, in the period prior to my election to the Federal Parliament, to which I refer later in this affidavit, I was an Adjunct Professor at Bond University in Queensland.

6. In 2012, Australia's *Government* magazine gave me an "Entrepreneur of the Decade" award in recognition of the contribution I had made to business in Australia. Annexed to this affidavit, and marked "**CFP1**", is a true copy of that award.

7. In 2012, I was elected as a Living National Treasure and declared as such in a poll conducted by the National Trust of Australia. That is a status which may only be awarded to a maximum of 100 living people. Recipients of the award are selected, by popular vote of the people of Australia, for having made outstanding contributions to Australian society in any field of human endeavour. Annexed to this affidavit, and marked "**CFP2**", is a true copy of a letter from the President of the National Trust dated 15 March 2012 confirming that award.

8. In 2013, I was elected as a Member of the House of Representatives of the 44th Parliament of Australia. I was a Member of the following Committees of the House of Representatives of the 44th Parliament:

   (a) House of Representatives Standing Committee on Economics (4 December 2013 to 9 May 2016);

   (b) House of Representatives Standing Committee on Infrastructure and Communications (4 December 2013 to 13 October 2015); and

   (c) Joint Select Committee on Trade and Investment Growth (2 October 2014 to 9 May 2016).

9. I retired from Parliament in 2016. While I was in Parliament, I donated all of my Parliamentary salary to charity. The donations went to more than 100 different community organisations in my electorate of Fairfax in Queensland.

10. In 2017, the Parliament of Australia acknowledged my service to the country and contribution to Parliament. That recognition was issued in writing under the authority of the Speaker of the House of Representatives and the President of the Senate. Annexed to this affidavit, and marked "**CFP3**", is a true copy of that acknowledgment.

11. Until about May 2017, I was the World Secretary-General of the World Leadership Alliance (**WLA**), an Institute with the largest number of former Heads of Government of any organization currently operating in the world. WLA's main objective is to support and foster democratic values throughout the world.

12. I am a former Director of the John F Kennedy Library in Boston in the United States of America.

13. I was not born into any great wealth and I am a "self-made" man. There were times in my younger life when I knew what it was like to be without money and I have never forgotten that.

14. I started out in business at about the age of about 18. Over time I discovered that I had a particular aptitude for business and was able to be successful. I attributed this success to having an entrepreneurial spirit, having high levels of ambition, being prepared to take risks to achieve gains and being willing to work very hard, which are all attributes I had seen and admired in my father.

15. By the time I was about 29 years old I had amassed a sufficient personal fortune to retire comfortably but I chose instead to continue working and to seek to serve the Australian community.

16. In or about 1985, I arranged for Mineralogy to acquire certain mining tenements in the area of Cape Preston in the Pilbara district of Western Australia. I was inspired by the development of Western Australia's North West Shelf gas project. I believed that, through a combination of hard work, self-belief and determination, it would be possible to turn the low grade iron ore deposits that existed on the tenements into something extraordinary for the nation. In the years which followed, I would take enormous risks and invest great amounts of time, money and energy seeking to achieve this dream. The steps I took to achieve this, from the time when mining leases were granted to the creation and execution of a State Agreement and beyond, are described later in this affidavit.

17. I have now been involved in business for more than 40 years. Projects which I have initiated or controlled during that time have contributed to the direct or indirect creation of more than 40,000 jobs in Australia and more than $10 billion of investment in the Australian economy.

18. I am currently the Chairman of The Palmer Foundation, which is a philanthropic entity owned by my family which pursues charitable projects designed to promote the better welfare of individuals and of society as a whole. In recent times, The Palmer Foundation has been focussed on responding to the COVID-19 pandemic by taking measures designed to protect Australian people against it.

**Mr McGowan's Defamatory Publications**

19. In this affidavit, unless the context requires otherwise (i.e. when reference is being made to matters complained of by Mr McGowan in his cross-claim), whenever I refer to the "first to sixth matters complained of", or "the matters complained of", I am referring to the statements made by Mr McGowan which are referred to as such in my Statement of Claim filed in this proceeding, which appear in the following link and which I have reviewed prior to preparing this affidavit:

https://1drv.ms/u/s!Ag5-nz86eo4SjdoQo4CpGGKntcq6UA?e=t6smdD

20. Prior to the publication of each of the first to sixth matters complained of, Mr McGowan took no steps to check with me the accuracy of the statements which he made and provided me with no opportunity to respond to any of the allegations.

21. I am unable to be absolutely definitive about the precise time and place when each of the matters complained of came to my attention. There are a number of reasons for this:

    (a) First, I have a very busy schedule. I usually work from early in the morning (often stating as early as 3.00 a.m.) until sometime in the evening. In late July and early August 2020 I was very busy indeed.

    (b) Secondly, the matters complained of were published at a time when Mr McGowan and I were both regularly making public comments about issues associated with Mr McGowan's "hard border" policy for Western Australia.

    (c) Thirdly, Mr McGowan made a number of statements about me within a short space of time and some of those statements (such as the first and second matters complained of) involved quite similar themes.

    (d) Fourthly, there were a number of different methods by which public statements about me, including the matters complained of, came to my attention. Those different methods are identified in the next paragraph.

22. I am nevertheless able to be certain that the matters complained of came to my attention, in each case shortly after the relevant statements were reported as having been made by Mr McGowan, by one or more of the following methods:

    (a) Although I use media monitoring services from time to time to keep an eye on media articles about matters which concern me, it has also for some time been my practice to keep track of such media coverage personally. That is because my experience has been that media coverage (such as online newspaper articles for daily newspapers, which often appear shortly after midnight) often comes to my attention more quickly that way. I do this regularly by undertaking Google searches on my iPhone or other computing devices. Because so many public statements were being made about me in July and August 2020, it was my invariable practice at that time to perform such searches at least once a day. I perform such searches by

putting "Clive Palmer" into the Google search engine and then clicking on "News". This brings up the latest references to me which have been captured by Google, typically being recent online newspaper articles or other recent online publications. I am then able to click on and view the publications themselves. I can recall seeing republications of the matters complained of in this way and believe it is the means by which the majority of the matters complained of first came to my attention.

(b) Although I do not usually have time to watch television during the day, I often watch television on at home in the evenings, at least "in the background" while I am on the phone or working on other things. I am able to pause to watch something closely if it captures my attention. My recollection is that, by this means, I saw television footage which republished some of the matters complained of.

(c) For example, one television program I usually make time to watch late in the evening after I have finished with most of my work for the day is Sky News Australia's "The Front Page" hosted by Peter Gleeson and others which usually screens from Monday to Thursday at 11.00 p.m. (AEST) and takes a look at the next day's front pages for the major metropolitan daily newspapers around Australia.

(d) It is also very common for media coverage about matters which concern me to be raised with me by business associates, employees (including employed solicitors and other employees at the offices of Mineralogy in both Perth and Brisbane) or people I know in politics. Sometimes this involves those people directing my attention to a particular media report which I would then look at myself, if I had not already seen it. I can recall being contacted by such people about some of the matters complained of but my recollection is that, in each case, I was already aware of the relevant matters complained of because they had already come to my attention by one or more of the other methods referred to above.

23. When I first became aware of the matters complained of shortly after they were published in July-August 2020, I was very upset about by what Mr McGowan had said about me. The reasons for this are set out below, with reference to each of the matters complained of.

*The first matter complained of*

24. In relation to the first matter complained of, paragraph 3 of my statement of claim sets out the imputations which I say arise from Mr McGowan's relevant statements (set out in

paragraph 2 of my statement of claim). I absolutely and emphatically deny all of those imputations. They are entirely false.

25. Until I became aware of the first matter complained of, I was not aware of anyone ever describing me as "the enemy of Western Australia" or "the enemy of Australia" or using any similar description of me. Indeed, it had never occurred to me that anyone, much less the Premier of an Australian State, would describe me in such terms. I have, and have always had, a great love of Australia and its people, including the people of Western Australia. It shocked me to be labelled as "the enemy" of those people. I found those statements very hurtful.

*The second matter complained of*

26. In relation to the second matter complained of, paragraph 5 of my statement of claim sets out the imputations which I say arise from Mr McGowan's relevant statements (set out in paragraph 4 of my statement of claim). Again, I absolutely and emphatically deny each of those imputations. They are entirely false.

27. For the reasons mentioned in paragraph [25] of this affidavit, I was again shocked to be labelled by Mr McGowan as "the enemy of the State" and "the enemy of Western Australia".

28. Further, I was hurt and distressed by Mr McGowan's statement that I was only focussed on myself and was not focussed on the health or wellbeing of people in Western Australia. That statement was untrue. My motivations for seeking to challenge Mr McGowan's "hard border" policy in the High Court of Australia were not merely economic and were in large part driven by a concern about the highly negative impact which I perceived that policy was having on people and families in Australia. My concerns in that regard were driven by considerations such as families being separated, significant social damage, livelihoods being destroyed and the risk of tragic outcomes such as domestic violence and suicide.

*The third matter complained of*

29. In relation to the third matter complained of, paragraph 7 of my statement of claim sets out the imputations which I say arise from Mr McGowan's relevant statements (set out in paragraph 6 of my statement of claim). Again, I absolutely and emphatically deny all of those imputations. They are entirely false.

30. I refer later in this affidavit to the purpose of my proposed visit to Western Australia. I deny that I ever lied about the purpose of that visit. The purpose of that visit was not to

promote a drug which "all the evidence" shows is "actually dangerous" or which I believed was not a cure for COVID-19 or which I believed was in any way remotely dangerous. On the contrary I believed that Hydroxychloroquine was showing real promise as a possible cure or treatment for COVID-19. I formed that belief on the basis of research studies, results of clinical trials and other events of which I became aware during February, March and April 2020. Those events are listed in a publication which I authorised and released, entitled "COVID-19 Response and Action", on 28 April 2020. Annexed to this affidavit and marked "**CFP4**" is a true copy of that publication. Because of the belief I had formed at that time, I arranged for Mineralogy to buy 32,900,000 doses of Hydroxychloroquine in April 2020 and donate it free of charge to the Australian Government's National Medical Stockpile in order to be available to all Australians. The cost of acquiring the 32,900,000 doses was in the millions of dollars. At that time, I did not know when any alternative, such as a vaccine, might be able to be developed and properly tested to establish that it was free of dangerous side-effects, safe for use and effective. In the light of this background, Mr McGowan's remarks in the third matter complained of made me very upset.

*The fourth matter complained of*

31. In relation to the fourth matter complained of, paragraph 9 of my statement of claim sets out the imputations which I say arise from Mr McGowan's relevant statements (set out in paragraph 8 of my statement of claim). I absolutely and emphatically deny each of those imputations. They are entirely false.

32. I was very hurt by the fourth matter complained of, particularly the allegation that I would "try and bring down our borders and damage the health of West Australians". I would never intentionally damage the health of Western Australians. It was particularly distressing to me that Mr McGowan portrayed me as a person who would try to do such a thing.

*The fifth matter complained of*

33. In relation to the fifth matter complained of, paragraph 11 of my statement of claim sets out the imputations which I say arise from Mr McGowan's relevant statements (set out in paragraph 10 of my statement of claim). I absolutely and emphatically deny each of those imputations. They are entirely false.

34. I was deeply hurt and offended by the suggestion that I was "in a war" with Australian people. As mentioned earlier in this affidavit, I have always had a great love of Australia and its people. My family has always had a strong commitment to Australia and its people.

I lost my great-uncle in World War I and members of my family served in World War II in action in Papua New Guinea. My nephew Martin Brewster was a Royal Australian Air Force squadron leader who ran logistics in East Timor before he stood for the Federal seat of Herbert in Queensland. These people instilled in me, from an early age, a deep sense of patriotism. I can think of few things more hurtful than to say that I am "in a war" with Australian people or to imply that the Australian people should perceive me as any kind of threat or a danger to them.

*The sixth matter complained of*

35. In relation to the sixth matter complained of, paragraph 13 of my statement of claim sets out the imputations which I say arise from Mr McGowan's relevant statements (set out in paragraph 12 of my statement of claim). I absolutely and emphatically deny all of those imputations. They are entirely false.

36. Later in this affidavit I refer to a process of arbitration in which a very distinguished arbitrator found that the State of Western Australia (**the State**) had acted in breach of a State Agreement to which two companies controlled by me were parties. The arbitrator had yet to determine what damages those companies had suffered as a result of that breach. Those companies were merely pursuing their legal right to compensation arising from the breach of the State Agreement which the arbitrator had found. I found it particularly hurtful that Mr McGowan described this orthodox legal process as a process involving me deciding to "make [my] profits by taking $12,000 from every man, woman and child in Western Australia" when, in reality, the legislation which had just been passed involved Mr McGowan's government expropriating money from two companies controlled by me.

37. I was also particularly disturbed that Mr McGowan was portraying me as someone who sought to do damage to the people of Western Australia when in fact it was the State of Western Australia which had terminated the mediation (referred to later in this affidavit) which was to be held by former Western Australian Chief Justice Wayne Martin AC QC and which could have enabled all matters to be resolved.

38. Although the sixth matter complained of represented that its purpose was "to clear up the facts", I was also very upset about what I believed were very significant factual misrepresentations in the sixth matter complained of. Mr McGowan said that I "CHOSE not to proceed with the project because of the conditions he was required to operate under" because I "decided that adhering to those conditions was too hard" and that I "wouldn't proceed with the project". He also alleged I was threatening to "bankrupt a State" just

because I was not "happy with conditions set by the State Government". In fact, the position of Mineralogy and International Minerals was and is that:

(a) the purported conditions referred to in the sixth matter complained of (being some 46 purported "conditions precedent") were conditions which the Minister had no lawful power to impose;

(b) the purported imposition of those conditions was unlawful (because, on its proper construction, clause 7(1)(c) of the State Agreement does not provide the Minister with any power to impose "conditions precedent" or to require the making of alterations "prior to" the giving of the Minister's approval under that clause); and

(c) the Minister's decision to impose the purported conditions was so unreasonable as to amount to a further breach of the State Agreement, sounding in damages.

For these reasons, I found it particularly hurtful to read in the sixth matter complained of the statements mentioned in the second sentence of this paragraph.

*General matters*

39. I see myself as a resilient person and I am generally able to treat unjustified criticism, unwarranted personal attacks and even quite vitriolic personal abuse as "water off a duck's back". For example, there are many occasions on which people have posted comments on my social media accounts which consist of very nasty personal abuse but I try never to let things like that get to me.

40. The first to sixth matters complained of were, however, in a very different category and they caused me a great deal of hurt and distress. That is because, rather than merely criticising, attacking or abusing me, the first to sixth matters complained of took aim at some of the most important facets of my character as a proud, patriotic Australian with a great love of Australia and its people. I was deeply hurt and offended by suggestions such as that I am "the enemy of Australia", that I would selfishly endanger "the health or wellbeing" of Australian people, that I would promote a "dangerous drug" to Australian people, that I would "try and … damage the health of West Australians" and that I am "in a war" with people of Australia. Those suggestions go against everything I believe in and have stood for throughout my entire life. They are a completely false portrayal of me as a person.

41. In addition, the fact that those statements were made by an elected Premier, who was at the time very popular and influential, caused me particular hurt and distress. That is because

people tend to take notice of what popular and influential State Premiers say and because I feared that all sorts of people, including Australian citizens and residents I do not know, people within the mining sector and other people in politics or business, including political and business leaders who might themselves be influential, might be more inclined to believe the statements on the basis that they had been made by a person of such standing.

42. As to Mr McGowan's general use of language, I refer to and repeat paragraphs [25], [27], [28], [30], [32], [34], [36], [37] and [38] of this affidavit. For the reasons mentioned in those paragraphs, I was very hurt and offended by McGowan's use of terms such as "enemy", "dangerous", "war" and "unthinkable", which I believed to be extreme language which lacked any justification.

*Response to McGowan's Publications*

43. After the first, second and third matters complained of were published, I became increasingly upset and distressed. I perceived that Mr McGowan was intent on continuing to attack me publicly by making statements which I considered to be false, deeply hurtful and highly injurious to my reputation.

44. Accordingly, on 4 August 2020, a solicitor (Michael Sophocles of Sophocles Lawyers) sent a letter on my behalf to Mr McGowan, seeking a retraction and an apology. Annexed to this affidavit, and marked "**CFP5**", is a true copy of that letter.

45. Mr McGowan did not apologise. Instead, he published the fourth matter complained of on 6 August 2020 and he published the fifth matter complained of on 7 August 2020.

46. On 10 August 2020, my solicitor sent a further letter to Mr McGowan. Annexed to this affidavit, and marked "**CFP6**", is a true copy of that letter.

47. Again, Mr McGowan did not apologise. Instead, he published the sixth matter complained of on or about 13 August 2020.

48. I was disappointed and upset when, despite having received the letters from my solicitor which are referred to in paragraphs [44] and [46] of this affidavit, Mr McGowan did not apologise to me. This increased the sense of hurt which the matters complained of had caused me. I had thought that, when the matters referred to in my solicitor's letters were brought to the attention of Mr McGowan, he would reconsider what he had said about me. I had hoped that Mr McGowan, whose public statements indicate to me that he is a man very much devoted to his family, would appreciate the impact which his statements might have not only on me but on members of my family.

49. I was particularly angry and disappointed about the fact that, despite having received the letters from my solicitor which are referred to in paragraphs [44] and [46] of this affidavit, Mr McGowan not only failed to apologise to me but also continued to publish statements about me, as referred to above. This made me feel even more angry and hurt because it caused me to believe that Mr McGowan simply had no regard for my reputation or for my feelings about the statements he was making.

50. On or about 2 August 2020 I became aware of further statements by Mr McGowan where he labelled me "*Australia's greatest egomaniac*" and "*an Olympic scale narcissist.*" Mr McGowan said those words during a press conference which he held on or about 1 August 2020. Video footage of that press conference may be accessed by clicking on the following link, which goes to the Facebook page maintained by 9 News Perth: https://www.facebook.com/watch/live/?v=740784866488937&ref=watch_permalink. I note that, at about 27:36 to 27:41, Mr McGowan said that I was showing myself to be *"Australia's greatest egomaniac"*. At about 29:49 to 29:51, Mr McGowan described me as *"an Olympic scale narcissist"*. I became aware of each of these statements, shortly after they were made, by one or more of the means referred to in paragraph [22] of this affidavit. In each case I believe those statements to have been hyperbolic and to have involved the use of further extreme language which lacked any justification. Those statements increased the feelings of hurt which the matters complained of had separately caused to me. I also note that, at about 29:52 to 29:55 in the video in the link in this paragraph, Mr McGowan described me as *"an egocentrist of the highest order"*. My feelings about that third statement are the same as my feelings about the two statements mentioned earlier in this paragraph.

51. I would later become even more disappointed and upset when I subsequently learned that Mr McGowan's conduct in publishing the first to fifth matters complained of had been part of a predetermined, carefully orchestrated plan which is referred to in the next section of this affidavit as the "Attack Plan".

52. On 19 August 2020, I commenced this proceeding.

**The Attack Plan**

53. On 13 August 2020 I became aware of a radio interview which the Attorney-General of Western Australia Mr John Quigley had given that day on ABC Radio. I first became aware of that interview when parts of it were reported on by online or print media which I

read that day. It particularly attracted my attention because of the unusual language which Mr Quigley was reported to have used, including his reported statements about me that:

> *"We've got to unleash the left hook today. We've got to knock him down today."*

54. It was not until sometime later that I became aware of the full contents of the radio interview. On or about 14 August 2020 I received from Mr Thomas Browning, an in-house counsel employed by Mineralogy, a partial transcript of that interview which he had prepared and which included Mr Quigley saying the following words:

> *"It is like a fight, like ... Danny Green says you just got to "Jab, jab, jab with your right, move them over to the left and then just knock him down with a left hook". And what has happened here is that Mark McGowan has been jab, jabbing away with insults, his lawyers have been busying themselves with sending us back threats of defamation writs when they should have been looking at main game of filing – of registering the arbitration, and we got through in time. We got that legislation into the assembly on Tuesday night when all the courts were locked."*

55. I have subsequently obtained a full transcript of the 13 August 2020 radio interview of Mr Quigley which was prepared by the Government of Western Australia Department of the Premier and Cabinet and which is currently available online at http://libstream.parliament.wa.gov.au/2020/8/Radio/222601.pdf. Annexed to this affidavit, and marked "**CFP7**", is a true copy of that transcript.

56. On 27 August 2020, my solicitor sent a letter to Mr McGowan's then solicitor concerning the plan revealed by Mr Quigley during the radio interview on 13 August 2020 (**the Attack Plan**). Annexed to this affidavit, and marked "**CFP8**", is a true copy of that letter.

57. Mr McGowan's then solicitor sent a letter in response to that letter on 4 September 2020. Annexed to this affidavit, and marked "**CFP9**", is a true copy of that letter in response.

58. My solicitor also sent a letter to Mr Quigley concerning the Attack Plan on 27 August 2020. Annexed to this affidavit, and marked "**CFP10**", is a true copy of that letter.

59. To the best of my knowledge and belief, Mr Quigley did not send any response to that letter.

60. I was shocked when I learned that the first to fifth matters complained of had been published by Mr McGowan as part of a pre-determined, orchestrated plan. I had assumed that such publications by Mr McGowan might have been motivated by political spite or

personal hostility towards me but it had not occurred to me that Mr McGowan had an ulterior motive for publishing those statements, namely to cause me so much hurt and distress that I would be distracted from doing something which Messrs McGowan and Quigley apparently regarded as highly significant, namely registering two previous arbitral awards. The reason why I had not registered the two previous arbitral awards is that I intended to await the outcome of the third (damages) arbitration referred to later in this affidavit before proceeding to registration and because I understood that the uniform legislation which applies to domestic arbitrations in Australia already required the two previous arbitral awards to be recognised as "binding" in all Australian States and Territories.

61. I was also taken aback by the nature of the language Mr Quigley used when describing the Attack Plan including the statements referred to in paragraphs [53] and [54] above and the following statements which appear in the transcript which is annexure "CFP7" to this affidavit:

> *"This is crucial that this bill is introduced and passed. And the academics and the other people can write about it afterwards, can analyse it afterwards all they like for months to come and criticise us, whatever, I don't care but we've got to unleash the left hook today. We've got to knock him down ... and knock him down today. There is too much at stake for all Western Australians for namby-pamby inquiries, 'what does this word mean, what does that word mean'".*

62. The language used by Mr Quigley came as a shock to me, especially given that he holds the high office of Attorney-General. I assumed, given that Mr Quigley is Mr McGowan's subordinate and that Mr McGowan has never disassociated himself from these remarks, that Mr McGowan approved and endorsed these comments. Since I learned of the Attack Plan, I have viewed all of Mr McGowan's publications and actions towards me from June 2020 to the present in the light of that information.

63. It particularly surprised, disappointed and angered me that Mr Quigley chose to use such bellicose rhetoric (with repeated references to physical violence) when he was obviously aware of the letters which my solicitor had sent to Mr McGowan, in which concerns had been expressed about a risk to my personal safety and the personal safety of those who travelled to Perth with me (including my wife and children) as a result of the creation of a climate of hatred and contempt for me in Western Australia. The letter to which I am referring in particular is the one mentioned in paragraph [44] of this affidavit.

**Hydroxychloroquine and my application to visit Western Australia**

64. Like many Australians, I am very concerned about the COVID-19 pandemic and the potential threat which it poses to the people of Australia.

65. In or about March 2020, I read news reports about trials which were then being undertaken in Australia to investigate Hydroxychloroquine as a possible cure or treatment for COVID-19.

66. These trials included one being conducted under the auspices of the University of Queensland Centre for Clinical Research and led by Professor David Paterson. I thought this was a potentially exciting development for Australia. I therefore donated $1 million towards the trial which was then being conducted in Queensland.

67. As mentioned in paragraph [30] of this affidavit, I formed the belief at or about this time that Hydroxychloroquine was showing promise as a possible cure or treatment for COVID-19.

68. I was concerned, however, that it would be important to move quickly to combat the threat posed by COVID-19 which even then was spreading quickly in many countries around the world. I formed the belief that, if the results of the trial confirmed that Hydroxychloroquine was effective as a cure or treatment for COVID-19, Australia could put itself in a strong position to protect its people against COVID-19 but that would only be the case if Australian people had sufficient access to Hydroxychloroquine.

69. By the start of April 2020, the Australian Federal Government appeared to me to be moving in a similar direction. That is because, on or about 1 April 2020 I saw the Federal Health Minister, Mr Greg Hunt, appear on Nine's "A Current Affair" television program and say words to the effect that:

    (a) he had "breaking news";

    (b) he just come off a call with an international supplier and he was confident that the Federal Government would have a significant supply of Hydroxychloroquine which would be available if doctors wished to use it with patients in hospitals; and

    (c) the advice he had received was that there had been some promising trials of Hydroxychloroquine around the world.

70. I was encouraged by what Mr Hunt had said because it was consistent with the view I had formed by that time about Hydroxychloroquine showing promise as a potential cure or treatment for COVID-19.

71. On the following day, 2 April 2020, the *Therapeutic Goods (Medicines – Hydroxychloroquine and Chloroquine) (COVID-19 Emergency) Exemption 2020* came into force. Its purpose was to exempt from the operation of Division 2 of Part 3-2 of the *Therapeutic Goods Act 1989* (Cth) certain specified goods, including Hydroxychloroquine, "in order to deal with the actual threat to public health caused by the COVID-19 emergency". Under section 18A(2)(b) of that Act, the Minister of Health may make such an exemption only of satisfied that, in the national interest, the exemption should be made so that the specified therapeutic goods can be made available urgently in Australia to deal with an actual threat to public health caused by an emergency that has occurred.

72. I wanted to assist the Federal Government in its endeavours to ensure that a sufficient supply of Hydroxychloroquine would be available in Australia for doctors to use with patients in hospitals, if so prescribed.

73. In the course of April 2020, I arranged for the purchase by Mineralogy of 32,900,000 doses of Hydroxychloroquine, in the form of tablets and bulk pharmaceuticals, with the intention of having it placed on the National Medical Stockpile and being available to be Australians free of charge.

74. This purchase was made in accordance with the exemption which had come into force on 2 April 2020. The arrangement was subsequently confirmed in a letter from the Australian Government Department of Health dated 23 April 2020. Annexed to this affidavit, and marked "**CFP11**", is a true copy of that letter.

75. In or about early May 2020, I sought to travel from Brisbane to Perth. The key purpose of my proposed visit to Western Australia at that time was to attend a meeting with Senator Matthias Cormann in Perth to brief him on the arrangement documented in the letter referred to in paragraph [74] of this affidavit and the donation to the Australian Government's National Medical Stockpile of the supply of Hydroxychloroquine which had been purchased by Mineralogy. I also intended, during the course of that visit to meet with members of the United Australia Party and to spend time in the Perth office of Mineralogy, doing things such as work associated with the arbitral proceedings referred to later in this affidavit.

76. The application to enter Western Australia which was prepared and submitted on my behalf (by my pilot) attached a copy of the letter referred to in paragraph [74] of this affidavit. Annexed to this affidavit, and marked "**CFP12**", is a true copy of that application. I note that the application completed by my pilot contained some factual errors of which I was not aware at the time. Specifically, in the "Personal Details" section of that document, the pilot put his own first and last name where my first and last name should have appeared. Nevertheless, contrary to Mr McGowan's statement about me having "other intentions" when my application to enter Western Australia was submitted, the information contained in the "Exemption Sought Page" section of that document made it clear that the basis on which I was seeking a travel exemption was that I was a "person providing essential or urgent health or medical services or supplies", namely "medical supplies re Coronavirus treatment" and reference was made to the "Exemption letter from Federal Government attached".

77. Annexed to this affidavit, and marked "**CFP13**", is a true copy of a similar application prepared and submitted (by my pilot) for my wife. It also attached a copy of the letter referred to in paragraph [74] of this affidavit. I note that this application also contained some factual errors of which I was not aware at the time. Specifically, the pilot put his own first and last name where my wife's first and last name should have appeared. Nevertheless, the information contained in the "Exemption Sought Page" section of that document is similar to the information contained in the corresponding section of my application.

**Mining Leases, Mineralogy and the Amendment Act**

Acquisition of mining tenements

78. As mentioned in paragraph [16] of this affidavit, in or about 1985, I arranged for Mineralogy to acquire certain mining tenements in the area of Cape Preston in the Pilbara district of Western Australia.

Grant of mining leases

79. In or about 1993, certain mining leases were granted to Mineralogy. Mineralogy ended up holding a number of mining leases (being Mining Leases 08/118-08/130 and 08/264-08/266), Exploration Licences (being Exploration Licences 08/117, 08/118, 08/636, 08/660, 08/1414 and 08/1451) and General Purpose Leases (being General Purpose Leases 08/51, 08/52, 08/53, 08/63 and 08/74) in the area of Cape Preston, as well as a Miscellaneous Licence in Cape Preston (being Miscellaneous Licence 08/20).

Mineralogy

80. Mineralogy is the "flagship" company in my business. I am currently a Director of Mineralogy. I have been a director of Mineralogy for the following periods of time:

(a) 21 February 1986 to 2 October 2008;

(b) 4 October 2008 to 20 May 2014;

(c) 8 June 2016 to 8 October 2018; and

(d) 27 February 2019 to date.

International Minerals

81. I am also a Director of International Minerals Pty Ltd (**International Minerals**), a company I shall refer to further later in this affidavit. I have been a director of International Minerals for the following periods of time:

(a) 16 December 1992 to 16 December 2006;

(b) 17 July 2012 to 16 July 2018; and

(c) 29 October 2019 to date.

Proving up the resource

82. Obtaining the mining leases was one thing but I was conscious that I still faced an uphill battle to convince others that the ore was worth mining. It was not going to be easy. There are two main types of iron ore, namely haematite and magnetite. The resource in question here was magnetite ore. Magnetite ore requires more intensive processing, to upgrade it to higher-grade material by a process of magnetic separation. In order to develop the resources it would be necessary to establish power stations, a new port and other significant infrastructure. At that time, the Pilbara had not been the subject of that kind of development and it was essentially a blank canvas.

83. In the period from about 1986, Mineralogy spent tens of millions of dollars in undertaking substantial exploration, drilling and geological surveys of the area which would become the subject of the State Agreement referred to later in this affidavit. This substantial investment was made in order to prove up the resources in the tenements and to undertake feasibility studies for the development of projects within the region. This was done despite substantial opposition and derision from certain members of the Western Australian Government. It was done because I continued to believe that I would ultimately be able to

achieve something very significant with the tenements, which would benefit not only Mineralogy and me but also Western Australia. The reasons for this included the fact that the magnetite deposits were very large and the fact that Western Australia was a jurisdiction which, at that time, had a reputation for low "sovereign risk" and had a history of entering into State Agreements which provided visible support for mining projects in the State.

The State Agreement

84. To this end, in the period from 1993 to 2001, I personally spent an enormous amount of time negotiating with the Western Australian Government on the terms of a possible State Agreement for industrial projects in the North of Western Australia. These negotiations took place between about March 1993 and December 2001.

85. Ultimately, with the intention and for the purpose of developing mineral resources within Area A, as defined in the State Agreement (as that term is defined later in this paragraph), Mineralogy, in common with Austeel Pty Ltd, Balmoral Iron Pty Ltd, Sino Iron Pty Ltd (formerly called Bellswater Pty Ltd), Anshan Resources Pty Ltd, International Minerals and Korean Steel Pty Ltd entered into an agreement dated 5 December 2001 with the Honourable Geoffrey Ian Gallop in his capacity as the Premier of the State acting for and on behalf of the State and its instrumentalities from time to time (**State Agreement**).

86. On or about 19 February 2002, the *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Bill 2002* (WA), to which the State Agreement was scheduled and by which it was intended to be ratified, was introduced in the Parliament of Western Australia.

87. That 2002 Bill passed the Legislative Assembly of Western Australia on or about 12 June 2002 and the Legislative Council of Western Australia on or about 20 June 2002.

88. The State Agreement was ultimately ratified by the *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002* (WA) (**the 2002 Act**) which came into operation upon the receipt of Royal Assent on 24 September 2002.

89. Pursuant to clause 45(1) of the State Agreement, the rights and obligations of the parties to it exist for 60 years, which is until 2061.

90. Pursuant to clause 10(2) of the State Agreement, once a mining lease has been dedicated to a project proposal, that mining lease may exist for 21 years, with two options for extension for a further 21 years, with that time running from the date of approval of a proposal.

91. Over such an extensive period, there would inevitably be highs and lows in the market for magnetite ore and concentrate, but there would also inevitably be significant advancements in the availability of technology for mining and processing magnetite ore, and projects approved under the State Agreement would have benefited over time from those advances.

Purposes and objectives of the State Agreement

92. The purpose of the State Agreement was to facilitate the development of projects by "Project Proponents" within the meaning of the State Agreement, being Mineralogy by itself or in conjunction with one or more of its Co-Proponents.

93. As recorded in Recital (c) of the State Agreement, Mineralogy by itself or in conjunction with one or more of the Co-Proponents wished to develop projects incorporating:

(a) the mining and concentration of iron ore in Area A (as defined in the State Agreement);

(b) the processing of that iron ore predominantly as magnetite in Area A or elsewhere in the Pilbara region principally for the production and sale of high grade pellets, direct reduced iron and/or hot briquetted iron or steel;

(c) the transport of magnetite concentrates and processed iron ore within the Pilbara region;

(d) the establishment of new port facilities in the Pilbara region; and

(e) the shipping of processed iron ore through such port facilities.

94. As recorded in Recital (d) of the State Agreement, the State, "for the purpose of promoting employment opportunity and industrial development in Western Australia", had "agreed to assist the establishment of the proposed projects" upon and subject to the terms of the State Agreement.

95. This was an express recognition of the fact that the State Agreement offered great benefits to the State as well, because projects developed under the State Agreement would promote jobs and growth within the State.

96. The objectives of the State Agreement were to be achieved by the pursuit of projects for the mining and concentration of iron ore in Area A (as defined in the State Agreement), and other matters referred to in the recitals to the State Agreement, in respect of which proposals of various types could be submitted to the relevant Minister for approval pursuant to clause 7 of the State Agreement (**Project Proposals**).

The BSIOP Proposal and the Arbitrations

97. On or about 8 August 2012, Mineralogy and International Minerals submitted a very comprehensive and detailed Project Proposal to the relevant Minister pursuant to clause 6 of the State Agreement in respect of *'The Balmoral South Iron Ore Project'* (**BSIOP Proposal**).

98. The Minister's response to the BSIOP Proposal gave rise to a dispute which ultimately led to two arbitrations between Mineralogy and International Minerals on the one hand, and the State of Western Australia on the other hand. Those arbitrations commenced in 2013 and resulted in two awards in favour of Mineralogy and International Minerals. A former Justice of the High Court of Australia, Mr M H McHugh AC QC, was the arbitrator. The contents of the two previous awards (dated 20 May 2014 and 11 October 2019) have become public as a result of steps taken in August 2020 to enforce them. The process was otherwise intended to be confidential.

99. A third arbitral process was subsequently commenced.

100. On 26 June 2020, Mineralogy and International Minerals' claims for damages were set down for hearing before the Arbitrator to commence on 30 November 2020 (**the Damages Arbitration**) and a direction was made by the Arbitrator that he would deliver his award in the Damages Arbitration on or before 12 February 2021. The purpose of the Damages Arbitration was to determine what damages Mineralogy and International Minerals had suffered by reason of any breach or breaches of the State Agreement by the State.

101. The Damages Arbitration was still on foot as at 11 August 2020. The relevance of that date is explained below.

*The Mediation*

102. Also by 11 August 2020, a mediation of the matters which were the subject of the Damages Arbitration had been arranged. On or about 5 August 2020, the State executed a counterpart of a mediation agreement between it, me (on behalf of Mineralogy and International Minerals) and a former Chief Justice of Western Australia, the Hon. Wayne Martin AC QC as mediator (**the Mediation Agreement**).

103. On or about 6 August 2020, the Mediation Agreement was executed in counterparts by me and by the mediator. By reason of the enactment only a week later of the legislation to which I refer below, no mediation was able to be held.

*The Amendment Act*

104. I became aware on the evening of 11 August 2020 of the proposed legislation which had been introduced to the Legislative Assembly in the Parliament of Western Australia and which would become the *Iron Ore Processing (Mineralogy Pty Ltd) Amendment Act 2020* (WA) (**the Amendment Act**).

105. Overnight on 11/12 August 2020, I read the bill introduced on 11 August 2020 and its explanatory memorandum. I spent much of the rest of that week reviewing the implications of the proposed legislation. My reaction to the contents of the proposed legislation was one of shock and dismay because:

(a) I have always believed that, when disputes arise between parties which they cannot resolve amicably between themselves, the appropriate course is for those disputes to be determined according to law by an independent, impartial court or tribunal or by some other dispute resolution mechanism agreed between the parties.

(b) In this case, Mineralogy and International Minerals had been following precisely such a process for almost 8 years and had succeeded every step of the way. I was dismayed to see that the successes which Mineralogy and International Minerals had had in the arbitral proceedings over that long period in establishing a breach by the State of the State Agreement, and their claims for damages arising from that breach, were suddenly being snatched away from them simply because the State did not like the way the arbitration was going. I was dismayed to read the provisions of the proposed legislation which provided for the relevant arbitrations and awards to be "terminated" and deemed "never to have had any effect".

(c) I found this deeply troubling, not only because it does not accord with the usual process of the law to which I referred in (a) above but also because it goes against basic principles of fair play which I also hold dear. To me, the proposed legislation seemed as unfair as a football team which was hopelessly behind on the scoreboard, with only minutes to play, deciding to erase the scoreboard, deny that the match had ever started, sideline the referee, deny that the referee had ever been appointed (but grudgingly agree to pay the referee's match fee) and deny the right of the public or the media to inquire into these extraordinary events.

(d) I was also very upset to find that, despite never having being a party to the State Agreement or a party to the arbitral proceedings, I was personally mentioned by name in the proposed legislation. I had never seen an Act of Parliament like that before. It made me feel that the proposed legislation was a direct attack on me and

that I had been singled out for adverse treatment by a State Parliament at the instigation of the Western Australian Premier and Attorney-General.

(e) I was also shocked by the provisions of the proposed legislation to the effect that the State has no liability in connection with the subject matter of the relevant arbitrations, that any existing liability of that kind is "terminated", that access to the courts in relation to those matters has been removed and even that "the rules of natural justice (including any duty of procedural fairness) do not apply". This also went against the basic principles of fair play which I hold dear.

(f) I was very surprised by the provisions of the proposed legislation which denied the public and the media the right to find out anything about a "disputed matter" (i.e. about how the State had got itself into this position in the first place) by rendering freedom of information legislation inapplicable to that subject matter and removing the ability to seek discovery, production, inspection or disclosure of relevant documents in any court proceedings.

(g) I was alarmed by the provisions of the proposed legislation which impose indemnities on various people, including me, to indemnify the State if any attempt is made to bring proceedings relating to a "disputed matter". This seemed to me to be another example of the proposed legislation taking direct aim at me personally.

(h) I was amazed by the proposed new section 20(8) providing that *"Any conduct of the State that occurs or arises before, on or after commencement, and that is, or is connected with, a protected matter does not constitute an offence and is taken never to have constituted an offence"*. I had never before seen or heard of such a blanket immunity against criminal liability being conferred by an Act of Parliament on a State Government and its representatives.

(i) I was disappointed and upset because I had been misled by the State, which had led me to believe that it was continuing to participate in the Damages Arbitration and would participate in good faith in the mediation process which had been agreed only one week earlier, when in fact the State had been secretly preparing legislation to terminate both processes. This particularly upset me because I believed that the State was supposed to behave as a "model litigant".

(j) I was also dismayed that the State had similarly led the arbitrator and the mediator to believe that it was continuing to participate in those processes, and even prevailed upon the former Chief Justice of the State to sign a mediation agreement,

at a time when it plainly had no intention of participating further in either process and was secretly preparing legislation to terminate them both. I thought this behaviour was foolish and unbecoming of a Premier and an Attorney-General of an Australian State.

(k) I felt distressed as an Australian citizen that the proposed legislation attacked the rule of law, the sanctity of the courts and the rights of companies and citizens under the various Commercial Arbitration Acts of each of the Australian States and Territories.

(l) Ultimately, my reaction to the proposed legislation was that I believed that Mr McGowan and his government had declared war on the rule of law and the Australian legal system.

106. I refer to and repeat paragraphs [53] to [55] of this affidavit concerning the radio interview of Mr Quigley on the morning of 13 August 2020 and how and when I became aware of the Attack Plan.

107. In September 2020, I commenced proceedings in the original jurisdiction of the High Court of Australia, seeking to challenge the validity of the Amendment Act on a variety of constitutional grounds. That is proceeding B52 of 2020. The defendant to that proceeding is the State.

108. Also in September 2020, proceedings were commenced in the original jurisdiction of the High Court of Australia by Mineralogy and International Minerals, seeking to challenge the validity of the Amendment Act on a variety of constitutional grounds. That is High Court of Australia proceeding B54 of 2020. The defendant to that proceeding is the State.

109. In both proceeding B52 of 2020 and proceeding B54 of 2020, defences have been filed. Both matters are currently listed for further directions before Kiefel CJ on 29 January 2020. I anticipate that decisions will be made on that occasion regarding the future conduct of those matters, which may include decisions as to whether each matter will proceed by way of a special case, a case stated under section 18 of the *Judiciary Act 1903* (Cth), questions reserved under that section or in some other fashion.

110. In October 2020, Mr Quigley published an article concerning the Amendment Act in *Brief*, which is a publication of the Law Society of Western Australia. Annexed to this affidavit, and marked "**CFP14**", is a true copy of that publication. It responded in part to a

publication by the Law Society of Western Australia on 19 August 2020. Annexed to this affidavit, and marked "**CFP15**", is a true copy of that publication.

111. In or about December 2020, the Western Australian Bar issued a response to Mr Quigley's October 2020 article. Annexed to this affidavit, and marked "**CFP16**", is a true copy of that response.

112. Annexed to this affidavit, and marked as indicated below, are true copies of the following additional articles concerning the Amendment Act which I have read:

(a) "**CFP17**" – An article entitled *"Equality before the law swept under the carpet by both sides"* dated 13 August 2020 and written by Chris Merritt, the Vice-President of the Rule of Law Institute of Australia.

(b) "**CFP18**" – An article entitled *"The WA government legislated itself a win in its dispute with Clive Palmer – and put itself above the law"* dated 14 August 2020 and written by Lorraine Finlay, Lecturer in Law at Murdoch University.

(c) "**CFP19**" – An article entitled *"WA MPs showing ignorance over Clive Palmer"* dated 19 August 2020 and written by Professor James Allan, the Garrick Professor of Law at the University of Queensland.

(d) "**CFP20**" – An article entitled *"Clive Palmer: the unlikely canary in the coalmine"* dated 19 August 2020 and written by Caroline Di Russo, an Australian lawyer and businesswoman.

(e) "**CFP21**" – An article entitled *"The tyranny that strikes a friendless Clive Palmer could hurt any of us"* dated 22 August 2020 and written by Tom Switzer (Executive Director at the Centre For Independent Studies) and Robert Carling (who is a Senior Fellow at the Centre for Independent Studies and who was previously the Executive Director, Economic and Fiscal at the New South Wales Treasury from 1998 until 2006).

(f) "**CFP22**" – An article entitled *"You Don't Need To Like Clive Palmer To Dislike His Arbitrary Treatment"* which was published on the website of the Institute of Public Affairs on 27 August 2020 and written by Morgan Begg (a Research Fellow with the Institute of Public Affairs).

113. My review of this material only confirms my belief that I have been singled out in an extraordinary way by the Amendment Act. My continuing reaction to that legislation, and

to Mr McGowan's defence of it in the sixth matter complained of, is one of shock and bewilderment.

*The State Election*

114. The State never filed a defence in the Damages Arbitration. It was directed by the arbitrator to do so by 18 September 2020 but by then it had enacted the Amendment Act. If the State believed that it had any reasonably arguable defences to the claims by Mineralogy and International Minerals in the Damages Arbitration, then I know of no reason why the State could not have filed a defence. There would then have been a determination about the damages to which Mineralogy and International Minerals was entitled.

115. I am able to think of only one possible explanation for the timing of the enactment of the Amendment Act. The Western Australia State Election was and is scheduled for 13 March 2021. On 26 June 2020 (and therefore just before the six week period referred to by Mr Quigley during which the draft legislation which became the Amendment Act was prepared in secret), the arbitrator issued a set of directions in which he directed that the hearing of the Damages Arbitration commence on 30 November 2020 for an estimated 15 days and that "the Arbitrator shall deliver is award in the Arbitration on or before 12 February 2021". On the basis of those facts, I have formed the belief that Mr McGowan wanted the Amendment Act to be passed at the time when it was passed because he 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. That would have required Mr McGowan to do a lot of explaining about how such an outcome had come about, which would have been embarrassing for Mr McGowan and potentially damaging to his political position in relation to the State Election. Enacting the Amendment Act prior to the commencement of the arbitration would not only avoid those risks for Mr McGowan but enable him to promote a self-serving political narrative.

**Publications sued upon by Mr McGowan in his cross claim**

116. In the course of mid-2020 I became aware of numerous statements which Mr McGowan had made about me, all of which appeared critical and some of which I found insulting or otherwise offensive. Because of this, I was by July 2020 keeping a particularly close eye on what Mr McGowan was saying about me in case he said something which required a response from me. I was keeping an eye on Mr McGowan's public statements by the various means referred to in paragraph [22] of this affidavit.

*First matter complained of by Mr McGowan*

117. I became aware that Mr McGowan said, during a media conference which he held on or about 26 July 2020, that I am *"a menace to Australia"* and that my conduct in bringing a constitutional challenge to his "hard border" policy in the High Court of Australia was *"irresponsible"* and *"playing with people's lives"*. My recollection is that I first became aware of these statements on 26 July 2020 when I did a Google search of the kind referred to in paragraph [22](a) and found an Australian Associated Press article in which those words were attributed to Mr McGowan. Annexed to this affidavit, and marked "**CFP23**", is a true copy of that article.

118. The following day, 27 July 2020, I issued a press release in response to Mr McGowan's statements referred to in paragraph [117] of this affidavit. Annexed to this affidavit, and marked "**CFP24**", is a true copy of that press release.

119. I became aware that, during the course of a television appearance on or about 28 July 2020, Mr McGowan described me as *"the biggest loser"*. My recollection is that this particular statement was drawn to my attention some time in or about late July by an employed solicitor in the Perth office of Mineralogy, Thomas Browning, who directed my attention to a short video clip showing Mr McGowan making the statement. I did not take steps to respond to that statement at the time because I thought at the time that it was in the nature of a "cheap shot" and best ignored.

120. On or about 30 July 2020, I became aware of the first matter complained of and Mr McGowan's suggestion that I was *"the enemy of West Australia"*, *"the enemy of the State"* and *"the enemy of Australia"*. At or about the same time, I became aware of similar statements made by Mr McGowan on 31 July 2020 in which he attacked me by calling me *"the enemy of Western Australia"* and *"the enemy of the State"*. My recollection is that I first became aware of these statements on 31 July 2020 when I did a Google search of the kind referred to in paragraph [22](a) of this affidavit and found a *Sydney Morning Herald* article entitled *"I think he's the enemy of Australia: McGowan ramps up war of words with Palmer"*. Annexed to this affidavit, and marked "**CFP25**", is a true copy of that article.

121. On 31 July 2020, and subsequently, a number of people contacted me about the fact that I had been described by Mr McGowan as *"the enemy of Western Australia"* and *"the enemy of Australia"*. These included friends, business associates, politicians and lawyers. One of them was Domenic Martino. I recall Mr Martino calling me on or about 31 July 2020 and asking me whether I was aware that Mr McGowan had called me *"the enemy of*

*Western Australia"* and *"the enemy of Australia"*. I said words to the effect that I was aware of the statements and that I was very upset about them. I also said that I believed that Mr McGowan was only calling me *"the enemy of the State"*, despite all that I had done over the years for Western Australia, because I was exercising my right as an Australian citizen to take a matter to the High Court of Australia and because I had not succumbed to Mr McGowan's urgings to the effect that I should drop that action.

122. After becoming aware of Mr McGowan's comments on 30-31 July 2020 I formed the view that I needed to respond promptly. As a general matter, it is my view that if negative statements appear in the news media which make a response necessary or desirable, than that response should be provided very quickly. That is why, for example, I had promptly issued the press release referred to in paragraph [118] of this affidavit.

123. On 31 July 2020 I therefore called a press conference in Brisbane to respond to the statements which had been made by Mr McGowan on 30 and 31 July 2020. At that press conference I said the words set out in paragraph 2(a) of my defence to cross-claim. The primary purpose of making those statements was to respond to what Mr McGowan had said about me on 30 and 31 July 2020. As part of my response, I wanted to point out that Mr McGowan had been telling lies in relation to border closures and medical advice. I believed in the truth of what I said and I believed it was a fair and proportionate response to Mr McGowan's extremely serious attacks on me.

*Second matter complained of by Mr McGowan*

124. I refer to paragraphs [104] and [105] of this affidavit about the introduction of the bill which would become the Amendment Act and my immediate reaction to that proposed legislation.

125. I became aware that Mr McGowan held a media conference with Mr Quigley on or about 12 August 2020. Video footage of that media conference may be viewed via the following link:

https://1drv.ms/u/s!Asrj0IvoVS85gb94I5aKwYdz_9juIQ?e=HqOPSP

126. I was particularly struck by Mr McGowan's remarks that I had been *"trying ... to bankrupt Western Australia"* and was *"trying to take our money"*. Those particular statements appear at about 28:03 to 28:09 in the video in the link immediately above. My recollection is that I first became aware of these statements on 12 August 2020 when Mr

Browning drew my attention to a video clip of part of the media conference. By that time, I had instructed a number of people employed by Mineralogy, including Mr Browning, to monitor all statements made by Mr McGowan about me which were reported by the news media or which appeared on social media, particularly Mr McGowan's Facebook account, and keep a record of all such statements.

127. My recollection is that I became aware of two Facebook posts published by Mr McGowan on 12 August 2020 when they were drawn to my attention either by Mr Browning or by Mr Daniel Jacobson, another in-house counsel employed by Mineralogy. They are the second and third items which appear in the link below:

https://1drv.ms/u/s!Ag5-nz86eo4SjdsZOAYlqIren3a1jQ?e=jLQdoD

128. I formed the view that the proposed legislation which had been introduced into the Legislative Assembly of the Western Australian Parliament, and the accompanying statements by Mr McGowan which are referred to in paragraphs [125] to [127] of this affidavit required a very fast response from me.

129. On 12 August 2020 I therefore called a press conference in Brisbane. At that press conference I said the words which are the subject of the second matter complained in Mr McGowan's cross-claim. The primary purpose of making those statements was to respond to the proposed legislation, and to Mr McGowan's statements seeking to justify the proposed legislation. As parted of this I wanted to put forward my view that the proposed legislation was extremely disappointing and could not be justified on the basis suggested by Mr McGowan. I believed in the truth of what I said and I believed it was a fair and proportionate response to the extraordinary legislation which I believed amounted to a personal attack on me, and also to Mr McGowan's disgraceful defence of that legislation.

*Third to seventh matters complained of by Mr McGowan*

130. I formed the view that the impact of the proposed legislation, the statements made by Mr McGowan which are referred to in paragraphs [125] to [127] above, and the wide publicity associated with both of those things, made it desirable for me to do more than hold a single press conference. Accordingly, by 13 August 2020 I had started work on a written response to the proposed legislation and to Mr McGowan's statements about the proposed legislation. The document is entitled "Cover Up" and it is the subject of the third to

seventh matters complained of by Mr McGowan. Although that document bears the date of 13 August 2020 it was not completed until sometime the following day, as is apparent from the fact that it refers to the Amendment Act having been passed "last night".

131. The primary purpose of the "Cover Up" publication was to provide a detailed written response to the Amendment Act and to Mr McGowan's statements, seeking to justify the enactment of the Amendment Act. I believed in the truth of what I said and I believed it was a fair and proportionate response to the extraordinary legislation which I believed amounted to a personal attack on me, and also to Mr McGowan's disgraceful defence of that legislation.

132. I believed that it was important to prepare a detailed written response to those matters going beyond what I had managed to say in the press conference (discussed at paragraph [129] above). I intended to explain my view that the Amendment Act was a very bad piece of legislation, which raised a number of serious questions which Mr McGowan had not adverted to at all in the statements he had made, and which could not be justified on the basis suggested in Mr McGowan's statements. Those questions are set out in the "Cover Up" publication for readers of the publication to consider for themselves.

133. One of those questions was directed to the reasons for the Amendment Act being passed in such a rush. The "Cover Up" publication posed the question as to whether that was really because of a "State emergency" (as Mr McGowan's statements referred to in paragraphs [125] to [127] above suggested) or whether instead it was done in response to a "Mark McGowan emergency". By that I intended to suggest the enactment of the legislation was really a panicked response by Mr McGowan to the prospect of a substantial adverse arbitral award becoming public knowledge only a few weeks before the State Election (see paragraphs [114] and [115] of this affidavit).

134. My intention in raising these questions in the "Cover Up" article was to cause readers of that publication themselves to ponder what the answers to those questions might be, whether the Amendment Act's extraordinary provisions could possibly be justified in Australia and whether the statements made by Mr McGowan seeking to justify the enactment of that legislation held water. I felt this was a vital part of my reply to Mr McGowan's attacks on me.

*Eighth matter complained of by Mr McGowan*

135. Very early on the morning of 14 August 2020 (Brisbane time) I became aware that Mr McGowan had published a Facebook post, a copy of which is the fifth item in the link

which appears below paragraph 127 of this affidavit. At that stage I was keeping a particularly close eye on media concerning the passage of the proposed legislation, including statements being made by Mr McGowan on his social media accounts (Facebook and Twitter). My recollection is that this is how I first saw that Facebook post, possibly after initially becoming aware of its existence by seeing it picked up in a Google search of the kind referred to in paragraph [22](a) of this affidavit.

136. Also very early on the morning of 14 August 2020 (Brisbane time) I became aware that Mr McGowan had published a "Tweet", a copy of which is the seventh item in the link which appears below paragraph 127 of this affidavit. My recollection is that this is I first saw the text of that Tweet when it was republished in an online news article which was picked up in a Google search of the kind referred to in paragraph [22](a) of this affidavit. In particular I recall seeing, as a result of such a Google search, an AAP report entitled *"'We will never give in: WA Premier hails passing of emergency legislation to thwart Clive Palmer"*, which reproduced the text of the Tweet. Annexed to this affidavit, and marked "**CFP26**", is a true copy of that article.

137. I formed the view that these additional attacks on me, including particularly the suggestion that the Amendment Act was a necessary response to bullying by me, made it essential for me to make a further response.

138. On 14 August 2020 I participated in an ABC radio interview with Hamish Macdonald. That interview is the eighth matter sued upon by Mr McGowan. The first question put to me by the interviewer related directly to the Tweet referred to in paragraph [136] above, which enabled me to respond to that (and the identical part of the Facebook post referred to in paragraph [135] above) straight away. I rejected the interviewer's question about whether Western Australia had "stood up to a bully and effectively won" and put forward my own explanation of what was really happening. The interviewer also put to me some propositions of the kind earlier made by Mr McGowan and referred to in parts of the publications referred to at paragraphs [125] to [127] above. This gave me an opportunity to respond by rejecting the interviewer's proposition that Mr McGowan's government was "standing up for the citizens of Western Australia". This I sought to do by focussing on what I regarded as the real issues, including:

(a) whether the Amendment Act's extraordinary provisions could possibly be justified in Australia;

(b) why there was perceived to be such a need for secrecy about the legislation; and

(c) whether the statements made by Mr McGowan seeking to justify the enactment of that legislation withstood scrutiny.

139. I believed in the truth of what I said during the interview and I believed it was a fair and proportionate response to the extraordinary legislation which I believed amounted to a personal attack on me, and also to Mr McGowan's latest attempts to defend that legislation.

*General*

140. Finally, in relation to my various responses to Mr McGowan's statements, I recognise that both of us had been making public statements critical of each other for some time. However, things changed dramatically on 30 and 31 July 2020 when Mr McGowan chose to label me as *"the enemy of Western Australia"*, *"the enemy of the State"* and *"the enemy of Australia"*. To me, that took the matter to a whole new level. As the newspaper article referred to in paragraph [120] of this affidavit said, Mr McGowan had "ramped up his war of words" with me by making those statements.

141. In these unusual circumstances, in which my business interests (including my interests in Mineralogy and International Minerals as their ultimate beneficial owner) had come under attack, and in which I had come under personal attack (even to the extent of being named in an Act of the Western Australian Parliament), I considered that I needed to use firm and robust language to defend myself and my business interests.

**"Dishonourable man" imputation**

142. In the light of the matters referred to in this affidavit, I am very surprised that Mr McGowan has brought a defamation claim against me on the basis that it will be funded by Western Australian taxpayers. In this respect I refer to his public confirmation of this fact. I refer, for example, to an article in *The West Australian* on 23 September 2020 which refers to the taxpayer funding of Mr McGowan's cross-claim and quotes Mr McGowan as claiming that what he is doing is *"standard procedure"*. Annexed to this affidavit, and marked "**CFP27**", is a true copy of that article.

143. I can recall many examples of Australian politicians bringing claims for defamation over the years. However, I cannot recall a previous example of an Australian politician bringing a claim for defamation on the basis that it will be required to be paid for by the very people that politician is supposed to represent.

144. I observed that Mr McGowan sought to justify his position by making public statements reported in September 2020 to the effect that he expects that Western Australian taxpayers will receive *"a big cheque"* as a result of the cross-claim he has brought. Such statements were, for example, reported in the article in *The West Australian* on 23 September 2020 to which I refer in paragraph [142] of this affidavit.

145. I interpret Mr McGowan's action in bringing his cross-claim against me as retaliation for the fact that I filed my claim on 19 August 2020, seeking to protect and vindicate my reputation. This action by Mr McGowan adds to my feelings of hurt, as does Mr McGowan's extraordinary use of taxpayer funds to bring his cross-claim against me. I do not accept his public statements that he is suing for the benefit of taxpayers and his prejudgment of the outcome by stating that he expects taxpayers to receive *"a big cheque"*. These statements only underscore to me the extraordinarily punitive and personalised approach Mr McGowan and his government have taken against me.

Sworn by the deponent )
at Brisbane )
in the State of Queensland )
on 27 January 2021 )
Before me: )

Signature of deponent

Signature of witness

Name of witness: Daniel Jacobson
Qualification of witness: Solicitor

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP1"**

The following 1 page is the annexure "CFP1" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson

Address:

Solicitor Solicitor


| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

CFP1

# GOVERNMENT

BUSINESS FOREIGN AFFAIRS AND TRADE

# The 2012 Mining Industry Awards

## Entrepreneur of the Decade

## Professor Clive Palmer

**Presented this 20th Day of June 2012**

**Signed** _____

**Peter Charlton**
**CEO and Proprietor, Government Magazine**

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP2"**

The following 1 page is the annexure "CFP2" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson
Address:
Solicitor Solicitor

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|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

CFP2 NATIONAL TRUST
Upper Fort Street, Observatory Hill
Millers Point, NSW 2000
GPO BOX 518
Sydney NSW 2001
T +61 2 9258 0123 F +61 2 9251 1110
www.nationaltrust.com.au

Thursday 15th March 2012

Professor Clive Palmer
c/- Mineralogy Head Office
GPO Box 1538
BRISBANE
QUEENSLAND 4001

Dear Professor Palmer,

**Re: National Living Treasure – Thank You**

Thank you for attending the launch of seven new National Living Treasures at the S.H. Ervin Gallery on Sunday 4 March 2012. It was a memorable event made special by your enthusiasm and support.

I welcome you to the family of 100 National Living Treasures chosen by the Australian public. In further recognition of this honour, all Living Treasures are afforded Life Membership of the National Trust of Australia (NSW). A membership card is enclosed.

The National Trust of Australia (NSW) and Woman's Day believe that the Living Treasures are exceptional Australians with substantial, enduring accomplishments in their field who have contributed constructively to a unified Australian identity.

The National Trust values your contribution to Australia and to our living heritage. We wish you well with your future endeavours and hope that you will continue to be an active member of the National Trust community.

Yours sincerely

Ian Carroll AOM
**President**

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP3"**

The following 1 page is the annexure "CFP3" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson

Address:

Solicitor Solicitor


| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

CFP3

40

# PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

acknowledges the distinguished service of

## Mr Clive Palmer

Leader, Palmer United Party
Member for Fairfax QLD
7 September 2013 – 9 May 2016

President of the Senate

Speaker of the House of Representatives

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP4"**

The following 2 pages are the annexure "CFP4" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson
Address:
Solicitor Solicitor


| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | *Level 23, 52 Martin Place*, Sydney NSW 2000 |

# The Palmer Foundation

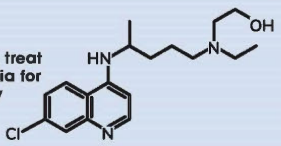
## COVID-19 Response and Action

The malaria drug hydroxychloroquine* is showing enormous promise in the treatment of COVID-19.

That's why The Palmer Foundation is making resources available to fund clinical trials, scale up the availability of hydroxychloroquine as soon as we can, and have enough of the drug available for all Australians, free of charge.

*** What is hydroxychloroquine?**

Hydroxychloroquine is a drug that was originally developed to treat malaria. It was synthesized in 1946, approved for use in Australia for over 40 years and approved by the FDA in 1955. It is commonly used to treat lupus, rheumatoid arthritis and malaria. It is on the World Health Organisation's List of Essential Medicines.




Follow along with extraordinary developments happening worldwide at a rapid pace.

While this list is by no means exhaustive, it is indicative of the progress being made.

**13 Feb 2020**
South Korean government guidelines recommended Kaletra, an anti-retroviral HIV medication, chloroquine or hydroxychloroquine, could be used as an alternative.

**15 Feb 2020**
French scientists propose 'Chloroquine for the 2019 novel coronavirus SARS-CoV-2' in the International Journal of Antimicrobial Agents

**9 Mar 2020**
The journal *Clinical Infectious Diseases* published an initial Chinese study report with the conclusion that 'hydroxychloroquine was found to be more potent than chloroquine to inhibit SARS-CoV-2 in vitro'.

**12 Mar 2020**
Korea Center for Disease Control and Prevention recommend the use of hydroxychloroquine in combination with an anti-HIV medication, and urged medical staff to use their best judgment when treating patients.

**12 Mar 2020**
WHO declares pandemic status in response to COVID-19.

**14 Mar 2020**
The UK Department of Health and Social Care added hydroxychloroquine to the list of medicines that cannot be parallel exported, in order to ensure the continuity of supply to patients in the UK.

**16 Mar 2020**
Professor David Paterson, Director, UQ Centre for Clinical Research puts out a call to action to secure $750,000 funding for The RBWH Foundation clinical drug trials via their Coronavirus Action Fund.

**17 Mar 2020**
The Palmer Foundation donates $1 million to the RBWH Foundation Coronavirus Action Fund.

**17 Mar 2020**
French research team Gautret et al publish 'Hydroxychloroquine and azithromycin as a treatment of COVID-19: results of an open-label non-randomised clinical trial in *International Journal of Antimicrobial Agents*. They reported significant clinical improvement & potential effectiveness in the early impairment of contagiousness.

**22 Mar 2020**
A Chinese study concluded: Despite our small number of cases, the potential of HCQ in the treatment of COVID-19 has been partially confirmed. Considering that there is no better option at present, it is a promising practice to apply HCQ to COVID-19 under reasonable management. However, large-scale clinical and basic research is still needed to clarify its specific mechanism and to continuously optimize the treatment plan.

**22 Mar 2020**
Shortages of hydroxychloroquine are reported in the US, UK, Thailand and France. India bans the export of the drug to safeguard the health of its health workers, who take the drug as a preventative measure.

**23 Mar 2020**
Jordan's FDA authorises COVID-19 treatment with hydroxychloroquine as part of a treatment protocol under doctors' supervision.

**23 Mar 2020**
The Palmer Foundation commits to fund the purchase of one million courses of hydroxychloroquine (30 million doses and supply free for Australians).

**27 Mar 2020**
Sermo, a leading healthcare data collection company launched its COVID-19 Real Time Barometer to measure physician insights and experiences with COVID-19 treatment across the globe. In 3 days, over 6200 physicians were surveyed across 30 countries. Hydroxychloroquine was overall chosen as the most effective therapy amongst COVID-19 treaters from a list of 15 options.

**28 Mar 2020**
The FDA in the U.S. issued an emergency use authorisation (EUA) for the use of hydroxychloroquine in the treatment of COVID-19.

**30 Mar 2020**
National Community Pharmacists Association in the U.S. support the dispensation of hydroxychloroquine for COVID-19 patients under medical care.

**2 Apr 2020**
Australia's Minister for Health, Greg Hunt announced hydroxychloroquine made available if doctors wish to use them with COVID-19 patients who are in hospital.

**For details on all these developments, and many more, please visit palmerfoundation.com.au**

Authorised by Clive Palmer

**6 Apr 2020**

The American Thoracic Society backs the use of hydroxychloroquine for the treatment of COVID-19 patients.

12 French doctors file a petition calling on French Prime Minister and Minister of Health to urgently make hydroxychloroquine available in all French hospital pharmacies.

**7 Apr 2020**

**8 Apr 2020**

Providing a treatment of hydroxychloroquine sulfate, zinc and azithromycin early in the disease, Dr. Vladimir Zelenko has treated over 900 COVID-19 patients with a 99.99% success rate. His approach is to treat patients early so that they don't have to be put on ventilators.

Turkey has made significant progress in treating coronavirus patients in the early stages of the disease with hydroxychloroquine, Turkish officials have said.

**8 Apr 2020**

**8 Apr 2020**

Sermo's second wave of global data collection from its COVID-19 Real Time Barometer reveals Hydroxychloroquine to be in the top two frontline treatments and its usage increased by a global average of 11% week over week. Reported usage in New York nearly doubled.

A clinical trial to evaluate the safety and effectiveness of hydroxychloroquine for the treatment of adults hospitalized with COVID-19 has begun, with the first participants now enrolled in Tennessee, USA.

**9 Apr 2020**

**9 Apr 2020**

Israeli Prime Minister Benjamin Netanyahu thanked India's Prime Minister Narendra Modi for rushing a five-tonne cargo of medicines, including hydroxychloroquine, to Israel.

Professor Raoult, France, unveils a follow-up study of 1061 people, estimating a 91% effectiveness of his treatment, including hydroxychloroquine, of COVID-19 patients.

**9 Apr 2020**

**10 Apr 2020**

Sen. Ron Johnson, Wisconsin representative, sent U.S. President Trump a letter from more than 750 physicians urging him to expand the use of hydroxychloroquine for coronavirus outpatients by removing federal and state restrictions limiting the drug's use to hospitals.

The United Arab Emirates has been using chloroquine and hydroxychloroquine to successfully treat COVID-19 patients amid the coronavirus outbreak, announced at their health ministry press conference.

**12 Apr 2020**

**14 Apr 2020**

The Federal Emergency Management Agency (USA), advises they have sent out 19.1 million tablets of hydroxychloroquine from the Strategic National Stockpile; the malaria drug that some doctors have prescribed to Covid-19 patients.

South Dakota, USA, announces a state-wide clinical trial to treat COVID-19 patients with hydroxychloroquine. Sanford Health will run the systemwide, randomized, placebo-controlled study and will initially include 2,000 outpatients who have been exposed to COVID-19, including health care workers and high-risk patients.

**14 Apr 2020**

**15 Apr 2020**

Sermo's third weekly wave of global data collection from its COVID-19 Real Time Barometer reveals of over 4000 physicians surveyed globally, 50% had prescribed hydroxychloroquine for COVID-19 patients, and Italy and France had the highest increase in COVID treaters having prescribed hydroxychloroquine wave over wave; an increase from 50% to 83% for Italy and an increase from 20% to 50% for France.

India has agreed to sell hydroxychloroquine tablets to Malaysia for use in the treatment of COVID-19 patients, with New Delhi partially lifting its bar on exports of the anti-malarial drug.

**16 Apr 2020**

**16 Apr 2020**

A multi-site clinical trial, led by the University of Washington Department of Global Health/International Clinical Research Center (ICRC) collaborating with NYUGrossman School of Medicine, aims to definitively determine whether hydroxychloroquine can prevent transmission in people exposed to the virus SARS-CoV-2.

The Russian government has authorised hospitals to treat coronavirus patients with the malaria drug hydroxychloroquine.

**16 Apr 2020**

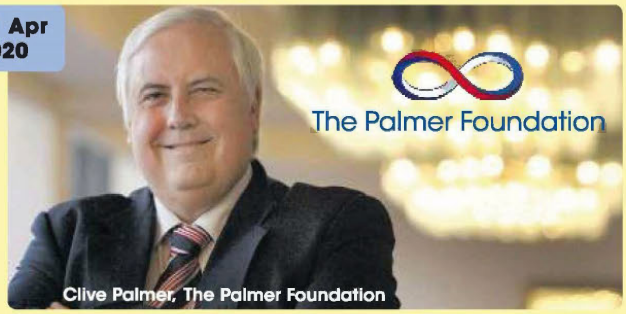
**19 Apr 2020**

India sends shipment of 5.5 million pills of hydroxychloroquine to the UAE.

**The Palmer Foundation has acquired 32.9 million doses of hydroxychloroquine for treating Australians, free of charge.**

**Part of this is a significant quantity of the active pharmaceutical ingredient, which will enable the manufacture of the tablets right here in Australia.**

**21 Apr 2020**

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**For details on all these developments, and many more, please visit palmerfoundation.com.au**

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP5"**

The following 7 pages are the annexure "CFP5" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson
Address:
Solicitor

Solicitor


| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

Sophocles Lawyers

Level 23, 52 Martin Place
Sydney NSW 2000, Australia
T +61 2 9098 4450
M +61 401 780 558
W www.sophocleslawyers.com

Our reference: 200002/MJS

Email: mjs@sophocles-lawyers.com

4 August 2020

**PERSONAL AND CONFIDENTIAL**

The Hon. Mark McGowan MLA
Premier of Western Australia
5th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

***By hand and by email to:*** **mark.mcgowan@mp.wa.gov.au**

Dear Mr McGowan,

**Statements made by you concerning C F Palmer – Defamation**

We act for Mr Clive Palmer (**Mr Palmer**).

In an interview which you gave on or about 31 July 2020, and in a further statement made by you and reported on 3 August 2020, you made a number of allegations which are grossly defamatory of Mr Palmer.

At the outset, we note that Mr Palmer accepts and recognises the importance of vigorous public debate in a democratic society, especially on matters of public interest and importance. This, however, does not entitle one citizen to engage in a calculated, sustained, malicious and vindictive attempt to destroy the reputation of another citizen by publishing false and defamatory statements about that other citizen.

For some time now, you have been engaging in a systematic campaign of public vilification of Mr Palmer, using the high profile associated with your office as a platform from which to launch a series of scurrilous attacks on Mr Palmer.

Although some of the statements you have made in the past might perhaps have been defensible in the context of a debate about matters of obvious public interest and importance, it is clear that you have recently crossed the line in a manner which requires the intervention of the laws of defamation.

Although this letter should not be taken to suggest that the only defamatory statements about Mr Palmer which you have made were those referred to in this letter (and our client's investigations are continuing in that regard), this letter will focus on those recent statements because they are the most extravagant, the most obviously malicious and the most damaging of the statements you have so far made about Mr Palmer. In the event that you fail to provide the apology requested in this letter, and proceedings are commenced against you, Mr Palmer reserves the right to include further claims for defamation for any other defamatory statements identified between now and the date of the court filing.

**The 31 July statements**

We have not yet had an opportunity to identify every defamatory imputation contained in the statements which you made during your interview on 31 July 2020. Subject to the matters referred to in the following paragraph, this letter is limited to the following statements of and concerning Mr Palmer which you saw fit to make on that occasion:

(a) the statement that Mr Palmer is "the enemy of Western Australia";

(b) the statement that Mr Palmer is "the enemy of the State"; and

(c) the statement that Mr Palmer is "the enemy of Australia" –

(together, **the 31 July statements**).

Without suggesting in any way that this is an exhaustive list, the defamatory imputations conveyed by the 31 July statements included the following:

(a) Mr Palmer hates Western Australia and the people of Western Australia;

(b) Mr Palmer hates Australia and the people of Australia;

(c) Mr Palmer fosters harmful designs against Western Australia and the people of Western Australia;

(d) Mr Palmer fosters harmful designs against Australia and the people of Australia;

(e) Mr Palmer is engaging in activities with the intention of injuring the people of Western Australia;

(f) Mr Palmer is engaging in activities with the intention of injuring the people of Australia;

(g) Mr Palmer is actively opposed to the interests and welfare of the people of Western Australia;

(h) Mr Palmer is actively opposed to the interests and welfare of the people of Australia;

(i) Mr Palmer represents a threat to the people of Western Australia and is dangerous to them; and

(j) Mr Palmer represents a threat to the people of Australia and is dangerous to them.

In case it becomes necessary to commence proceedings against you in respect of the 31 July statements, Mr Palmer expressly reserves the right to plead defamatory imputations additional to those mentioned immediately above.

To refer to another citizen in a constitutional democracy in the terms of the 31 July statements is simply indefensible. It represents a deliberate attempt by you to:

(a) vilify Mr Palmer merely for expressing legitimate views and exercising his lawful rights, including by bringing a case before the High Court of Australia on a matter of national importance involving the Australian Constitution;[1]

(b) cause members of the public to shun and avoid Mr Palmer for expressing legitimate views and exercising his lawful rights; and

(c) expose Mr Palmer to hatred and contempt.

Indeed, it is significant to note that the use of phrases such as "enemy of the State" and "enemy of the people", although they date back to Roman times, is a tactic now most strongly associated with the worst authoritarian rulers of the 20th century in their respective endeavours to stifle civil liberties and crush opponents by means including the devastating tactic of labelling any person or group with whom they disagreed in terms such as those of the 31 July statements. We note, for example, that in his speech to the 20th congress of the Communist Party of the USSR on 25 February 1956, Nikita Khrushchev denounced this effective but deplorable tactic in the following terms:

> Stalin originated the concept "enemy of the people." This term automatically made it unnecessary that the ideological errors of a man or men engaged in a controversy be proven. It made possible the use of the cruellest repression, violating all norms of … legality, against anyone who in any way disagreed with Stalin …. The concept "enemy of the people" actually eliminated the possibility of any kind of ideological fight or the making of one's views known on this or that issue, even [issues] of a practical nature.
>
> …
>
> The formula "enemy of the people" was specifically introduced for the purpose of … annihilating such individuals.

As a well-educated person, and by virtue of the office which you hold, you must be taken to be aware of the enormous power and impact of the words which you chose to use when making the 31 July statements and to have made a conscious choice to use such words in a deliberate attempt to destroy Mr Palmer's reputation, to quell his perfectly legitimate opposition to your "hard border closure" policy and to inhibit him from pursuing the case which he has placed before the High Court of Australia in a legitimate exercise of his rights as an Australian citizen.

Indeed, it is troubling to note that your sustained attempts to generate widespread hatred and contempt for Mr Palmer already appear to be having the desired effect. An especially disturbing manifestation of this is the recent creation of the Facebook event "Cough at Clive Palmer at Perth Airport" which incites members of the public to "cough openly" at Mr Palmer if he is successful in the Constitutional case he has brought before the High Court. At the time of writing, this Facebook event has attracted the interest of almost 40,000 people and almost 9,000 people have listed themselves as "going" to the event, apparently meaning that they intend to act on the suggestion that they should carry out vigilante attacks on Mr Palmer at Perth Airport by deliberately attempting to infect him with a potentially deadly illness or, at least, to cause him (and members of his family) to suffer distress and fear that he

[1] As an aside, Mr Palmer considers that, although you have sought in your public comments to dismiss that case as a trifle involving mere "Constitutional niceties", the Australian Constitution and the High Court of Australia are deserving of far greater respect from a Premier of an Australian State, especially one who was a practising lawyer.

may have been so infected. The relevant Facebook page urges those who act on this suggestion to "re-cover your face" afterwards because "We don't want to infect any real people"; the corollary of that snide remark is of course that the creator of that Facebook page, and the thousands of people who have subsequently supported it, do wish to cause physical harm to Mr Palmer, with possibly fatal consequences.

In addition, it has been reported that at least one supporter of that Facebook event has made a death threat against Mr Palmer and that several have threatened to assault Mr Palmer physically by bringing projectiles to Perth Airport to throw at him. Additional death threats have been made against Mr Palmer in material posted on his own social media accounts.

By the making of the 31 July statements, and numerous other public utterances which preceded them, you have created the conditions in which Mr Palmer is now exposed to such hatred and contempt that he, members of his family and others who might travel with him have now been placed in physical danger.

Further, your obvious malice towards Mr Palmer means that defences which might otherwise have been available to you in respect of the publication of the statements referred to in this letter will not be available. It also founds additional claims by Mr Palmer for aggravated damages to be awarded against you.

**The 3 August statement**

We now refer to the statement of and concerning Mr Palmer which you saw fit to make on 3 August 2020, namely that "him coming to Western Australia to promote a dangerous drug, I don't think was a good thing for our State and I'm pleased the Police rejected him" (**the 3 August statement**).

The 3 August statement cannot be divorced from the context of the 31 July statements. On the contrary, the 3 August statement built on the 31 July statements by continuing to develop themes to the effect that Mr Palmer fosters harmful designs against Western Australia and the people of Western Australia, is engaging in activities with the intention of injuring the people of Western Australia, represents a threat to the people of Western Australia and is dangerous to them. The 3 August statement does this by making the additional unfounded and defamatory allegation that Mr Palmer is seeking to enter Western Australia "to promote a dangerous drug".

Without suggesting in any way that it is an exhaustive list, the defamatory imputations conveyed by the 3 August statement included many of those listed above in relation to the 3 July statements.

In case it becomes necessary to commence proceedings against you in respect of the 3 August statement, Mr Palmer expressly reserves the right to plead defamatory imputations additional to those mentioned immediately above.

For the reasons mentioned above, the 31 July 2020 statements and the 3 August 2020 statements (together, **the Statements**) were grossly defamatory of Mr Palmer and:

1. The Statements have damaged Mr Palmer's reputation in that they are likely to cause people to think less of him.

2. The Statements are likely to cause others to "shun and avoid" Mr Palmer, both in a personal capacity and in a business capacity.

3. The Statements expose Mr Palmer to hatred and contempt.

The impact of the Statements, and the wide publicity which they have generated in the Australian media, has been especially significant by virtue of the position which you hold as the Premier of an Australian State.

**Specific damage**

As you know, Mr Palmer is one of Australia's best known and most successful business people, with very substantial business interests in Western Australia and elsewhere in Australia. These business interests of course include those which are the subject of the State Agreement which was ratified, and the implementation of which was authorised, by the *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act 2002* (WA) (**the State Agreement**).

Accordingly, and quite apart from being grossly defamatory by any measure, the Statements involved that form of defamation involving injury to business reputation which the High Court of Australia considered in *John Fairfax Publications Pty Ltd v Gacic* (2007) 230 CLR 291 and which Gleeson CJ and Crennan J described in that case as the *"established form of defamation"* concerning *"the publication of imputations that have a tendency to injure a person in his or her business, trade or profession"*. Accordingly, our client reserves the right to claim (in addition to compensatory damages and aggravated damages) special damages for all economic loss caused by the publication of the Statements.

There can be no doubt that the publication of the Statements has caused, and will continue to cause, significant injury to Mr Palmer. In effect you have used your position as the Premier of an Australia State as a platform from which to urge all Western Australians, and indeed all Australians, to treat Mr Palmer as their "enemy". That is so despite the fact that all Mr Palmer (who does not recall ever having met you) has done to offend you is to exercise his lawful rights as an Australian citizen under the Constitution and bring a case before the High Court of Australia in which, until very recently, the Commonwealth itself had intervened "in support of the position of the plaintiffs" (i.e. Mr Palmer and his company Mineralogy Pty Ltd).

By reason of the grossly defamatory nature of the Statements, the fact that they have been published so broadly (as you doubtless intended they would be) and the significant injury which the Statements have caused and will continue to cause to Mr Palmer, including the inevitable injury to his business reputation, the damage caused by the Statements is expected to sound in claims for many millions of dollars, including not only claims for compensatory damages and aggravated damages but also claims for specific damages.

We note, for example, that the Statements are likely to have a very profound impact on whatever value might possibly be left in the State Agreement. That is because the fundamental purpose of an agreement such as the State Agreement is to provide the degree of demonstrable Governmental support necessary for a project to be financed and developed and that any prospective financier of a project would inevitably conclude that a person who had been described by the Premier of Western Australia as "the enemy of the State" would never be capable of deriving any such support, with the result that any such project (which might otherwise have been worth billions of dollars) could never get off the ground.

**Contempt of court**

The conduct referred to in this letter gives rise to another concern, namely that you may be engaging in conduct which amounts to a contempt of court. The relevant principles in this regard have been summarised as follows:

> A publication may constitute contempt if it tends to impose improper pressure on a party to proceedings as to the conduct of those proceedings. For example, a publication may have a tendency to pressure a party to discontinue or settle proceedings.[2] The basis for restricting the publication of material in this context is concern that the individual party, as well as litigants and potential litigants generally, will be discouraged from seeking access to the courts for vindication of their legal rights, and in this way the due administration of justice will be impeded.[3]

In an appropriate case, such conduct may be restrained by an injunction.[4]

This separate aspect of the matter is currently under active consideration and in the meantime it is subject to the general reservation of rights in the final paragraph of this letter.

**Corrective action**

Mr Palmer requires that immediate action be taken to mitigate the ongoing damage to reputation which he continues to suffer as a result of the publication of the Statements. In order to mitigate that ongoing damage, Mr Palmer seeks the publication an apology, within 7 days of the date of this letter, in the following terms:

> *"**Apology to Clive Palmer***
>
> *In recent weeks I have made a number of statements highly critical of Mr Palmer.*
>
> *On 31 July 2020, I went so far as to describe Mr Palmer as 'the enemy of the State', 'the enemy of Western Australia' and even 'the enemy of Australia'.*
>
> *On 3 August 2020, I went further still and falsely accused Mr Palmer of seeking to enter Western Australia with the intention of 'promoting a dangerous drug'.*
>
> *I accept that those statements were entirely unfounded, were entirely improper and should never have been made.*
>
> *I also accept that the statements were defamatory of Mr Palmer.*

---

[2] See *Commercial Bank of Australia Ltd v Preston* [1981] 2 NSWLR 554; *Harkianakis v Skalkos* (1997) 42 NSWLR 22; *Attorney General v Times Newspapers Ltd* [1973] QB 710; *Hamersley Iron Pty Ltd v Lovell* (1998) 19 WAR 316. See also A Riseley, *Improper Pressure on Parties to Court Proceedings* (Australian Law Reform Commission, Reference on Contempt of Courts, Tribunals and Commissions, Research Paper 3, 1986).

[3] New South Wales Law Reform Commission, *Contempt by Publication*, Discussion Paper No 43, (2000) at [6.19].

[4] *Attorney General v Times Newspapers Ltd* [1974] AC 273; *Pharmac v Researched Medicines Industry* [1996] 1 NZLR 472.

*In the circumstances, I unreservedly withdraw those statements and I apologise unconditionally to Mr Palmer."*

Such apology must be made by you publicly and a signed apology in those terms must be provided to Mr Palmer within the same 7 day period in order that Mr Palmer may publish the apology himself as he sees fit, including by publishing it for the purposes of mitigating the damage to his business interests which have been, or have the potential to be, damaged by the Statements.

We note that, under the Uniform Defamation Laws, evidence of an apology would not be admissible in any proceedings as evidence of fault or liability but it could mitigate (but not eliminate) damages.

If the corrective action referred to above is not taken within 7 days of the date of this letter, our client will look to all of his remedies, including but not limited to the right to commence proceedings for defamation in respect of the Statements.

In the meantime all of our client's rights and remedies in respect of the matters referred to above are hereby expressly reserved.

Yours faithfully,
**SOPHOCLES LAWYERS**

Sophocles Lawyers

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP6"**

The following 2 pages are the annexure "CFP6" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson

Address:

Solicitor Solicitor


| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

# CFP6

Sophocles Lawyers

Level 23, 52 Martin Place
Sydney NSW 2000, Australia
T +61 2 9098 4450
M +61 401 780 558
W www.sophocleslawyers.com

Our reference: 200002/MJS

Email: mjs@sophocles-lawyers.com

10 August 2020

**PERSONAL AND CONFIDENTIAL**

The Hon. Mark McGowan MLA
Premier of Western Australia
5th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

***By hand and by email to:*** **mark.mcgowan@mp.wa.gov.au**

Dear Mr McGowan,

**Statements made by you concerning C F Palmer – Defamation**

We refer to our letter dated 4 August 2020. Terms defined in that letter have the same meaning in this letter.

You have not to date taken corrective action in respect of the defamatory statements identified in that letter. Instead, you have chosen to engage in conduct which is calculated to aggravate the damage caused by those statements.

In particular, on or about 7 August 2020, you publicly stated that Western Australia is *"in a war with Clive Palmer"*. Those words are obviously not to be taken literally in that, as a Premier of an Australian State, you have no power to declare war on an Australian citizen merely because you wish to deter him from exercising his legal entitlement to bring a case before the High Court of Australia. Nevertheless, the fact that you have resorted to such extraordinary rhetoric speaks volumes about the strength of your determination to fan the flames of the hatred and contempt for Mr Palmer which you have generated by your previous attacks on Mr Palmer's reputation, including by the 31 July statements.

It is very troubling that, despite the concerns expressed in our letter dated 4 August 2020 (including that "you have created the conditions in which Mr Palmer is now exposed to such hatred and contempt that he, members of his family and others who might travel with him have now been placed in physical danger"), you have continued, and even intensified, your campaign of public vilification of Mr Palmer.

As mentioned in our letter dated 4 August 2020, your obvious malice towards Mr Palmer means that defences which might otherwise have been available to you in respect of the publication of the statements referred to in this letter will not be available. It also founds additional claims by Mr Palmer for aggravated damages to be awarded against you.

In the statement of claim which is currently being prepared for Mr Palmer, an additional claim for aggravated damages will be made in respect of your statement that Western Australia is *"in a war with Clive Palmer"*, which has exacerbated the damage already caused by the 31 July statements.

For reasons already mentioned in our letter dated 4 August 2020, the damage caused by the Statements referred to in that letter (and in this letter) is expected to sound in claims for many millions of dollars, including not only claims for compensatory damages and aggravated damages but also claims for specific damages.

We note, for example, that the Statements are likely to have a very profound impact on whatever value might possibly be left in the State Agreement. That is because the fundamental purpose of an agreement such as the State Agreement is to provide the degree of demonstrable Governmental support necessary for a project to be financed and developed and that any prospective financier of a project would inevitably conclude that a person who had been described by the Premier of Western Australia as *"the enemy of the State"*, and even *"in a war"* with the State, would never be capable of deriving any such support, with the result that any such project (which might otherwise have been worth billions of dollars) could never get off the ground.

We also reiterate our concerns about the potential for a contempt of court to have been committed, which separate aspect of the matter is currently under active consideration and in the meantime is subject to the general reservation of rights in the final paragraph of this letter.

We look forward to receiving your response (if any) to our letter dated 4 August 2020.

In the meantime all of our client's rights and remedies in respect of the matters referred to above (and in our letter dated 4 August 2020) continue to be reserved.

Yours faithfully,
**SOPHOCLES LAWYERS**

Sophocles Lawyers

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP7"**

The following 5 pages are the annexure "CFP7" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson
Address:
Solicitor Solicitor


| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

Government of **Western Australia**
Department of **the Premier and Cabinet**
Media Monitoring Unit

# TRANSCRIPT

**DATE:** Thursday, August 13, 2020

**TIME:** 8.35am

**PROGRAM:** ABC Radio Perth – Breakfast (MITSOPOULOS & WOOLF)

**SUBJECT:** **QUIGLEY – Palmer's $30 billion claim**



NADIA MITSOPOULOS

Now Opposition party supported the bill but the Liberal Party does want a Parliamentary inquiry to look at it. While Mr Palmer heads to the New South Wales Supreme Court to try and circumvent it.

This is complicated, the Attorney-General calls this a very complicated game of chess. The Attorney-General is of course John Quigley and he joins us this morning. [greetings not transcribed]

JOHN QUIGLEY

If I could just explain that last comment, it is like a complicated game of chess, but in no way is it a game. I certainly together with the Premier feel a heavy weight of responsibility on behalf of all Western Australians to repel this rapacious claim by this… by this Palmer man.

NADIA MITSOPOULOS

Let's just… thank you for that sorry. Just… if we just look at the legislation it pretty smoothly moved through the Upper… the Lower House last night, debated in the Upper House today, but so far you have some bipartisanship on this issue. How quickly can you get this through.

JOHN QUIGLEY

Today. I want to see the Governor's signature on this legislation this evening. Can I just explain. As I said to you on your last program we… I left off on the basis that we had another punch in the bag in this fight. This is a game of tactics. Mr Palmer got a arbitrators award back in 2014, and an intervening six years has failed to register the… [… audio drops out for 20secs…] we decided that only a few, the Premier and I only knowing about it last week, we kept it so tight and then brought it in at 5pm on Tuesday after every court in the land was closed and the doors were locked.

KEY: * Spelling indeterminate

Now let me explain the legislation. The legislation in Clause 10 and 11 terminates the arbitration as of the time of introduction. So it terminates it as though the arbitration never happened, and the time that that termination begins or becomes effective is when I did my second reading speech on Tuesday evening. And it was too late for him to get to a court. And so once the legislation passes and becomes law, the arbitration is terminated as of last Tuesday two days ago.

And so I think that the people… and I said this in the Assembly last night… the people who are really in the cart now are Palmer's lawyers who for six years have failed to legislate the arbitration.

The New South Wales Law Society insurers would be quacking in their boots this morning if they read my speech because Mr Palmer's lawyers will have to today notify them of a potential claim in negligence by their client Clive Palmer. This is getting where… this is getting to a crucial point.

And what needs to happen today is the legislation to pass through the Upper House today, as a matter of urgency, so determination effective as of Tuesday becomes law today, before there is any registration of the arbitration accepted by the Supreme Court of New South Wales.

And so I heard on the news… on the ABC news earlier on an academic saying 'oh there could be… should be an inquiry and we look at this legislation carefully and put it off for a couple of weeks', that's all academic speak. We're in the real world here and protecting all Western Australians from a claim of $30 billion. And I urge all Members of the Upper House to work collaboratively together in the interests of all Western Australians to pass this law swiftly today and have the Governor's signature on it today.

RUSSELL WOOLF

So, Mr Quigley, that means the bipartisanship that we're seeing needs to extend, you know, through to the Liberals. And if they're looking at having a… a joint select committee to look at the legislation, you can't afford the timing for that to happen.

JOHN QUIGLEY

They will be playing right into Palmer's hands… right into Palmer's hands. They will be assisting him by slowing this legislation down. So over in Sydney all the lawyers will be talking about is there's a bill under investigation in the Parliament of Western Australia which may or may not have an effect.

We can't risk this. There's got to be an Act of Parliament… of the Western Australian Parliament signed off today.

NADIA MITSOPOULOS

We know that there are some Liberal MPs in the Upper House that can go a bit rogue. Do you have a commitment that the Opposition parties will support this in the Upper House?

JOHN QUIGLEY

I do not, I do not. I'm making this plea on your radio program. I've made it in the paper. In the interests of all Western Australians, families, babies, children… children will owe Palmer $12,000 if this… if… if we don't stop him.

The police stations… the police won't be able to be paid properly, the teachers, the nurses. This is absolutely, as the Premier said, obscene. And as I said to you, it is like a… it is like a fight. Like my near neighbour Danny Green says, you've just got to jab, jab, jab with your right and move him over to the left and then just knock him down with a right… a left hook.

And what's happened here is that Mark McGowan has been jab, jabbing away with insults. His lawyers have been busying themselves with sending us back reams of defamation writs, when they should have been looking at the main game of filing… of registering the arbitration, and we got through in time. We got that legislation into the Assembly on Tuesday night while all the courts were locked.

NADIA MITSOPOULOS

Okay. The… the reports now are that Clive Palmer is going to New South Wales Supreme Court to try and block this legislation. How… how do you see that playing out?

JOHN QUIGLEY

Right. Well, that's what I was saying earl… that's what I was saying earlier, Nadia. Once you get an award in arbitration, the arbitrator makes an award, you can go and register it in a court, and you apply to the court to register it. So what he's doing now, too late, we think…

NADIA MITSOPOULOS

… he's trying to register it.

JOHN QUIGLEY

…he's going to… he's trying to register it. Had he got a whisper of what I was about last week, or what the Government was about last week, or even Monday or even Tuesday morning, Tuesday afternoon, had he got a whisper and made his move to the court then we would have been in all sorts of difficulty 'cause once the matter is before the court the independence of the courts are protected by Chapter 3 of the Constitution.

NADIA MITSOPOULOS

So how long does it take to register? I mean, if he's trying to do that today your legislation hasn't passed yet, he may still win?

JOHN QUIGLEY

This is peak politics, isn't it? Everyone's sitting on the edge of their seat. This is peak politics and I'm pleading with all Members of the Upper House… all Members of the Upper House to move swiftly to protect Western Australian and all Western Australians.

This is crucial that this bill is introduced and passed. And the academics and the other people can write about it afterwards, can analyse it afterwards all they like for months to

come and criticise us whatever, I don't care, but we've got to unleash the left hook today. We've got to knock him down… and knock him down today. There is too much at risk for all Western Australians for namby-pamby inquiries, 'what does this word mean, what does that word mean'.

This legislation has been drafted over the last six weeks in secret by the best legal minds in this city. The Solicitor-General of Western Australia, Mr Joshua Thomson SC, our incredible State Solicitor Mr Nick Egan and his legal team at the State Solicitor's office. Mr Egan even left the office and worked at home to keep it… to keep the job secret so that people in… in his own office wouldn't know. And then after we prepared the legislation, two weeks ago we sent it off to the firm that the Liberal Party normally use, Clayton Utz, and task them with two jobs.

One, to black hat it, to, as it were, receive instructions from Palmer how to attack it, and they came up with different minds of attack on the legislation. So then we amended our bill to take care of all those attacks. And secondly, to give an independent opinion that normal… the firm that normally act for the Liberal Party, an independent opinion as to its constitutionality and efficacy for the task at hand, and that is to terminate this arbitration today, effective as of 5pm last Friday… last Tuesday when I hopped to my feet.

RUSSELL WOOLF

I wonder you're now the Attorney-General of course but you're a lawyer. If you remember you know when you were wearing your lawyer's cap I guess… if you had seen an Attorney-General come through and create legislation like this in a kind of sneakily and the bring it in without any fanfare just immediate reaction, and say you were involved in a court case that this legislation now altered so significantly, how would you react.

JOHN QUIGLEY

Well this is unprecedented Russell, this is absolutely unprecedented and Western Australia faces an unprecedented challenge to its existence, to its economic existence. And let's understand what's happening here. Palmer is trying to double-dip. He's got the Balmoral South iron ore project, the iron ore is still in the ground. He can still put in an application to mine it, he still has the rights to all of those resources worth billions and billions of dollars. What this action is about is suing the State because the honourable Colin Barnett rejected his first proposal as being invalid, and in relation to his second proposal put on 46 conditions.

So he's suing the State for damages, cop this one, because he was denied the opportunity in 2012 of selling the whole of the mine to the Chinese Government. And this is the man who in the last election was putting ads in the paper saying don't vote Labor because they've got all these airports, the Derby Airport, the Karratha Airport and that airdrome out in Merredin where Singapore Airlines used to train their pilots lined up for a Chinese invasion.

NADIA MITSOPOULOS

Appreciate all that John Quigley but there is concern that you're using legislation to override and strike out of court process, an independent court process. And there is

concern that this could influence other cases that it could set a precedent which could be used again 10-20 years down the track.

JOHN QUIGLEY

Firstly may I, this is not a court process, this is an arbitration under contract. The judgement in this.. at this stage, this is an arbitration under contract the first point. Second point, the Chamber of Minerals and Energy and Mr Paul Everingham, certainly not Laborites have come out and said this sets no precedent that Clive Palmer is a lunatic and he's attacking the whole economy of Western Australia.

This sets no precedent the Premier has rung FMG, BHP, Rio, Mr Chris Ellison's company, he's rung them all and they're all perfectly comfortable with this legislation. None of them see it as a threat, none of them see it as creating a precedent, none of them see it as creating a sovereign risk because it doesn't. We're not taking away Mr Palmer's resource, he's still got it there. He can still mine it, he's getting a million dollars a day from WA, a million dollars a day and now he want to take $30 billion in one hit.

NADIA MITSOPOULOS

John Quigley before I let you go just a quick yes, no because we've got lots of calls we need to get to. But your Government did table a letter from Clive Palmer's lawyer and it said in there that he would drop his hard border challenge against the State if the Government agreed to arbitration hearings being held in Canberra rather than in Perth. Did you ever consider that offer.

JOHN QUIGLEY

Not for one moment. He wanted to trade the health and safety of all Western Australians, we do not have community spread of the virus here. He wanted to trade the hard border for his claim of $30 billion. We would never sell out the people of Western Australia, we would never sell out their safety and health.

RUSSELL WOOLF

John Quigley we appreciate you being with us. The Attorney-General of Western Australia.

Ends...
sb

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP8"**

The following 3 pages are the annexure "CFP8" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson

Address:

Solicitor Solicitor

| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

Sophocles Lawyers

Level 23, 52 Martin Place
Sydney NSW 2000, Australia
T +61 2 9098 4450
M +61 401 780 558
W www.sophocleslawyers.com

Our reference: 200002/MJS

Email: mjs@sophocles-lawyers.com

27 August 2020

Carmel Galati
Solicitor
PO Box 186
HAMILTON HILL WA 6963

***By email to:*** carmel@carmelgalati.com

Dear Ms Galati,

***Clive Frederick Palmer v Mark McGowan* – Federal Court of Australia proceeding NSD 912/2020 ("the Proceedings") – Document hold**

We refer to previous correspondence.

As mentioned in our initial letter dated 4 August 2020, your client's obvious malice towards Mr Palmer means that defences which might otherwise have been available to your client in respect of the matters complained of will not be available.

The question of your client's malice highlights an additional issue, namely the critical importance of ensuring that all documents which are or may be required in evidence in the Proceedings are preserved.

Obviously the full scope of any discovery in the Proceedings can only be determined after the pleadings have closed but it appears inevitable that discovery of documents relevant to the question of malice will be sought. The reasons for this are explained below.

As the Leader of the Opposition in Western Australia recently observed, your client *"deliberately went out of his way to provoke Mr Palmer with unnecessary, intemperate language – language that was not befitting ... a Premier"*.

It has been revealed that your client did this as part of a pre-conceived plan of attack, undertaken in concert with Attorney-General John Quigley (and possibly also others), which was described by Mr Quigley in an interview on 13 August 2020 as follows:

> *"It is like a fight, like ... Danny Green says you just got to "Jab, jab, jab with your right, move them over to the left and then just knock him down with a left hook". And what has happened here is that Mark McGowan has been jab, jabbing away with insults, his lawyers have been busying themselves with sending us back threats of defamation writs when they should have been looking at main game of filing – of registering the arbitration, and we got through in time. We got that legislation into the assembly on Tuesday night when all the courts were locked"*
>
> **(the Attack Plan)**.

In the course of the same interview on 13 August 2020, Mr Quigley indicated that he believed that your client had implemented his part of the Attack Plan and that it was time to move to the second part of the Attack Plan which he described as the "left hook". Consistently with the irresponsible violent rhetoric favoured by your client and Mr Quigley when referring to Mr Palmer, Mr Quigley said:

> *"We've got to unleash the left hook today, we've got to knock him down, and knock him down today."*

In other words, the statements made by your client were part of the Attack Plan, a deliberate strategy designed to insult our client, harm our client's reputation and cause our client so much distress that he would be distracted from arranging for the registration of the 2014 and 2019 arbitral awards. It will be our client's case at trial that the matters complained of included false statements of fact and purported statements of opinion which were made without any genuine belief; rather, the statements were made by your client with malice and in pursuance of the Attack Plan.

Given that your client expressed himself in such a manner publicly, what he said privately will no doubt be even more illuminating in establishing his state of mind in making the relevant statements.

It is therefore intended to seek discovery from your client in the Proceedings, including discovery of documents relating to the Attack Plan. It is also intended more generally to seek discovery of documents which evidence any animosity, malice, antagonism, hostility, hatred or other such animus towards Mr Palmer on the part of your client.

In the circumstances, please confirm that your client has preserved and will continue to preserve all documents of any kind described in the Schedule to this letter ("**Documents**") which may be relevant to the question of malice in the Proceedings, including without limitation all Documents in your client's possession, custody or power which relate in any way to the Attack Plan and its purposes (including, again without limitation, all communications and records of communications between your client and Mr Quigley concerning the Attack Plan and its purposes) and any other documents which evidence any animosity, malice, antagonism, hostility, hatred or other such animus towards Mr Palmer on the part of your client.

Yours faithfully,
**SOPHOCLES LAWYERS**

*Sophocles Lawyers*

## SCHEDULE – MEANING OF "DOCUMENTS"

**"Documents"** means any documents and includes:

(a) any record of information falling within the definition of *"**document**"* in Part 1 of the Dictionary to the *Evidence Act 1995* (Cth) (as expanded by clause 8 of Part 2 of that Dictionary); and

(b) any other material, data or other record of information, irrespective of the medium by which it is stored, including the following:

(i) emails;

(ii) voice mail messages;

(iii) text messages;

(iv) any communications, or records of communications, sent by "instant messaging" or other forms of "online chat";

(v) blog posts;

(vi) data accessible from any social networking sites (including Facebook, Twitter and LinkedIn) including, without limitation, Tweets, Twitter direct messages, LinkedIn messages and Facebook posts, comments and messages;

(vii) any other material, data or other record of information stored on any mobile phone or on a SIM card for any mobile phone;

(viii) any other material, data or other record of information stored on any "feature phone" or on a SIM card for any "feature phone";

(ix) any other material, data or other record of information stored on any "smart phone" (meaning any iPhone or other such device built on a mobile operating system such as iOS, BlackBerry, Android, Windows Phone or Windows Mobile) or on a SIM card for any such "smart phone";

(x) any other material, data or other record of information stored on any desktop computer, laptop or notebook computer or tablet computer (including any iPad or other such device built on a mobile operating system such as iOS, BlackBerry OS, Windows, Android or Linux) or on a SIM card for any tablet computer;

(xi) any other material, data or other record of information stored on any servers, archives, back-up or disaster recovery systems, tapes, disks, drives (including external hard disk drives and USB flash drives), flash memory cards, cartridges or other information storage devices; and

(xii) any other material, data or other record of information stored on any cloud storage services.

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP9"**

The following 1 page is the annexure "CFP9" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson

Address:

Solicitor Solicitor

| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

Carmel Galati
SOLICITOR

**CFP9**

4 September 2020

PRIVATE AND CONFIDENTIAL
Sophocles Lawyers
**By email to mjs@sophocles-lawyers.com**
Mr Michael Sophocles
Level 23, 52 Martin Place
SYDNEY NSW 2000

Dear Mr Sophocles

**Mark McGowan ats Clive Palmer– NSD 912/2020**

I refer to your letter dated 27 August 2020 in which you request my client preserve documents of the kind described in the schedule to your letter.

As your letter acknowledges, pleadings have yet to close and therefore what document or documents are relevant on the pleadings is yet to be determined.

The assertion in your letter that there was a deliberate strategy as between the Attorney-General and the Premier to insult your client, cause your client distress and harm your client's reputation is fanciful, with respect.

My client will comply with his discovery obligations at the appropriate time.

Yours faithfully

**Carmel Galati**
carmel@carmelgalati.com

PO Box 186, Hamilton Hill Western Australia 6963 ABN: 80635212013
Telephone: +61 8 9433 4850 Facsimile: +61 8 9433 4512 Mobile: 0403 342 483 Email: carmel@carmelgalati.com

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP10"**

The following 3 pages are the annexure "CFP10" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson
Address:
Solicitor Solicitor

| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

Sophocles Lawyers

Level 23, 52 Martin Place
Sydney NSW 2000, Australia
T +61 2 9098 4450
M +61 401 780 558
W www.sophocleslawyers.com

Our reference: 200002/MJS

Email: mjs@sophocles-lawyers.com

27 August 2020

The Hon. John Quigley MLA
Attorney-General of Western Australia
5th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

***By hand and by email to: Minister.Quigley@dpc.wa.gov.au***

Dear Sir,

***Clive Frederick Palmer v Mark McGowan* – Federal Court of Australia proceeding NSD 912/2020 ("the Proceedings") – Subpoenas - Document hold**

We act for Mr Palmer in the Proceedings.

An issue which will almost inevitably arise in the Proceedings will be a contention by our client that Mr McGowan's obvious malice towards him means that defences which might otherwise have been available to Mr McGowan in the Proceedings will not be available.

The question of Mr McGowan's malice highlights an additional issue, namely the critical importance of ensuring that all documents which are or may be required in evidence in the Proceedings are preserved.

Obviously the full scope of any discovery (or subpoena) obligations in the Proceedings can only be determined after the pleadings have closed but it appears inevitable that discovery of documents relevant to the question of malice will be sought. The reasons for this are explained below.

As the Leader of the Opposition in Western Australia recently observed, Mr McGowan *"deliberately went out of his way to provoke Mr Palmer with unnecessary, intemperate language – language that was not befitting ... a Premier"*.

You have revealed that Mr McGowan did this as part of a pre-conceived plan of attack, undertaken in concert with you (and possibly also others), which you described in an interview on 13 August 2020 as follows:

> *"It is like a fight, like ... Danny Green says you just got to "Jab, jab, jab with your right, move them over to the left and then just knock him down with a left hook". And what has happened here is that Mark McGowan has been jab, jabbing away with insults, his lawyers have been busying themselves with sending us back threats of defamation writs when they should have been looking at main game of filing – of registering the arbitration, and we got through in time. We got that legislation into the assembly on Tuesday night when all the courts were locked"*
>
> **(the Attack Plan)**.

In the course of the same interview on 13 August 2020, you indicated that you believed that Mr McGowan had implemented his part of the Attack Plan and that it was time to move to the second part of the Attack Plan, which you described as the "left hook". Consistently with the irresponsible violent rhetoric favoured by you and Mr McGowan when referring to Mr Palmer, you said:

> *"We've got to unleash the left hook today, we've got to knock him down, and knock him down today."*

In other words, the statements made by Mr McGowan which are now the subject of the Proceedings were part of the Attack Plan, a deliberate strategy designed to insult our client, harm our client's reputation and cause our client so much distress that he would be distracted from arranging for the registration of the 2014 and 2019 arbitral awards. It will be our client's case at trial that the matters complained of included false statements of fact and purported statements of opinion which were made without any genuine belief; rather, the statements were made by Mr McGowan with malice and in pursuance of the Attack Plan.

Given that Mr McGowan expressed himself in such a manner publicly, what he said privately will no doubt be even more illuminating in establishing his state of mind in making the relevant statements.

It is therefore intended to seek discovery from Mr McGowan in the Proceedings, including discovery of documents relating to the Attack Plan. It is also intended more generally to seek discovery of documents which evidence any animosity, malice, antagonism, hostility, hatred or other such animus towards Mr Palmer on the part of Mr McGowan. It is also intended to seek the leave of the Court to issue subpoenas to persons other than Mr McGowan who may reasonably be supposed to have such documents. This obviously includes you.

In the circumstances, please ensure that you preserve all documents of any kind described in the Schedule to this letter ("**Documents**") which may be relevant to the question of malice in the Proceedings, including without limitation all Documents in your possession, custody or power which relate in any way to the Attack Plan and its purposes (including, again without limitation, all communications and records of communications between you and Mr McGowan concerning the Attack Plan and its purposes) and any other documents which evidence any animosity, malice, antagonism, hostility, hatred or other such animus towards Mr Palmer on the part of Mr McGowan.

Yours faithfully,
**SOPHOCLES LAWYERS**

Sophocles Lawyers

## SCHEDULE – MEANING OF "DOCUMENTS"

**"Documents"** means any documents and includes:

(a) any record of information falling within the definition of *"**document**"* in Part 1 of the Dictionary to the *Evidence Act 1995* (Cth) (as expanded by clause 8 of Part 2 of that Dictionary); and

(b) any other material, data or other record of information, irrespective of the medium by which it is stored, including the following:

(i) emails;

(ii) voice mail messages;

(iii) text messages;

(iv) any communications, or records of communications, sent by "instant messaging" or other forms of "online chat";

(v) blog posts;

(vi) data accessible from any social networking sites (including Facebook, Twitter and LinkedIn) including, without limitation, Tweets, Twitter direct messages, LinkedIn messages and Facebook posts, comments and messages;

(vii) any other material, data or other record of information stored on any mobile phone or on a SIM card for any mobile phone;

(viii) any other material, data or other record of information stored on any "feature phone" or on a SIM card for any "feature phone";

(ix) any other material, data or other record of information stored on any "smart phone" (meaning any iPhone or other such device built on a mobile operating system such as iOS, BlackBerry, Android, Windows Phone or Windows Mobile) or on a SIM card for any such "smart phone";

(x) any other material, data or other record of information stored on any desktop computer, laptop or notebook computer or tablet computer (including any iPad or other such device built on a mobile operating system such as iOS, BlackBerry OS, Windows, Android or Linux) or on a SIM card for any tablet computer;

(xi) any other material, data or other record of information stored on any servers, archives, back-up or disaster recovery systems, tapes, disks, drives (including external hard disk drives and USB flash drives), flash memory cards, cartridges or other information storage devices; and

(xii) any other material, data or other record of information stored on any cloud storage services.

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP11"**

The following 1 page is the annexure "CFP11" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson
Address:
Solicitor


| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | *Level 23, 52 Martin Place*, Sydney NSW 2000 |

**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 Skerritt
Health Products Regulation Group

23 April 2020

Phone: (02) 6289 4200 Email: John.Skerritt@health.gov.au
PO Box 100 Woden ACT 2606 - www.health.gov.au

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP12"**

The following 5 pages are the annexure "CFP12" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson
Address:
Solicitor Solicitor


| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

Second Application Viewed

*Registration Page*





## Carlo Filingeri

REASSESS

Current Status - Rejected

Travel type - Into WA, within WA

**Internal comments**

7545 three applications different information

**External Notes (visible to traveller)**

Rejected three application different documents an investigation into false fraudulent submissions can lead to a fine of $50,000

**Direction**

Select a condition

REGISTRATION DETAILS · TRAVEL DETAILS · EXEMPTIONS SOUGHT (2) · REGIONS · SUPPORTING DOCUMENTS (1) · DECLARATIONS

### PERSONAL DETAILS

| | |
|---|---|
| First name | Carlo |
| Last name | Filingeri |
| Date of birth | 26/03/1954 |
| Gender | Male |
| Contact email | PILBERA@YAHOO.COM |
| Phone number | 0421756015 |
| Passport number | PB4092587 |
| Address | 1 KING ARTHUR COURT SOVEREIGN ISLANDS QLD 4216 |
| Employment class/role | N/A |
| Organisation | N/A |
| Requested regions | Perth / Peel<br>State Boundaries |

### NEXT OF KIN

| | |
|---|---|
| Name | ANNA PALMER |
| Relationship | WIFE |
| Residential address | 1 KING ARTHUR COURT QLD 4216 |
| Phone number | 0437325485 |

### MOBILITY

| | |
|---|---|
| Requires mobility assistance? | No |
| Assistance required | N/A |

*Travel Details Page*

REGISTRATION DETAILS | TRAVEL DETAILS | EXEMPTIONS SOUGHT (2) | REGIONS | SUPPORTING DOCUMENTS (1) | DECLARATIONS

**TRAVEL DETAILS**

| | |
|---|---|
| Date of travel | 21/05/2020 |
| Means of travel | Air |
| Point of entry / exit | Perth |
| Name of carrier | N/A |
| Address while in WA | GOLD COAST |
| Category of traveller | A person providing health services at the request of the Chief Health Officer or Director General of the Department of Health |

*Exemption Sought Page*

REGISTRATION DETAILS | TRAVEL DETAILS | EXEMPTIONS SOUGHT (2) | REGIONS | SUPPORTING DOCUMENTS (1) | DECLARATIONS

| **INTO WA** | |
|---|---|
| Please include enough information to support your travel request. | PLEASE SEE ATTACHED LETTER FROM THE FEDERAL GOVERNMENT EXEMPTING ME FROM TRAVEL RESTRICTIONS DUE PROVISION OF MEDICAL SUPPLIES FOR CORONA TREATMENT |

| **REGIONAL ZONES** | Perth / Peel |
|---|---|
| Date required to | May 28, 2020 |
| Primary reason for request | Person providing essential or urgent health or medical services or supplies |
| Summary detail of reason | PROVISION OF MEDICAL SUPPLIES RE CORONA VIRUS TREATMENT. EXEMPTION LETTER FROM FEDERAL GOVERNMENT ATTACHED |

*Regions Page*

REGISTRATION DETAILS | TRAVEL DETAILS | EXEMPTIONS SOUGHT (2) | REGIONS | SUPPORTING DOCUMENTS (1) | DECLARATIONS

**REGIONS**

SAVE

| | |
|---|---|
| Perth / Peel | ✓ |
| State Boundaries | ✓ |
| Wheatbelt | |
| South West | |
| Great Southern | |
| Gascoyne | |
| Mid West | |
| Pilbara | |
| Goldfields - Esperance | |
| Shire of Esperance | |
| East Pilbara Region (Bio Security Zone) | |
| Kimberley Region (Bio Security Zone) | |
| Shire of Ngaanyatjarraku | |
| Interstate FIFO | |
| Air Arrivals International | |
| WA/NT Border - Road | |
| WA/SA Border - Rail | |
| WA/SA Border - Road | |
| Shire of Broome | |
| Shire of Derby-West Kimberley | |
| Shire of Halls Creek | |
| Shire of Wyndham-East Kimberley | |
| Air Arrivals Domestic | |

*Supporting Documents Page*

REGISTRATION DETAILS | TRAVEL DETAILS | EXEMPTIONS SOUGHT (2) | REGIONS | SUPPORTING DOCUMENTS (1) | DECLARATIONS

| | |
|---|---|
| Sherritt to Palmer Foundation 23 4 20.pdf (1).pdf | |

*Declarations Page*

REGISTRATION DETAILS | TRAVEL DETAILS | EXEMPTIONS SOUGHT (2) | REGIONS | SUPPORTING DOCUMENTS (1) | DECLARATIONS

| | |
|---|---|
| Informed consent | 18/05/2020 - 11:25 AM |
| COVID Declaration | 18/05/2020 - 11:37 AM |
| Biosecurity Declaration | N/A |
| Interstate Declaration | 18/05/2020 - 11:37 AM |

**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 Skerritt
Health Products Regulation Group

23 April 2020

Phone: (02) 6289 4200 Email: John.Skerritt@health.gov.au
PO Box 100 Woden ACT 2606 - www.health.gov.au

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP13"**

The following 5 pages are the annexure "CFP13" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson

Address:

Solicitor Solicitor


| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | *Level 23, 52 Martin Place, Sydney NSW 2000* |

Third Application Viewed

*Registration Page*

## Carlo Filingeri

Current Status - Rejected
Travel type - Into WA, within WA

REASSESS

80

**Internal comments**

PD07545 errors in application give concerns of fraudulent application to be confirmed

**External Notes (visible to traveller)**

Rejected three application different documents an investigation into false fraudulent submissions can lead to a fine of $50,000

**Direction**

Select a condition

REGISTRATION DETAILS | TRAVEL DETAILS | EXEMPTIONS SOUGHT (2) | REGIONS | SUPPORTING DOCUMENTS (1) | DECLARATIONS

### PERSONAL DETAILS

| | |
|---|---|
| First name | Carlo |
| Last name | Filingeri |
| Date of birth | 05/02/1975 |
| Gender | Female |
| Contact email | A.PALMER980@GMAIL.COM |
| Phone number | 0421756015 |
| Passport number | E4080924 |
| Address | 1 KING ARTHUR COURT SOVEREIGN ISLAND QLD 4216 |
| Employment class/role | N/A |
| Organisation | N/A |
| Requested regions | Perth / Peel<br>State Boundaries |

CFP13

### NEXT OF KIN

| | |
|---|---|
| Name | CLIVE PALMER |
| Relationship | HUSBAND |
| Residential address | 1 KING ARTHUR COURT SOVEREIGN ISLAND |
| Phone number | 0437325485 |

### MOBILITY

| | |
|---|---|
| Requires mobility assistance? | No |
| Assistance required | N/A |

*Travel Details Page*

REGISTRATION DETAILS | TRAVEL DETAILS | EXEMPTIONS SOUGHT (2) | REGIONS | SUPPORTING DOCUMENTS (1) | DECLARATIONS

**TRAVEL DETAILS**

| | |
|---|---|
| Date of travel | 21/05/2020 |
| Means of travel | Air |
| Point of entry / exit | Perth |
| Name of carrier | N/A |
| Address while in WA | GOLD COAST |
| Category of traveller | A person providing health services at the request of the Chief Health Officer or Director General of the Department of Health |



*Exemption Sought Page*

REGISTRATION DETAILS | TRAVEL DETAILS | EXEMPTIONS SOUGHT (2) | REGIONS | SUPPORTING DOCUMENTS (1) | DECLARATIONS

| **INTO WA** | |
|---|---|
| Please include enough information to support your travel request. | TO PROVIDE CORONA TREATMENT UNDER PALMER FOUNDATION. PLEASE REFER TO ATTACHED LETTER FROM FEDERAL GOVERNMENT STATING TRAVEL RESTRICTION EXEMPTION DUE TO CORONA VIRUS TREATMENT. |

| **REGIONAL ZONES** | Perth / Peel |
|---|---|
| Date required to | May 28, 2020 |
| Primary reason for request | Person providing essential or urgent health or medical services or supplies |
| Summary detail of reason | PLEASE REFER TO EXEMPTION LETTER FROM FEDERAL GOVERNMENT FOR ALL TRAVEL WITHIN AUSTRALIA. |

*Regions Page*

REGISTRATION DETAILS | TRAVEL DETAILS | EXEMPTIONS SOUGHT (2) | REGIONS | SUPPORTING DOCUMENTS (1) | DECLARATIONS

**REGIONS**

SAVE

| | |
|---|---|
| Perth / Peel | ✓ |
| State Boundaries | ✓ |
| Wheatbelt | |
| South West | |
| Great Southern | |
| Gascoyne | |
| Mid West | |
| Pilbara | |
| Goldfields - Esperance | |
| Shire of Esperance | |
| East Pilbara Region (Bio Security Zone) | |
| Kimberley Region (Bio Security Zone) | |
| Shire of Ngaanyatjarraku | |
| Interstate FIFO | |
| Air Arrivals International | |
| WA/NT Border - Road | |
| WA/SA Border - Rail | |
| WA/SA Border - Road | |
| Shire of Broome | |
| Shire of Derby-West Kimberley | |
| Shire of Halls Creek | |
| Shire of Wyndham-East Kimberley | |
| Air Arrivals Domestic | |

*Supporting Documents Page*

REGISTRATION DETAILS | TRAVEL DETAILS | EXEMPTIONS SOUGHT (2) | REGIONS | SUPPORTING DOCUMENTS (1) | DECLARATIONS

| | |
|---|---|
| Skerritt to Palmer Foundation 23 4 20.pdf[1].pdf | ⧉ |

*Declarations Page*

REGISTRATION DETAILS | TRAVEL DETAILS | EXEMPTIONS SOUGHT (2) | REGIONS | SUPPORTING DOCUMENTS (1) | DECLARATIONS

| | |
|---|---|
| Informed consent | 18/05/2020 - 11:38 AM |
| COVID Declaration | 18/05/2020 - 11:49 AM |
| Biosecurity Declaration | N/A |
| Interstate Declaration | 18/05/2020 - 11:49 AM |

**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 Skerritt
Health Products Regulation Group

23 April 2020

Phone: (02) 6289 4200 Email: John.Skerritt@health.gov.au
PO Box 100 Woden ACT 2606 - www.health.gov.au

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP14"**

The following 3 pages are the annexure "CFP14" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson

Address:

Solicitor Solicitor

| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

# Extraordinary But Not Without Foundation: The WA Government's Response to an Unprecedented Threat

By **John Quigley MLA**
Attorney General of Western Australia


**Passage of the *Iron Ore Processing (Mineralogy Pty Ltd) Amendment Act 2020* ('Amendment Act') has demonstrated that extraordinary legislation makes many in the legal profession uncomfortable.**

This reaction is proper, and is to be expected.

The West Australian Government believes that such Acts should be passed rarely and only when the circumstances are so serious that not legislating would result in significant harm.

Clive Palmer's $30 billion damages claim against the State of WA is one such occasion.

It is common ground that the emergency legislation passed at speed through State Parliament last month (August) to extinguish arbitral awards underpinning Mr Palmer's claim was extraordinary and unprecedented for WA.

But that doesn't mean the Amendment Act is not built upon a solid foundation of case law and precedent.

Notwithstanding the critics' cries of "banana republic", "17th century star chamber" and "charade for democracy", the Act is far from ill thought-out.

There are three key constitutional principles which underpin the operation of the Amendment Act. These principles are all well-established in the High Court by cases from other states in Australia.

The first principle is that it is always within the power of Commonwealth or State Parliaments to alter the rights and liabilities of a person, even in respect of pending litigation.

In a 2015 case called *Duncan v Independent Commission Against Corruption* [2015] HCA 32; (2015) 256 CLR 83 at [26] then-High Court Chief Justice French, current Chief Justice Kiefel as well as Justices Bell and Keane specifically stated: "it is now well settled that a statute which alters substantive rights does not involve an interference with judicial power contrary to Ch III of the *Constitution* even if those rights are in issue in pending litigation."

They illustrated this point by reference to a 1998 case called *H A Bachsrach Pty Ltd v Queensland* [1998] HCA 54; (1998) 195 CLR 547, a unanimous decision of five High Court justices. *Duncan* itself was a case involving New South Wales legislation.

It effectively declared that the ICAC had power to take future action, after the legislation passed, in respect of conduct which was retrospectively to be regarded as corrupt.

The second principle is that it is within the power of a State Parliament to expropriate property without providing just compensation.

This was established in a 2001 case called *Durham Holdings Pty Ltd v New South Wales* [2001] HCA 7; (2001) 205 CLR 399.

In that case, coal in certain lands in New South Wales was vested in the Crown by the *Coal Acquisition Act 1981*.

That Act provided for payment of compensation to landowners, but an amendment in 1990 introduced a cap on the amount of compensation which was payable.

This legislation prevented Durham Holdings pursuing a claim for over $93 million for coal compensation, because the cap applicable to that company was $23.25 million, effectively depriving Durham Holdings of approximately $60 million of compensation.

The High Court refused to hold the New South Wales legislation invalid, because they said it had been the settled position respecting State legislative power since the *Wheat Case* (1915) 20 CLR 54, that

there was no requirement for a State Parliament to provide just or properly adequate compensation upon the acquisition of property.

The third principle is that, while there may be some circumstances in which the party-specific nature of legislation can indicate a tendency to interfere with the exercise of judicial power, legislation can be specific to particular individuals or corporations: *Minogue v Victoria* [2019] HCA 31; (2019) 93 ALJR 1031 at [23]; *Knight v Victoria* [2017] HCA 29; (2017) 261 CLR 306 at [26]. Party-specific legislation has been considered and upheld on a number of occasions by the High Court. As the first principle I have outlined demonstrates, it is well-established that altering rights and liabilities in pending litigation is not an interference with judicial power.

The Amendment Act recently passed with bipartisan Liberal Party support through the WA Parliament does not seek to take away the estimated $1 million a day in royalty revenue which Mr Palmer reaps from his Sino Iron project in the Pilbara under the terms of his state agreement.

What it concerns is a separate proposal by Mr Palmer's Mineralogy Pty Ltd and International Minerals Pty Ltd to develop the adjacent Balmoral South precinct, a proposal submitted to former State Development Minister and Premier Colin Barnett.

In 2012 Mr Barnett rejected the proposal, which an independent arbitrator found had been "defective", and in 2014 Mr Barnett then approved the proposal with 46 conditions.

I told State Parliament in my second reading speech that Mineralogy and International Minerals say that they had a contractual right to have the proposal properly considered in 2012 (despite it being defective) and that they lost the opportunity to develop a new project which they would have sold to overseas interests. They pursue arbitral awards for damages totalling the entire annual budget of WA even though they did nothing about pursuing the proposal between 2014 and 2018, and still hold the rights to develop Balmoral South.

The Amendment Act essentially says that any claim for damages for this speculative lost opportunity cannot now be pursued.

If the proposal had been submitted pursuant to development legislation, rather than pursuant to a fast track contractual state agreement, there would be no question about damages.

Whether you view the Amendment Act as taking away a contractual right without providing proper compensation, or you view it as adjusting the contractual liabilities of the State in a pending arbitration, those things can happen because of the well-settled underlying principles about State legislative power.

At a practical level, the legislation was the only option available to Cabinet as it confronted a potential looming financial catastrophe.

Mr Palmer's $30 billion damages claim posed a potential threat to the financial wellbeing of WA taxpayers, and the Government had no choice but to extinguish that threat.

While the Act has by and large been well received within WA, commentators from the Eastern States have been less enthusiastic, with some adopting Mr Palmer's now-familiar catchcry that WA has abandoned the Rule of Law.

Far from it. The Amendment Act, having been passed through both houses of State Parliament, *is* the law. As explained, it does not infringe the any principle based upon the Rule of Law which prevents the Executive interfering with judicial decisions by altering rights and liabilities in pending litigation.

Others grasp that this is law-making, not law-breaking, but contend that is not justified.

One op-ed correspondent to a national newspaper, a university law professor, posited that retrospective lawmaking should only be undertaken on the rarest of occasions when it was squarely the public interest.

To illustrate his argument, the writer cited as an example the Burmah Oil company suing His Majesty's Government after retreating British troops destroyed oil reserves to stop them falling into Japanese hands during World War II.

After an appeal court upheld the company's compensation claim in 1965, the Westminster Parliament passed an Act that retrospectively extinguished the British government's liability.

The law professor's argument was that the British Parliament was justified in shielding its citizens from a liability stemming from actions taken on their behalf during a war.

I agree. But I rather think the professor's example bolsters the state's case rather than undermines it.

Coronavirus has been widely described as the biggest social and economic upheaval since World War II and the most destructive pandemic since the Spanish flu of 1918-19.

The idea that WA could absorb a multi-billion dollar hit to the State's finances at this time is simply unthinkable. We could not.

Those opposed to the legislation began by disputing the $30 billion claim figure – led by Mr Palmer who repeatedly described it as "bullshit".

The figure, plus unspecified damages, costs and interest, is now indisputable following my tabling in Parliament of Mineralogy and International Minerals' statement of claim for the equivalent of AU$27.75 billion, signed by one Clive F Palmer.

But Mr Palmer continues to claim that

the legislation has ruined his whole State Agreement – the Act of WA Parliament passed in 2002 which underpins his mining interests in the Pilbara.

This is demonstrably incorrect. Not only does Mr Palmer continue to reap the lucrative royalties from the Sino Iron project facilitated by the State Agreement, his right to develop Balmoral South is preserved by our legislation. Indeed, the WA Government has invited such a proposal.

WA has a long history of more than 70 state agreements over several decades – 50 of which remain in force. They provide important certainty underpinning long-term planning and are supposed to be entered into in the spirit of mutual respect and cooperation to achieve the shared goal of a viable resources project.

This is the first time that the holder of a State Agreement has invoked legal clauses contained therein to sue the people of WA for damages.

It is for this reason that state and federal industry and political leaders do not share critics' view that the legislation poses any risk to investment in WA.

The WA Chamber of Minerals and Energy has said it "does not believe that the actions by the WA Government will be detrimental to the resources sector" because "the WA Government took very unique action against a very unique dispute on behalf of the people of WA".

Federal Attorney-General Christian Porter said the Commonwealth was "not going to get in the way of the WA State Government making its best judgements about what's in the best interest of West Australians in this matter".

The Law Society of WA in a statement acknowledged that "Our State's Constitution provides that Parliament is bound to pass laws for the peace, order and good government of Western Australia" and that "extinguishing a potentially crippling liability is in the interests of the State".

However, the Law Society expressed some concern about provisions in the Amendment Act which exempted the state from certain liabilities and excluded the Freedom of Information (FOI) Act.

It said such terms required close scrutiny and further justification.

I will aim to do just that.

All of the measures to limit the application of ordinary accountability measures like right of appeal, FOI and natural justice – which I concede are extreme – were taken to limit Mr Palmer's avenues for further litigation against the State.

His flurry of legal claims since passage of the Amendment Act show that these fears were well founded.

It is the case that in the past, aggressive litigants have attempted to have criminal charges laid against individual public officers who worked on legislation which affected that party.

This occurred after passage of the *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015*.

To prevent this, the Amendment Act contains a very narrow exemption from criminal liability for officers involved in its preparation and operation. The Act certainly does not permit the Premier, or anyone else, to commit violent crimes, as Mr Palmer has absurdly claimed.

Similarly, aggressive litigants can use FOI laws as a tool for "discovery" of material to use in legal challenges, or to flood governments with nuisance applications to drain administrative resources.

Unfortunately, to protect the State's legal position, it was necessary to prevent FOI access by any and all applicants because it would be impossible to know on whose behalf an application was being submitted, and for what purpose. In any event, one would expect that almost all relevant documents would be subject to legal professional privilege or public interest immunity.

An FOI exemption was also a feature of the *Bell (Finalisation of Proceeds) Act*.

I am confident that the Government, under the guidance of some of the brightest legal minds in Australia, has made the legislation as strong as possible to withstand Mr Palmer's challenges.

Of course Mr Palmer has vigorously pursued his "hobby" of litigation, and after first denying the size of his damages claim, now threatens that WA "will be up for more damages than they would have in the arbitration".

I thought Law Society of WA President Nick van Hattem distilled the issues very well when he said on radio on 13 August that "In the same way that lawyers get uneasy when Parliament takes someone's rights away, or when Parliament talks about taking away natural justice, lawyers also get uneasy when people talk about using litigation as a hobby".

These are complex matters with competing principles, each of which must be weighed carefully against the public interest.

I expect the views on our legislation within the legal community to be many and varied.

However, I trust that the legal profession will grant that the Government, faced with a large financial risk, exercised the powers vested in it by Parliament in good faith and for the right reason – to protect the public of Western Australia.

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP15"**

The following 2 pages are the annexure "CFP15" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson

Address:

Solicitor Solicitor

| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | *Level 23, 52 Martin Place*, Sydney NSW 2000 |

# Media Statement on the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act

**Wednesday, 19 August 2020**

Last week, Parliament passed a law which challenges fundamental legal principles.

The law unilaterally amended a state agreement for the first time in some sixty years. It exempted the State from defined liabilities, removed potential appeal and review rights and excluded principles of natural justice.

The law also excluded the *Freedom of Information Act*, which ordinarily allows media and the public greater transparency into government action and the capacity for informed scrutiny. It is not clear why that exclusion was necessary, or how that exclusion will serve the public interest. Similarly, there is limited capacity for the public to scrutinize the State's principal justification for the legislation: the reported potential $30 billion liability.

Our State's Constitution provides that Parliament is bound to pass laws for the peace, order and good government of Western Australia. The new law can be analysed by reference to that standard. Extinguishing a potentially crippling liability is in the interests of the State. Damaging the State's reputation for negligible sovereign risk is not. Drawing a balance between the immediate financial benefits of this law and the long-term effect is a political decision, and a difficult one at that.

More fundamentally, the new law affects a principle on which our system of law is based. Citizens acquiesce to be governed by the State on the basis the State will govern according to the rule of law. The rule of law comprises a series of concepts, but most fundamentally: all people, whatever their status, are subject to the ordinary law of the land. Departure from that principle has the capacity to affect the foundation of our democracy.

The new law is unprecedented and extreme. Its terms, particularly those which limit the public's access to information, require close scrutiny and further justification.

– ENDS –

For comment please contact:

Madeleine McErlain
Marketing and Communications Manager
(08) 9324 8650
mmcerlain@lawsocietywa.asn.au

***The Law Society of Western Australia is the peak professional association for lawyers in the State. The Society is a not-for-profit association dedicated to the representation of its more than 4,000 members. The Society enhances the legal profession through its position as a respected leader and contributor on law reform, access to justice and the rule of law. The Society is widely acknowledged by the legal profession, government and the community as the voice of the legal profession in Western Australia.***

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP16"**

The following 9 pages are the annexure "CFP16" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

.....

Name: Daniel Jacobson

Address:

Solicitor Solicitor


| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

**The Western Australian Bar's response to the Attorney-General's justifications for the *Iron Ore Processing (Mineralogy Pty Ltd) Amendment Act 2020***

The October 2020 edition of *Brief* contained an article by the Attorney General of Western Australia, the Honourable John Quigley MLA, in respect of the *Iron Ore Processing (Mineralogy Pty Ltd) Amendment Act 2020* (**the legislation**) (***Extraordinary But Not Without Foundation:*** *The WA Government's Response to an Unprecedented Threat)*.

The legislation was intended to take away, retrospectively, existing and substantive legal rights of companies within the Mineralogy group of companies controlled by Clive Palmer (**the Palmer companies**). The very nature of the legislation is apt to cause disquiet. These concerns are heightened by the secretive and hasty way in which the legislation was passed.

In the article, the Attorney seeks to answer criticism of the legislation on the ground that it is contrary to the rule of law.

The Western Australian Bar Association (**The WA Bar**) has a special interest in the maintenance of the rule of law. According to its Constitution, The WA Bar exists with (amongst other things) a dedicated commitment to promoting free speech, freedom of association and adherence to and respect for the rule of law, including equality before the law, untrammelled by oppression or tyranny from any quarter.

To his credit, in the article the Attorney expressly recognises the extraordinary nature of the legislation and the fact that reaction to it by many in the legal profession is both proper and to be expected. The Attorney does not suggest that criticism of the legislation is unwarranted. To the contrary, he accepts that the reaction to the legislation was proper and expected, and that the criticism needs to be answered.

For the reasons set out below, however, the proper conclusion is that the legislation fails to respect the rule of law. Contrary to the Attorney's view, and with respect, his article does not explain how the legislation is *consistent with* the rule of law. Rather, his article explains why, in effect, the Government has elected to *ignore* the rule of law. The Attorney's article does not make out the case for doing so.

Before going further, I should make three things clear.

First, the views expressed in this response have the support of a majority of Bar Council, the governing body of The WA Bar.

Secondly, nothing in what I say is concerned with the *validity* of the legislation. As I say below, the question of whether the legislation is consistent with the rule of law is quite independent of the issue of its validity.

Thirdly, I am not concerned here with the related but conceptually distinct issue of sovereign risk. The Government is satisfied there is no sovereign risk. Accepting that the Government's view in that respect is correct, it says nothing as to whether the legislation is consistent with the rule of law.

**The legislation**

As its name suggests, the legislation amends the *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act* 2002 (**the 2002 legislation**). The 2002 legislation established a State Agreement (**the State Agreement**) between the State of Western Australian and the Palmer companies.

The legislation (amongst other things) expressly extinguishes all existing rights which the Palmer companies have against the State Government (and any corresponding liabilities in the State) for damages for breach of the State Agreement.

The Palmer companies' rights to damages arose in the following way:

In 2012, the Palmer companies submitted a proposal to the State Government for a new project under the 2002 legislation. The relevant Minister (the then Premier, the Hon Colin Barnett) rejected the proposal without considering it. The Palmer companies alleged that this was a breach of the State Agreement. The State Government denied this, and the dispute was referred to arbitration.

The arbitrator was no lightweight. He was former High Court justice, the Hon Michael McHugh AC QC. In May 2014, Mr McHugh determined that, by rejecting the Palmer companies' proposal without consideration, the State Government had breached the State Agreement. Damages for

that breach, ie damages for loss of the opportunity to pursue the rejected proposal, were left to be assessed.

In a letter to the current Premier and Attorney General dated 13 August 2020, which was tabled in State Parliament, the State Solicitor said that the Barnett Government had been advised to appeal Mr McHugh's award, and chose not to do so.

Instead, following that decision, the Minister (again, Premier Barnett) imposed conditions on the Palmer companies' proposal, which the Palmer companies alleged to be so unreasonable as to amount to further breaches of the State Agreement.

The Palmer companies did not, for some time, pursue the assessment of damages under the 2014 arbitral award. By 2017, the State Government considered that the effect of the 2014 award had lapsed. This resulted in a further arbitration before Mr McHugh. In 2019, Mr McHugh determined that that the effect of his 2014 award had not lapsed, that the conditions which the State Government had imposed on the Palmer companies' proposal constituted a further breach of the State Agreement, and that the Palmer companies were entitled to have their damages assessed for the breaches by the State Government of the State Agreement.

The State sought leave to appeal from Mr McHugh's 2019 award. In February 2020, the State's appeal was summarily dismissed.[1]

The assessment of the Palmer companies' damages was then listed for hearing before Mr McHugh.

It was in that context that the State Parliament passed the legislation.

The legislation looks more like a bank mortgage or the standard Apple Inc terms and conditions than an Act of Parliament. It provides (amongst other things) that the 2014 and 2019 arbitral awards are of no effect and are to be taken never to have had any effect, and that the arbitration agreements, under which those arbitral awards were made, are not valid, and are taken never to have been valid, to the extent that they would underpin, confer jurisdiction to make, authorise or otherwise allow the making of those arbitral awards.[2] The Palmer companies' existing rights,

[1] ***The State of Western Australia v Mineralogy Pty Ltd*** [2020] WASC 58.
[2] Section 10 of the 2002 legislation as introduced by the legislation.

and the State's liabilities, are extinguished,[3] as are any appeal rights and other rights of review.[4] Freedom of information rights are legislated away,[5] and the Palmer companies (and Mr Palmer personally, despite the fact he is not even a party to the State Agreement) are legislated to have given indemnities in favour of the State and (in effect) the Commonwealth.[6]

There are a number of further provisions designed to ensure that the State does not (and, in fact, cannot) make any payment to any of the Palmer companies in respect of the 2014 arbitral award or the 2019 arbitral award. But one gets the drift.

Special mention should, however, be made of sections 30 and 31 of the 2002 legislation as introduced by the legislation. They provide, in effect, that, should the Minister of the day feel that the 2002 legislation as amended somehow fails to give the State the absolute protection which the Minister desires,[7] he or she may remedy that oversight by subsidiary legislation, including with retrospective effect.

Such a provision (although this is an extreme example) is known as a Henry VIII clause. The Attorney himself described this provision as *"the Henry VIII clause of all Henry VIIIs!"*.[8]

I trust that no detailed exposition of Henry VIII's attitude towards the rule of law is required.

**The rule of law**

The rule of law is the bedrock of a liberal democracy. But what is it?

The concept is not without difficulties. Lord Bingham's definition of the core principle is:[9]

[3] Section 11 of the 2002 legislation as introduced by the legislation.
[4] Section 12 of the 2002 legislation as introduced by the legislation.
[5] Section 13 of the 2002 legislation as introduced by the legislation.
[6] Sections 14 to 16 of the 2002 legislation as introduced by the legislation.
[7] Or as the Attorney put it, *"[I]f Mr Palmer and his lawyers come up with something that we have not thought of … No matter what Mr Palmer and his lawyers might invent to circumvent the protections that this [A]ct will give the public of Western Australia, they can swiftly be put to the sword by the minister making an order that that is out of order, too"*.
[8] Hansard, Legislative Assembly debates, 12 August 2020, p4834.
[9] Bingham, *The Rule of Law*, Penguin Books, 2010, p8.

> *"That all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts."*

Plainly, the rule of law operates to impose restraints on the executive arm of government, requiring it not be 'above' the law. But in a liberal democracy such as ours, it means more than this. As is explained by Professor Walker in his book *The Rule of Law, Foundation of Constitutional Democracy*, in terms which resonate in this case:[10]

> *"[I]f government is to operate under the law and not merely through it, the doctrine [of rule of law] must have something to say about the substantive content of the enactments that issue from the legislative arm of government. In short, it imports limits on legislative power. Otherwise, government will be able simply to alter and redefine the law in whatever way suits its purposes, with the state, as Kelsen said, in the position of a King Midas that is able to turn everything it touches into law. Law may thereby not only cease to be a limit or constraint on the powers of government, but may degenerate into a positive implement of oppression. The rule of law doctrine in [this] sense consists, as Wade and Phillips have said, of a body of inherited values, mainly distilled from the experience of the common law over the centuries ... The presumption of innocence in criminal cases, the presumption against retroactive legislation, jury trial in serious criminal cases and the requirement that court proceedings be open to the public are examples of these values. A government seeking to introduce legislation overriding any of these principles would be met with opposing arguments based on rule of law concepts in this broader sense. ..."*

This understanding of the concept of the rule of law is reflected in the courts' approach to the interpretation of legislation such as that in question. See, for example, the following passage from the reasons of the plurality in ***Australian Education Union v General Manager of Fair Work Australia***:[11]

> "In a representative democracy governed by the rule of law, it can be assumed that clear language will be used by the Parliament in enacting a statute which falsifies, retroactively, existing legal rules upon which people have ordered their affairs, exercised their rights and incurred liabilities and obligations.

As I say above, The WA Bar's Constitution provides that it exists with a dedicated commitment to promoting (amongst other things) respect for the rule of law, including equality before the law, untrammelled by oppression or tyranny from any quarter.

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[10] Melbourne University Press, 1988, pp4-5.
[11] (2012) 246 CLR 117; [2012] HCA 19 at 134-135; [30].

That language is revealing. The rule of law is not only to be *adhered to*, but is also to be *respected*. 'Adherence' may be concerned primarily with conduct. But 'respect' is concerned with the underlying attitude which manifests in a government's actions. More particularly, it is concerned with respect for what Professor Walker (and Wade and Philips) describe as the 'body of inherited values' which operate to impose restraints on the exercise of legislative power.

It is generally accepted that there may be occasions on which it is appropriate for a government to legislate in a manner which is incompatible with those inherited values. The Attorney in his article refers to the proposition (with which he appears to agree) that retrospective lawmaking should only be undertaken on the rarest of occasions, when it is squarely in the public interest. As Lord Bingham said, respect for the rule of law requires that, generally speaking, any departure from it calls for close consideration and clear justification. The real issue, in respect of the legislation in question, is whether the Attorney has made the case for departing from the rule of law in the present case.

**The law is not the rule of law**

The legislation operates to (amongst other things) retrospectively extinguish the Palmer companies' legal rights against the State under the State Agreement established under the 2002 legislation. It does so notwithstanding that through the arbitration process (the parties' agreed alternative to going to court), those rights have already been determined to exist in favour of the Palmer companies. Having failed in its attempts to remove those rights through the arbitral process, the State has simply changed the rules of the game. It has legislated the Palmer companies' rights out of existence.

The Attorney says that the legislation is consistent with the rule of law. Underlying this argument is the proposition that, by definition, that must be so because the legislation, having been passed by both houses of Parliament, *is* the law.

This argument is, with respect, not only simplistic, but premised upon a misconception as to what it means to adhere to and respect the rule of law. Observance of the rule of law imposes a restraint upon a government doing things that it might otherwise be empowered to do. To define the

concept in the way the Attorney does is to effectively define the concept of rule of law out of existence.

Take an example. Perhaps one which is close to the heart of all lawyers. Assume the government of the day decided to give legislative effect to the populist sentiment of Shakespeare's Dick the Butcher: *"The first thing we do, let's kill all the lawyers"*.[12] That is, summary execution without trial. And assume the existence of no constitutional impediment to such a law.

If the Attorney is correct, such legislation would adhere to, and respect, the rule of law, for no reason other than, once passed, it *is* the law. That proposition merely needs to be stated to be seen to be unsustainable.

The Attorney identifies what he describes as three key constitutional principles which underpin the operation of the legislation. However, each of these three propositions is directed towards the proposition that the legislation is within the power of State Parliament, and, therefore, valid. As I have said, it may be assumed that that is so. I do not express an opinion either way. But for the reasons above, that is quite separate from the question of whether the legislation is consistent with the rule of law.

The Attorney then says that the legislation passed with bipartisan support. That says nothing except that disrespect for the rule of law may extend to both sides of the political dial.

**The Attorney has not made out a case for the legislation**

Having accepted (with respect, correctly) that the legislation is 'extraordinary' and of a type which should only be enacted on the rarest of occasions and when it is squarely in the public interest, the Attorney does not make out a case as to why the State Government was justified in enacting it.

He refers to the fact that the Palmer companies had quantified their claim for damages in the order of $30 billion, and he refers, at various points, to an *"unprecedented threat"* and the *"significant harm"* and *"potential looming financial catastrophe"* which would result from not legislating. The Attorney says that, at a practical level, the legislation was the *"only option available to Cabinet"*.

[12] *Henry VI*, Part 2, Act IV, Scene 2.

These comments tend to suggest that the Palmer companies were likely to *succeed* in their claims to recover damages of such an amount as to imperil the financial position of the State.

On the other hand, the Attorney observes that the Palmer companies did nothing about pursuing their proposal between 2014 and 2018 and that they still hold the rights to develop it, and he describes the claims for damages as *"speculative"*. These comments tend to suggest that he regards the claims as having no merit, or at least as having a true value very much less than the claimed amount of $30 billion.

It is difficult to see how *both* can be correct.

If, as the Attorney suggests, the Palmer companies' quantification of their damages was without merit or very significantly inflated, the State Government – like any other litigant – had an opportunity to demonstrate that in any further arbitration in which those damages were to be assessed.

On the other hand, if the Palmer companies' quantification of their claims had merit, what is the justification for having legislated them out of existence entirely? If there was merit in the Palmer companies' claims, why should they not be entitled to compensation for their loss (or at least some part of their loss) as a result of the breaches of contract by the Minister on behalf of the State?

**Why does this matter?**

It matters for a number of reasons.

First, failure to respect the rule of law has a broader corrosive effect on attitudes towards, and respect for, the rule of law. As I say above, I leave aside issues of sovereign risk. But what moral authority does the State Government have for insisting that ordinary citizens comply with their contractual or other legal obligations to others, and towards the State, when the State Government itself does not do so?

Secondly, a precedent has now been set which will have a tendency to legitimise similar legislative responses in the future. On this occasion, the Government's justification was that the State was exposed to a claim (described by the Attorney as 'speculative') quantified at $30 billion. What if

someone made a claim against the State for $10 billion? $1 billion? In Warren Anderson's failed litigation against the State,[13] the amount in question was $50 million (presumably plus interest). Would a State Government faced with such a claim in the future simply call in aid the precedent of this State Government's response as justification to legislate it out of existence?

Thirdly, Mr Palmer and his companies may be said to be 'big players' with a high profile and able to look after themselves. They may well be 'big players', but if (as the Attorney says) the legislation is valid and effective, then, by definition, they are unable to protect themselves from the statutory extinguishment of their claims.

Fourthly, it is often said that the government of the day is accountable for its actions at the ballot box. This is true, of course, as a matter of political theory, although that usually has an air of unreality about it. That is particularly so where rule of law issues are concerned, since although fundamental to the maintenance of our democratic institutions, they are rarely of sufficient interest to attract the public attention, and are almost always unlikely to be sufficient to change the outcome at the ballot box.

Fifthly, and related to the fourth point, at the time the legislation was passed, Mr Palmer, and the Palmer companies, were generally portrayed as 'unpopular' in Western Australia. But the rule of law exists to protect the rights of the unpopular as well as the popular. Indeed, it is even more important that a government respect the rights of the unpopular, since disregard of their rights is less likely to be vindicated at the ballot box or even in the media.

It may be difficult to avoid the conclusion in this case that the State Government considered that it could pass the legislation without significant public backlash because of Mr Palmer's unpopularity in Western Australia. Indeed, it appears that the legislation generally received both public support and support in the media. It is open to conclude that the State Government may have taken advantage of Mr Palmer's unpopularity to legislate to extinguish the Palmer companies' claims because – to use the vernacular – it thought it could get away with it. In the court of public opinion, it probably has. But it has done so at the expense of fidelity to the rule of law.

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[13] See ***Tipperary Developments Pty Ltd v Western Australia*** (2009) 38 WAR 488; [2009] WASCA 126.

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP17"**

The following 3 pages are the annexure "CFP17" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

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Name: Daniel Jacobson

Address:

Solicitor Solicitor

| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

THE AUSTRALIAN

# Equality before the law swept under the carpet by both sides

CHRIS MERRITT

By **CHRIS MERRITT**, ANALYSIS
8:39PM AUGUST 13, 2020

The audacity of the move to strip Clive Palmer of access to remedies available in the West Australian courts shows that both sides of politics in that state have little real commitment to equality before the law.

The politicians have acted because Palmer had a winning hand in his dispute with the state government. He had complied with the rules governing the development of mining projects and the state government had not.

Palmer said that meant he was unable to sell a mining project to China and he wants compensation — $30bn, according to government estimates.

For different reasons, both sides of state politics are keen to ensure Palmer's argument will never see the inside of a courtroom. By legislative fiat, they have decided to absolve the state government of liability.

This dispute arose under former Liberal premier Colin Barnett. But the consequences of Barnett's actions threatened to derail the finances of the current Labor government.

Barnett's mishandling of Palmer's proposal is beyond dispute. A February 28 decision by the WA Supreme Court reproduces large slabs of last year's arbitral decision on the affair by former High Court judge Michael McHugh.

McHugh wrote that in a 2014 arbitration he had "held that the premier of Western Australia, as minister for state development, had failed to give a decision within the time limit required by clause 7(2) of the agreement and noted that this failure was a breach of the agreement".

On Tuesday, when Attorney-General John Quigley gave his second-reading speech on the legislation expunging the state's liability, he gave a clear outline of what had gone wrong.

In essence, Barnett had no authority to reject Palmer's proposal. He could only give it his approval, defer it or impose conditions. Yet Barnett rejected it as invalid.

Quigley told parliament that McHugh had found, while Palmer's proposal was defective, "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".



Since then, the dispute has expanded. But it all comes back to Barnett's original error.

From a rule-of-law perspective, retrospective legislation imposing a legal detriment on a named individual is an abomination. It is far worse than Barnett's original breach of the rules and is certain to attract close scrutiny when it inevitably finds its way to the High Court.

Judges do not take kindly to legislatures trampling on their turf by imposing penalties on individuals, absolving others of liability and blocking access to justice.

The scheme's explanatory memorandum says any conduct by the state in connection with Palmer's proposal "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".

Liberal support for Labor's plan might surprise the Liberal Party's core supporters. In the past, Liberals elsewhere have supported the rule of law and associated ideas such as equality before the law.

By lining up with Labor, the Liberal Party in WA is now complicit in eroding these principles while running a protection racket for Barnett, the man who almost cost WA $30bn.

This narrows the gap between this country and those unfortunate places where the interests of the state take priority over due process and equal protection.

*Chris Merritt is vice-president of the Rule of Law Institute of Australia*

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP18"**

The following 6 pages are the annexure "CFP18" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

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Name: Daniel Jacobson
Address:
Solicitor

| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

# The WA government legislated itself a win in its dispute with Clive Palmer — and put itself above the law

theconversation.com/the-wa-government-legislated-itself-a-win-in-its-dispute-with-clive-palmer-and-put-itself-above-the-law-144360

Lorraine Finlay

The events of the past few days in Western Australia have been extraordinary as the protracted conflict between the government and mining billionaire Clive Palmer reached a fever pitch.

Premier Mark McGowan declared the state is “in a war” with Palmer, and, in turn, Palmer has called for the premier to be jailed.

While this war of words has become a feature of their ongoing dispute over the WA border closures, these comments are related to an entirely different disagreement — a legal battle Palmer is waging against the state, reported to be worth A$30 billion. But Palmer told reporters this week:

> There isn’t any $30 billion claim against the Western Australian government […] It’s [their] assessment of what the damages are for what they’ve done.

Nevertheless, the Western Australian government late last night took the unprecedented step of passing a bill preventing Palmer from collecting damages from the state.

In essence, the government is seeking to legislate its way out of a legal dispute. There is no doubt that having to pay a potential $30 billion damages claim would be devastating for WA. But trying to circumvent the courts by instead legislating a preferred outcome is also not

without its consequences.

***Read more: WA border challenge: why states, not courts, need to make the hard calls during health emergencies***

## What is the current dispute about?

Late Tuesday, Attorney-General John Quigley introduced the bill and informed parliament the state was facing the massive damages claim related to the dispute with Palmer.

The dispute stretches back to 2012 and has a complicated history, including both arbitral awards and a Supreme Court decision in Palmer's favour. It was recently listed for a 15-day arbitration hearing due to commence in November.

While WA has vigorously defended its legal position, Quigley acknowledged "a successful defence of the claim is not guaranteed".

McGowan also warned losing the case would bankrupt the state and

> would mean mass closures of hospitals, of schools, of police stations, mass sackings of public servants and child protection workers.

The bill was designed to prevent this outcome. And just two days later, it passed into law with the support of both government and opposition members.


McGowan (right) and Quigley have issued dire warnings about the impact Palmer's lawsuit could have on the state. REBECCA GREDLEY/AAP

## What does the new law do?

Quigley has acknowledged this new law is unprecedented. It is directly and expressly targeting Palmer, his mining company Mineralogy Pty Ltd, and the ongoing dispute over the Balmoral South iron ore project.

It terminates the ongoing arbitration, invalidates existing arbtiration agreements, voids existing arbitral awards, prevents further legal proceedings or appeals, protects the state from any liability of any sort in relation to the dispute (including any criminal liability), and obliges Palmer and his companies to indemnify the state.

The rules of natural justice and freedom of information laws are expressly stated not to apply.

***Read more: Mineral wealth, Clive Palmer, and the corruption of Australian politics***

There are a number of concerns with the government's actions. First, this approach undermines both the rule of law and separation of powers, which are foundational pillars of our Westminster system of government.

It also creates sovereign risk. The premier has sought to downplay this by reassuring the resources sector this is a one-time-only exceptional case.

But how could it realistically not change the risk calculation made by potential investors? If the government shows it is prepared to intervene in this way once, how could anybody be 100% sure that they wouldn't be prepared to do it again?

Another concern is the singling out of Palmer by the law. While he is clearly a wildly unpopular figure in WA and an enthusiastic litigant, drafting specific laws to target named individuals is never a good idea and undermines the principle of equality before the law.

Laws should not be drafted to target specific individuals, no matter who they are.

## A rushed debate

The fact that such extraordinary legislation has been rushed into the parliament with no prior consultation or warning, and passed with only two days of debate is also concerning.

The government rejected a proposal to have the legislation considered in more detail by a parliamentary committee, even if done within an expedited timeframe. Quigley claimed

> there is too much at risk for all Western Australians for namby-pamby inquiries.

While the premier has claimed the urgency was necessary given the unique circumstances, it means an extraordinary law that negates foundational Westminster principles has been passed with minimal scrutiny or debate.

The significance of this is perhaps best captured by comments made by McGowan himself in 2013. The view from opposition gave him a somewhat different perspective:

> It has been part of the standing orders and the time-honoured process of parliament in the Westminster system for a long period that we do not rush legislation through without time to consider it because doing so does not allow proper debate in its consideration and mistakes are made in the legislation.

The unprecedented nature of this particular law must surely amplify these concerns.

**The West Australian**
@westaustralian

OPINION: A high stakes game of poker is being played on the floor of Parliament and in courts across Australia. On one side is the McGowan Government and on the other is Clive Palmer. In the middle are WA taxpayers, writes Peter Law.
bit.ly/2DXMwSW

10:37 PM · Aug 12, 2020

6 See The West Australian's other Tweets

## What happens next?

Palmer has already indicated he will challenge the validity of the new law in the High Court. He has also taken steps in the past two days to try to prevent the law from taking effect by registering the existing arbitral awards in the Queensland Supreme Court and applying for an injunction in the Federal Court.

While the WA government has tried to remove the dispute from the courts, it now looks as though the matter will end up in court one way or another — and the legal fight will likely be protracted.

By trying to legislate itself a win in this legal dispute, the government has tried to place itself above the law. This may or may not end up saving WA from a catastrophic damages claim.

But there is still a significant cost in the collateral damage that has been done to the rule of law.

***Read more: These young Queenslanders are taking on Clive Palmer's coal company and making history for human rights***

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP19"**

The following 3 pages are the annexure "CFP19" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

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Name: Daniel Jacobson

Address:

Solicitor Solicitor

| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | *Level 23, 52 Martin Place*, Sydney NSW 2000 |

# WA MPs showing ignorance over Clive Palmer

JAMES ALLAN

By **JAMES ALLAN**, CONTRIBUTOR
1:00AM AUGUST 19, 2020 • 91 COMMENTS

I wonder if the politicians in Western Australia have read Shakespeare? Or if they know their World War II legal history? My bet is that, on both counts, Labor and the Liberals out west are flat-out ignorant. And because of it they're undermining the rule of law and advertising their jurisdiction's Mickey Mouse credentials.

Start with WWII. As the British were retreating up Burma in 1942 they destroyed some oilfields owned by the Burmah Oil company, to stop them falling into the hands of the Japanese. After the war, this private company sued for compensation. No one doubted that what the British troops did was lawful. The question was whether the post-war government had to pay compensation.

At first instance, in Scotland, the judge decided for the company. On appeal (still in Scotland), this was unanimously reversed. Then at the House of Lords (then the highest court in Britain), in a three-two decision in 1965, the judges sided with the company. What happened next? The Westminster parliament passed an act that retrospectively removed the government's liability.

I don't have a problem with that particular piece of legislation. In a way, it goes to prove the rule that retrospective lawmaking is a very, very bad idea. Here, where people throughout Britain, and the Commonwealth had suffered so massively and absorbed so many costs, it was morally acceptable to put a private company in the same position.

But notice the sort of facts you need to line up to make that case even remotely palatable: millions of others having died, suffered losses, sacrificed to win a war against evil regimes so that changing the rules of the game after the fact in the face of wartime necessity is the right call.

Yet the basic rule stands. Barring the unbelievably exceptional case — the one that proves the rule, as it were — a democratic legislature simply does not do this sort of thing. The basic reason why is the one that Shakespeare gave us more than 400 years ago in the play all law students absolutely need to read, The Merchant of Venice. When the moneylender Shylock wants to enforce his bond of a pound of flesh and refuses to accept even twice the loan's value that the borrower's friend Bassanio now offers, there is this famous exchange on whether to retrospectively void the contract.

Bassanio: "I beseech you, Wrest once the law to your authority: To do a great right, do a little wrong."

Portia: "It must not be. There is no power in Venice can alter a decree established: Twill be recorded for a precedent, and many an error by the same example will rush into the state. It cannot be."

There you have it. The value of following set rules in all but the most extreme examples laid down for you in a couple of sentences. Of course, Shakespeare plays to the audience and manufactures a - literal interpretation that gives the wanted happy ending.

But the underlying point is clear. Even a politician might be expected to see the gist of it.

Alas, no. What the West Australian politicians are doing to Clive Palmer is a disgrace, and I say that with no particular love of Palmer. But this is flat-out theft engineered after the fact in a situation that looks nothing like the Burmah Oil case (even there, it was a close call). They dress it up as stopping Palmer from trying to take taxpayers' money. It is nothing of the sort.

It is Palmer seeking to exercise his lawful rights according to the laid-down rules established by West Australian politicians. And now we see legislation passed that voids any sum awarded to Palmer while explicitly removing all natural justice and procedural fairness. This is the stuff of Third World banana republics. No, even they would be more nuanced.

And here's the kicker: the Liberal opposition supported this state Labor government legislation. It is unprincipled and incompetent. It is becoming clear Liberal Party politicians live in a value-free, principle-free zone.

Go back and read the very simple point Shakespeare has Portia make. It amounts to this: there are costs to be paid for changing the rules of the game after the fact, and those costs will be big. Rules are only worthwhile when everyone has confidence they won't be manipulated for the benefit of

mediocre politicians. At the end of one of the world's biggest conflagrations, one might be prepared to pay those costs, but not otherwise.

I'm with Palmer on this. It is shameful that at the very least the Liberals weren't too. Not even the federal Liberals, who have been mostly, and disgracefully, silent.

*James Allan is Garrick professor of law at the University of Queensland.*

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP20"**

The following 5 pages are the annexure "CFP20" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

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Name: Daniel Jacobson

Address:

Solicitor Solicitor


| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

# Clive Palmer: the unlikely canary in the coalmine

Caroline Di Russo

In 2002, Geoff Gallop's Labor government in Western Australia entered into a state agreement with Mineralogy, Clive Palmer's company, for the development of the Balmoral South iron ore mine in the Pilbara. Generally speaking, a state agreement is a statutory contract agreed between a company and the state containing the terms that form the basis of a mining project. It prescribes, amongst other things, the rights and obligations of the parties, the process for approval and the process to resolve disputes. In WA, they are common.

After hours last Tuesday, the WA Attorney General, John Quigley, sought to suspend standing orders to introduce a bill to the state parliament. A bill which he had known about for months, Cabinet had known about for 30 minutes, and the opposition had no notice of prior to it being introduced.

The bill sought to change the Mineralogy state agreement to extinguish certain rights of Mineralogy relating to an ongoing dispute with successive WA governments. The bill provided, in relation to the dispute, that:

- two arbitral awards (a judgment in a private arbitration) that had been awarded by a private arbitrator in Mineralogy's favour (against WA) are deemed to be invalid;

- the government is absolved of any liability (including criminal liability in relation to certain matters);
- Palmer must indemnify the government in relation to any loss and damage arising from the litigation and arbitration to date;
- Mineralogy/Palmer cannot sue WA over this legislation for any reason;
- There is no avenue of appeal or review; and
- The rules of natural justice and provisions for freedom of information do not apply.

The Attorney General told us that Palmer was planning proceedings against the State for $30 billion, that the bill would protect WA from Palmer's so-called rapacious conduct and that the bill needed to be passed immediately to prevent any risk of the state being required to pay Mineralogy if the claim continued through to judgment. The Premier told us that Palmer was trying to take our money and if that happened the government would be required to close schools, police stations and hospitals.

If you think this sounds a lot like yelling 'fire' because someone has lit a cigarette, you'd be right.

It's populism at its most putrid.

We now know Mineralogy commenced, and won, two arbitrations in its dispute with the state based on alleged breaches of the state agreement by the Barnett Liberal government. We also know that Mineralogy has threatened additional court proceedings. However, instead of dealing with the substance and consequences of this dispute, the government has thrown its toys out of the cot and has unilaterally sought to change the state agreement to deny Mineralogy its contractual rights. Remember, these are rights the government agreed to give Mineralogy under the state agreement back in 2002.

The fact is, this is a commercial dispute. The only thing unusual is the size of the claim. Mind you, $30 billion is a number paraded around by the government to terrify West Australians; it is not a number, so far as I understand, that originated with Palmer. And even so — it is still only a claim. For a damages claim to be successful, Palmer must first establish the state is liable on each cause of action and then the quantum of damages is assessed. I've seen plenty of burgeoning damages claims and most of them are reduced to mere lambs once all the relevant questions are asked and a judge runs a ruler over them.

In any event, the size of the claim is as irrelevant as is the identity of the person bringing it. Justice is meant to be blind. Despite this, the Government has used a very effective but disingenuous narrative to convince an already hypersensitive population into believing that this gross abuse of government power is in the interests of Western Australians. The irony is

that nothing could be further from the truth. By extinguishing Mineralogy's rights, and putting a shot through the heart of government accountability, government transparency, judicial oversight, natural justice and freedom of information, the Government is trampling upon fundamental and immutable principles of our parliamentary democracy. The Government is catapulting its own self-serving interests outside of reach of the Courts in an attempt to escape its own alleged wrongdoing.

In his speech in the legislative assembly, Quigley said that the bill didn't create sovereign risk because no other company has sought to challenge the Minister's decision or take the state to arbitration and that the change only applies very narrowly to this dispute and not to the broader Mineralogy state agreement. Actually, the bill is the archetypal definition of sovereign risk. Any unilateral change to a contract with a private party by a government on the wrong end of a commercial dispute smacks of wrangling with an African backwater despot. It might be a narrow change, but it sets a precedent: challenge this government, and if you get the upper hand, it will pull the rug out from underneath you. Given Mineralogy is the first company to challenge a state agreement, means we now have 100% strike rate of the Government moving to expropriate the rights of a private company who exercises the dispute resolution provisions prescribed in a state agreement. Regardless of the rhetoric, this will make prospective investors think twice before committing big money to projects in WA.

The Bill also provided for the non-application of freedom of information provisions and rules of natural justice. Freedom of information provisions permit a level of government transparency for the public and journalists and the rules of natural justice to ensure procedural fairness for private citizens in their interaction with state institutions. Ultimately, both protect citizens from government overreach and abuse of power. Despite this, Mr McGowan claimed Mr Palmer was trying to bankrupt WA and that these strong measures were being taken for the right reasons. Mineralogy may have the better side of this dispute, but it is still a private entity with the right to protect its commercial interests and to expect fair judicial process. Similarly, by the very severe nature of this law there should be an emphasis on government transparency not an excision of it.

Regardless how you tart this up, a state government extinguishing certain legal rights of a private entity, after having reached agreement with that entity to grant them those rights, is terrifyingly totalitarian.

And what of the other players in this political soap opera?

Well, the unofficial PR arm of the WA government — otherwise known as the West Australian newspaper — spent the week pumping out the most puerile front pages known to modern journalism: it turned a conversation about fundamental rights into a series of

caricatures and crass headlines. And instead of shining a light on the government's conduct and asking the hard questions, it has, save for the odd exception, been perfectly obedient.

And the opposition?

Well, you'd be forgiven for thinking there wasn't one.

At least Liberal Democrats MLC Aaron Stonehouse, together with the Liberals, Shooters and Fishers and One Nation, moved to have the bill referred to a committee in the upper house for review and amendment, because, you know, IT'S THE HOUSE OF REVIEW. This resulted in criticism from Labor MP Rita Saffioti who alleged the Liberal Party sided with Palmer and voted to shut down debate on the Bill. Evidently, the nuances of the parliamentary process are not Saffioti's strong suite, nor is an appreciation for irony given the ALP's sledgehammer approach of trying to ram this legislation through both houses without notice or interrogation.

Despite the abovementioned protestations in the Upper House, the bill was waved through without review and into law courtesy of the increasingly irrelevant and politically clueless Nationals who voted with the ALP and the Greens. Nationals leader, Mia Davies said, via Twitter, that 'we have to take what Premier & AG say on face–value. We must trust that they have chosen the best course of action'. Well, if that isn't appeasement with the hope of being eaten last then I don't know what is. And if the Nationals are happy to trust and take the government on face value, then their upper house members should pack their bags because they are evidently oblivious as to what their job entails. Look at it this way, if the federal government legislated to extinguish its liabilities in relation to the live export class action judgment, methinks Davies would have squealed. The dots of that analogy are not hard to join.

Following the Liberal Party's failed attempt to send the bill for review, the WA opposition leader, Liza Harvey, tweeted that 'I want to assure all West Australians that we support this legislation to stop Clive Palmer's legal challenge'. Ladies and gents, I present you 'gutless' in a single tweet. Instead of standing up for the fundamental rights of individuals and private enterprise, the Libs have capitulated to this abuse of power in the desperate hope they can avoid a public backlash and keep their jobs come the March election.

And as we head towards that election, the Essential Poll shows the WA Government has continued to outshine other state governments in terms of approval, particularly in support of the hard border. It's amazing what rank politics mainlined with fear will do to an otherwise easy-going population. In addition, McGowan has soundly hammered the Liberals over their early support for a softer border which has resulted in a gold medal winning backflip in favour of the harder border. This panicked grasp for the popular position only

serves to make the Liberals look all the more spineless. It's disappointing but unsurprising that no one has yet to grasp that 'popular' doesn't necessarily mean 'proper'.

But I digress…

On Thursday night, the Bill passed and it was ushered off, under the cover of darkness, to Governor Kim Beazley for immediate rubber stamping. And so, on Thursday, government transparency, accountability, natural justice and private rights all became optional extras. Our political class has totally vacated the field of courage, integrity and competence.

And as Clive becomes the canary, the rest of us watch on, wondering which of us is next.

*Caroline Di Russo is a lawyer, businesswomen and unrepentant nerd.*

***Got something to add? Join the discussion and comment below.***

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP21"**

The following 4 pages are the annexure "CFP21" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

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Name: Daniel Jacobson
Address:
Solicitor

| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | *Level 23, 52 Martin Place*, Sydney NSW 2000 |

The Sydney Morning Herald



This was published 5 months ago

OPINION

# *The tyranny that strikes a friendless Clive Palmer could hurt any of us*

For our free coronavirus pandemic coverage, learn more here.

By **Tom Switzer** and **Robert Carling**
August 22, 2020 — 12.00am



We don't know Clive Palmer and we have no time for his antics. However, not even the eccentric billionaire should be treated as disgracefully as he has been by the West Australian government.

A week ago, the Labor government of Premier Mark McGowan, shamefully backed by the Liberal opposition, passed legislation that extinguishes the legal rights of Palmer's Mineralogy.


If it can happen Clive Palmer, it can hapen to any of us. NINE

In 2002, the flamboyant businessman's flagship company made an agreement with the WA government for the exploration and development of an iron ore deposit. Subsequently, disputes arose and, under the provisions of the 2002 agreement, were referred to independent arbitration before a retired High Court judge.

That judge has twice found in favour of Mineralogy and damages are to be assessed at hearings later this year. The government fears it will lose the case and pay a large compensation bill up to about $30 billion, though other sources claim any award to Palmer could be a small fraction of that.

Simply put, the WA government does not want to honour the terms of a contract. By using its legislative powers to annul a contract it entered into in 2002, it seeks to prevent the other party from exercising its legal rights to enforce it.

According to McGowan, if Palmer successfully "steals" from the people, "that would mean mass closures of hospitals, of schools, of police stations, mass sackings". This is tripe.

If anything, it's the WA government that is doing the stealing by effectively rendering a valuable asset worthless to its owner. The result is that West Australians will suffer thanks to the flight of investment capital from their state.

To reiterate: the WA government has rushed through legislation to tear up the contract, deny Palmer natural justice, exempt the matter from freedom-of-information rules and grant criminal immunity to the state and its agents. The government is saying it can do as it wishes, rewrite the rules to its advantage and thumb its nose at the rule of law.

All this should be a warning light to anyone contemplating investment in WA. Indeed, the government's action is a perfect example of sovereign risk, which drives away capital.

Meanwhile, reinforcing Palmer's persona non grata status in the state is his High Court challenge to WA's border restrictions. But those restrictions are extreme, and Palmer is doing the whole nation a favour by testing their constitutional validity.

If the government's action against Mineralogy is payback for Palmer's temerity in challenging border controls, it just puts the action in an even worse light.

In any case, the state government's legislative gambit to shield itself from Palmer's legal action is an outrageous abuse of power that should deeply concern all Australians. If states can abolish a company's right to natural justice, they can

threaten the legitimate legal rights of anyone. This is what we expect of a banana republic or an authoritarian state.

As the anti-Nazi Protestant pastor Martin Niemoller recognised in his famous poem – *First they came for the socialists, and I did not speak out* – those who want to remove freedoms will remove them first from people with no friends. However, if the broader community does not oppose this illiberalism from the outset, forcefully and clearly, our free and open society is seriously threatened.

Retrospective rewriting of the rules is not new, but is generally repugnant. Past examples are rare and do not provide legitimacy to WA's actions.

In 1980 the Fraser government shut down the bottom-of-the-harbour tax avoidance scheme. The legislation cast the net back almost nine years. At the time, Senator Don Chipp, then leader of the Australian Democrats, said that, although he supported the policy objective, he opposed retrospectivity as a matter of principle. "One of the few protections that the ordinary citizen has," he warned, "is that he knows the law."

In NSW, one of the early actions of the newly elected O'Farrell government in 2011 was to propose legislation to rewrite contracts that had promised households a feed-in tariff of 60 cents per kilowatt-hour for surplus electricity generated by their rooftop solar panels.

The scheme was ridiculously generous and in fact had already been modified by the previous government to reduce the feed-in tariff for new participants from October 2010. Nobody could complain about that, as it only affected new entrants. However, the O'Farrell government's move to tear up the old contracts and slash the feed-in tariff for them rightly created a political storm.

As a result, the attempt was abandoned. The fact the scheme was put in place by the previous Labor government was neither here nor there: it was an obligation of the NSW government.

If there was an outcry then, there should be an outcry now against the WA government. But there isn't. Not from the Commonwealth, the state opposition or the people of Western Australia.

The cold hard reality is that the government campaign against the mining magnate represents a serious threat to the rule of law. It's Clive Palmer today, but who is next?

**Tom Switzer is executive director and Robert Carling is a senior fellow at the Centre for Independent Studies.**

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**Tom Switzer**

Tom Switzer is executive director at the Centre for Independent Studies and is a presenter on ABC Radio National.

**Robert Carling**

Robert Carling is a senior fellow at the Centre for Independent Studies and was executive director, economic and fiscal at the NSW Treasury from 1998 to 2006.

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP22"**

The following 3 pages are the annexure "CFP22" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

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Name: Daniel Jacobson
Address:
Solicitor

Solicitor

| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

# You Don’t Need To Like Clive Palmer To Dislike His Arbitrary Treatment

Morgan Begg / 27 August 2020 / , IPA TODAY, PUBLICATIONS, Opinion, RESEARCH AREAS, Constitution and Law, Energy and Resources
Originally appeared in The Spectator Australia

The Western Australian government’s draconian legislation passed this month to extinguish the legal rights of Clive Palmer and his flagship company, Minerology, is the kind of thing that would not be out of place in a third world autocracy.

A foundational principle of a free and just society is that the law that governs all Australians is not arbitrary, applies prospectively, that court proceedings are fair and government decisions be subject to review or appeal.

These are the principles known as the rule of law and it is these principles that the WA government has thrown aside with its petty legislation rushed through parliament last week.

The background to this extraordinary legislation is that Minerology and the WA government voluntarily entered into a State Agreement in 2002 for the exploration and development of the Balmoral South Iron Ore Project.

When the Barnett government in 2012 rejected a project proposal from Minerology it violated the state agreement that imposed an obligation on the state to at least assess proposals before making a decision. The dispute came before former High

Court judge Michael McHugh QC for independent arbitration who delivered two arbitration awards in 2014 and 2019, finding that the state government was liable for breaches under the State Agreement.

Rather than challenge or appeal the arbitration decisions, WA Attorney-General John Quiggin instead introduced into the parliament a bill seeking to retrospectively nullify the arbitration decisions entirely. Clause 12 of the Bill provides that decisions or actions in relation to the government's 2012 decision cannot be appealed or reviewed.

It adds that "The Rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to; or in relation to, any conduct of the State that is, or is connected with, a disputed matter." The Bill also seeks to make documents connected to a "disputed matter" exempt from freedom of information laws and grants criminal immunity to the states and its agents.

In this scenario, the rights under the arbitration awards gave Minerology a proprietary right to claim damages from the state. The state, by negating the awards, has effectively expropriated a proprietary interest held by Minerology.

Expropriation of property is a hallmark of tyrannical governments. Property rights are inextricably tied to individual liberty and limited government. As United States founding father John Adams and second president John Adams famously said: "Property must be secured or liberty cannot exist." This is because an economic system that respects the right to own property and enforce property rights against others tends to strengthen individual autonomy and independence from the state.

The government's move is without justification. The arguments in favour of the Bill have been to suggest that schools would be shut and nurses put out of work to pay a damages bill of $30 billion. But Palmer himself asserts that he has not claimed that amount and the hearing to determine damages was scheduled to take place in November 2020.

Premier Mark McGowan has declared the state is "in a war" with Palmer, who has been branded an "enemy of the state". This is the kind of language that might be applied to a person who is accused of treason. But Palmer's only crime has been to raise a challenge to the WA border closure rules.

Undoubtedly Clive Palmer has his critics, but he is an Australian and is entitled to argue that the Australian Constitution should be applied, and to raise a challenge if he has standing to do so. The WA government should respect this basic entitlement of Australian citizenship, not make a declaration of war.

The WA government's excessively petty response is incredibly dangerous. The confirmation that the government is prepared to legislate away its liabilities presents a very real risk to any business who is considering investing in the state. This is the definition of sovereign risk.

Scaring away capital and investment is the last thing Western Australia needs as the country crawls out of depressed economic conditions imposed in response to COVID-19. But this is what the government is risking by pulling away at the threads of the rule of law.

The rule of law is the basic principle the separates the West from the rest of the world. In the World Justice Project's Rule of Law Index 2020, 8 of the top 10 best performers for the rule of law were in Europe, while number 7 and 9 were New Zealand and Canada respectively. Australia ranked 11th, above the United States and the United Kingdom.

Australia's political and legal system has a good reputation but this requires a commitment to uphold the rule of law. Decisions like those of the WA government, as well as the arbitrary nature of the lockdowns imposed nationwide this year, demonstrates a recent failure to meet these basic standards of lawmaking.

While no government can claim to have a perfect record the WA government's response in its dispute with Minerology is a shameful betrayal of a core Australian legal tradition.



**Tags:** CLIVE PALMER | MARK MCGOWAN | MINING | RULE OF LAW | WESTERN AUSTRALIA

**Morgan Begg**

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP23"**

The following 2 pages are the annexure "CFP23" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

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Name: Daniel Jacobson

Address:

Solicitor Solicitor


| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

# WA Premier Mark McGowan says Clive Palmer a ‘menace to Australia’ after coronavirus ‘beat-up’ comments

perthnow.com.au/politics/wa-premier-mark-mcgowan-says-clive-palmer-a-menace-to-australia-after-coronavirus-beat-up-comments-ng-b881620639z

26 July 2020

## Palmer launches legal challenge of WA’s border closure

7NEWS Perth

AAP

July 26, 2020 4:05PM

West Australian Premier Mark McGowan has labelled Clive Palmer a menace after he suggested the coronavirus pandemic was a media “beat-up”.

The billionaire mining magnate will front the Federal Court on Monday to challenge WA’s interstate border restrictions.

Evidence on whether the closures are constitutional is also being given by the Commonwealth, which argues WA should reopen.

A three-day trial will be heard in the Federal Court ahead of the matter returning to the High Court.

Mr Palmer has told the Sunday Times the crisis is a “beat-up” and the risk to most people is negligible, attributing most of the deaths to co-morbidities.

The premier on Sunday hit back at Mr Palmer, labelling him selfish and irresponsible and urging the federal government to withdraw its involvement in the court matter.

“He’s a menace to Australia,” Mr McGowan said.

“And I’d just say to the Liberal Party, don’t support him in the High Court - it’s wrong.

“It’s irresponsible and it’s playing with people’s lives. Mr Palmer and the Liberal Party should back off from the High Court action.”

Mr McGowan said he was confident the state’s legal position was strong, adding that reopening the borders could have a dire health impact.

WA has not had any known community transmission of the virus since April 12.

“I do a lot of travelling around, I go to lots of cafes … I’m yet to have anyone say to me ’tear down the border’,” Mr McGowan said.

“Everyone says keep us safe, get our economy back within the borders and bring it down when the time is right.”

Mr Palmer is arguing WA’s border restrictions are contrary to section 92 of the constitution which provides for freedom of movement between the states.

Solicitor-General Stephen Donaghue QC has signalled that the Commonwealth will contribute expert evidence that targeted quarantine measures are just as effective as state border closures in managing potential COVID-19 outbreaks.

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP24"**

The following 1 page is the annexure "CFP24" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

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Name: Daniel Jacobson
Address:
Solicitor Solicitor

| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

27
JUL

**Media release**

## Palmer responds to Mark 'The Menace' McGowan

Premier Mark McGowan was proving himself to be the real menace to the people of Western Australia over his unreasonable coronavirus border closure, Clive Palmer said today.

"Mark 'The Menace' McGowan knows the mortality rate for West Australians hasn't increased because of COVID-19 yet he continues to mislead the people of WA for political grand standing," Mr Palmer said.

"There are other highly contagious viruses, for example Hepatitis B, which result in thousands of deaths every year. COVID-19 has claimed very few lives in WA, yet has led to unprecedented border closures and devastation to the economy," Mr Palmer said.

"When the federal government stops JobSeeker and JobKeeper, WA will face very uncertain times. Mark McGowan is a menace for not opening the borders and leading the great state of Western Australia forward," he said.

**ENDS**

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## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP25"**

The following 4 pages are the annexure "CFP25" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

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Name: Daniel Jacobson
Address:
Solicitor Solicitor

| | |
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| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

The Sydney Morning Herald



This was published 5 months ago

# 'I think he's the enemy of Australia': McGowan ramps up war of words with Palmer on WA border battle

For our free coronavirus pandemic coverage, learn more here.

By **Daile Cross** and **Nathan Hondros**
July 31, 2020 — 3.20pm



WA Premier Mark McGowan has ramped up his war of words with Clive Palmer as the closing submissions in Mr Palmer's legal challenge to the constitutionality of WA's hard border wrapped up.

He labelled Mr Palmer "the enemy of the state" and the country as a whole, while calling on the federal government to back away from the battle over his hard border policy.

Clive Palmer said his United Australia Party will contest Queensland's state election on October 31. NINE

Mr McGowan said Mr Palmer only cared about himself.

"Let Mr Palmer fight his own fights," Mr McGowan said. "I'm happy to have a blue with Mr Palmer ... I think he's the enemy of Australia."

While Mr McGowan has enjoyed a spike in his popularity over the handling of the coronavirus threat in WA, with social media campaigns supporting him and even burgers named in his honour, there has been criticism that his continued 'hard border' stance is politically motivated.

But Mr McGowan insisted he was relying on health advice and had done "the right thing all along".

"I'm not enjoying it. But we're not going to cave in, we're not going to give in," he said.

Speaking to the press in Brisbane, Mr Palmer accused the WA Premier of lying about his motivations.

The billionaire said WA Chief Health Officer Andy Robertson conceded in his evidence before the Federal Court that Mr McGowan was not following health advice in keeping the borders closed and accused the Premier of using the issue to win the March state election.

"What the Western Australian government has done is unconstitutional," Mr Palmer said.


"This is not a political issue, Mark. This is not about you getting back as Premier, it's about good government for the people of Australia and caring about the citizens you're supposed to represent.

"I can tell you from experience, politicians will do anything they can to win an election. It's not past them to lie to the people."

Attorney General Christian Porter told reporters on Friday a decision in Mr Palmer's case would not be likely until October and defended the Commonwealth's decision to intervene.

"As a matter of legal principle, the more total, the more uncompromising the border closure, the more likely it is to be found by the High Court to be unconstitutional," he said.

"If there's absolutely zero compromise to the present situation, that increases the risks.

"It may be a convenient thing for people to try and blame the Commonwealth or some other party for a loss that hasn't even heard yet, but the more uncompromising the policy, the higher the risk it can be found unconstitutional."

Mr Porter said the Commonwealth was acting in the best interests of West Australians by "having protected borders which are also constitutionally sustainable".

"What is constitutional and what is popular is not the same thing," he said.

"There is not much point to a very popular policy that you can't sustain for more than a month and a half.

"If it were as easy as going into the High Court and saying 96 per cent of people in Western Australia would prefer this, we wouldn't have an issue on our hands, but that is not the question before the High Court."

Earlier on Friday, Mr Palmer published online a letter addressed to WA voters.

"While the Premier is not slow to call me names and attack my integrity, I have never met the Premier," he wrote.

Mr Palmer said WA's Dr Robertson told the Federal Court that South Australia, Queensland, Tasmania, the Northern Territory and the ACT were all further advanced than WA 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," Mr Palmer said.

"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."

Mr Palmer said the truth was that tens of thousands of people had entered the state while Labor maintained the line that there was a 'hard border' in place.

"Politicians will tell the Australian public anything to be re-elected," he said.

"It is particularly disturbing to me when politics becomes mixed up with health policies close to an election."

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**Daile Cross**

Daile Cross is the Deputy Editor of WAtoday.

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**Nathan Hondros**

Nathan is WAtoday's political reporter and the winner of the 2019 Arthur Lovekin Prize for Excellence in Journalism.

## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP26"**

The following 3 pages are the annexure "CFP26" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

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Name: Daniel Jacobson
Address:
Solicitor Solicitor


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|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | *Level 23, 52 Martin Place,* Sydney NSW 2000 |

# WA Premier hails passing of emergency legislation to hinder Clive Palmer

thenewdaily.com.au/news/2020/08/14/wa-emergency-legislation-passes-clive-palmer

The New Daily and AAP 13 August 2020

News

1:09am, Aug 14, 2020 Updated: 5:22pm, Oct 30

## 'We will never give in': WA Premier hails passing of emergency legislation to thwart Clive Palmer

WA Premier Mark McGowan and Clive Palmer are at loggerheads over the WA border closure. *Photos: AAP*

Legislation to block a $30 billion damages claim by businessman Clive Palmer has passed the Western Australian Parliament late on Thursday night, local time.

Premier Mark McGowan posted on Twitter that the emergency legislation will now "go straight to Governor Kim Beazley, who has been waiting on standby, ready to sign it into law".

"This law protects the taxpayers of Western Australia, so essential services won't be under threat," Mr McGowan tweeted.

"Thank you to all the Members of Parliament that genuinely supported us on this extremely important matter."

"This law shows that Western Australians will not be bullied.

"We will never give in. We will never give up."

> BREAKING: Our emergency legislation to protect Western Australia from Clive Palmer's $30 billion claim has just passed Parliament.
>
> It will now go straight to Governor Kim Beazley, who has been waiting on standby, ready to sign it into law.
>
> There's no time to wait. pic.twitter.com/fMC4A0EOEr
>
> — Mark McGowan (@MarkMcGowanMP) August 13, 2020

The government had put forward unprecedented legislation to amend a 2002 state agreement with Mr Palmer's Mineralogy company.

It is intended to have the effect of terminating arbitration between the two parties and stopping Mr Palmer seeking damages against the state.

The bill passed the upper house after the WA Nationals and Greens sided with the government to suspend all other business.

But in a twist, Mr Palmer said the Queensland Supreme Court had on Thursday registered his two arbitration awards.

He said this meant WA's "draconian and disgraceful" legislation would now be invalid under the constitution.

Attorney-General John Quigley had previously said any court action between the bill's introduction and assent would be covered by the legislation.

WA's lower house signed off on the bill on Wednesday night, just hours after it was introduced to state Parliament.

> 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 pic.twitter.com/Yn2i78HU71
>
> — Clive Palmer (@CliveFPalmer) August 13, 2020

The Liberal opposition and some crossbenchers had unsuccessfully sought more time to scrutinise the legislation, arguing it was unreasonable to consider it within 48 hours.

Government upper house leader Sue Ellery said MPs could not afford to provide Mr Palmer with any opportunity to challenge the bill's validity.

"If the bill is not enacted and his self-serving claims are not extinguished, then the damages exposure is quite breathtaking," she said.

Liberal MP Nick Goiran labelled the fast-tracking of the legislation a “pathetic charade for democracy”.

Mr Palmer and his associated companies Mineralogy and International Minerals are pursuing damages over a 2012 decision by the former Liberal government to not assess his proposed Balmoral South iron ore mine in the Pilbara.

The government has calculated the total claim to be $27.7 billion minus costs, an amount Mr McGowan said would effectively bankrupt the state.

He said the situation could have been avoided had the former government heeded legal advice in 2014 to appeal one of the award decisions.

The government has also tabled evidence Mr Palmer offered to withdraw his legal challenge against WA’s border closures if officials agreed to move arbitration hearings relating to the damages claim from Perth to Canberra.

The offer was made in a letter from the in-house counsel for Mineralogy to state lawyers in WA.

Mr Palmer has called on both the premier and attorney-general to resign and said their legislation will cause other companies to reconsider investing in WA.

**Topics:**

Clive Palmer

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## Annexure Certificate

No. NSD 912 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

**Annexure Certificate – "CFP27"**

The following 2 pages are the annexure "CFP27" to the affidavit of Clive Frederick Palmer sworn before me on 27 January 2021.

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Name: Daniel Jacobson

Address:

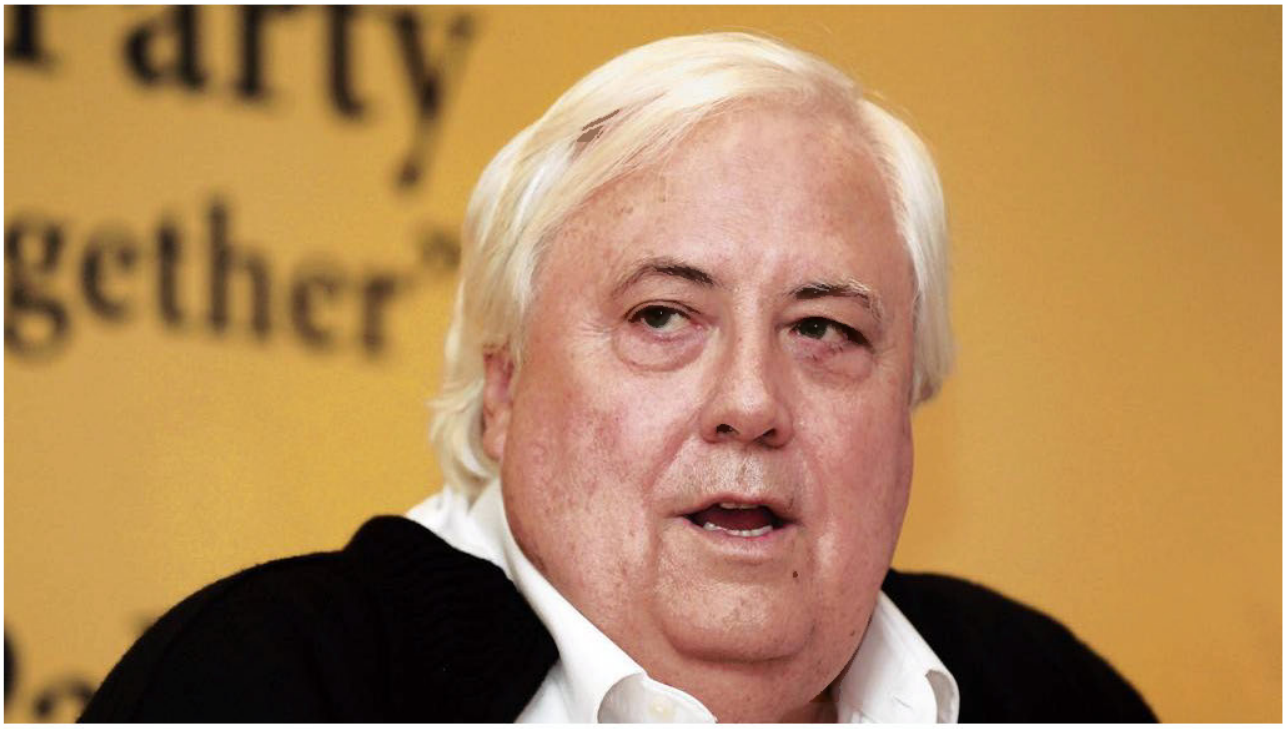
Solicitor Solicitor


| | |
|---|---|
| Filed on behalf of | Clive Frederick Palmer, Applicant |
| Prepared by | Michael John Sophocles |
| Law firm | Sophocles Lawyers |
| Tel | 02 9098 4450 |
| Email | mjs@sophocles-lawyers.com |
| Address for service | Level 23, 52 Martin Place, Sydney NSW 2000 |

# Defamation counterclaim: Premier Mark McGowan says Clive Palmer will write 'big cheque' to WA taxpayers

thewest.com.au/politics/state-politics/defamation-counterclaim-premier-mark-mcgowan-says-clive-palmer-will-write-big-cheque-to-wa-taxpayers-ng-b881674756z

Peter Law 23 September 2020



Mark McGowan says his defamation counterclaim against Clive Palmer has a strong chance of winning and he expects the billionaire will be writing a "big cheque" to WA taxpayers.

The Premier came under fire from the Opposition — who labelled him "thin-skinned" and "a princess" — after The West Australian revealed he was suing Mr Palmer as part of his defamation defence.

Liberal leader Liza Harvey said it was an "inappropriate" use of taxpayers' money, while her party colleague Zak Kirkup said Mr McGowan needed to "man-up".

Mr McGowan, who is being represented in the Federal Court case by defamation lawyer Carmel Galati, said he'd received legal advice to submit the cross-claim as part of his defence.

He said Mr Palmer had made "very defamatory" comments, which included likening him to Nazi leader Adolf Hitler, Italian dictator Benito Mussolini and disgraced former United States president Richard Nixon.

The Premier said he'd been told his case was "strong" and that — should he win — any damages paid by the mining magnate would go to State Government coffers.

He also stressed that the court action was started by the United Australia Party leader, which followed after a war of words of WA's border closure and a $30 billion damages claim.

"The standard procedure in these things is people in roles like Premier and Prime Minister have to be able to defend themselves in these cases. Otherwise, people of means would be able to force anyone in public office, out of office," Mr McGowan said.

"Any proceeds from this will go directly back to the taxpayers. I, of course, won't get a cent out of it. Mr Palmer has been very defamatory. I expect the taxpayers will get a big cheque because of his action."

High-profile lawyer Tom Percy said there was nothing inappropriate about using public money to pay for the counterclaim as it formed part of the Premier's defence against a lawsuit instigated by Mr Palmer.

He said the defence would likely cost hundreds of thousands of dollars, but launching a counterclaim was unlikely to increase the legal bill.

"I don't think there is anything inappropriate about it. The Premier has not initiated this and as part of his defence you would run a counterclaim. It's part and parcel of the same case," he said.

But Mr Kirkup said Mr McGowan was using taxpayers' money to "defend his ego" in a "schoolyard fight".

"The Premier needs to man-up — I didn't realise that we elected a princess at the 2017 State election — and stop using taxpayer dollars to defend his own reputation," Mr Kirkup said.