

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/06/2021 4:22:37 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: NSD912/2020  
File Title: CLIVE FREDERICK PALMER v MARK MCGOWAN  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 25/06/2021 4:23:43 PM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

### Important Information

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

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



Form 33  
Rule 16.32

**Further Amended Defence**  
**Amended pursuant to the order made**  
**by Justice White on 10 November 2020**

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

No. NSD 912 of 2020

**Clive Frederick Palmer**

Applicant

**Mark McGowan**

Respondent

1. The Respondent admits paragraph 1 of the Amended Statement of Claim dated 28 May 2021 ~~19 August 2020~~ (the Statement of Claim).
2. As to paragraph 2 of the Statement of Claim, the Respondent:
  - (a) admits he spoke the words set out in paragraph 2 of the Statement of Claim in the course of responding to questions put to him by representatives of the media who were present at the briefing, and says further he spoke other words on that occasion, a transcript of which will be relied upon at the trial of this proceeding;
  - (b) says with respect to the particulars of publication that:
    - (i) he admits sub-paragraph 2(a);
    - (ii) he admits he knew that some or all of what he said during the briefing could be republished in the media, but otherwise denies sub-paragraph 2(b) because he did not intend for just those words set out in paragraph 2 to be republished and because he had no control over the decision by those republishers as to what would be republished;
    - (iii) he admits the words set out in paragraph 2 were republished on Youtube at the link provided at sub-paragraph 2(c), and says further that other words also said by him

---

**Filed on behalf of:** The respondent

Prepared by: Nicholas Cooper  
Law firm: Clayton Utz

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

**Contact details:**

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

during the briefing and upon which he will rely at the trial of the action also were republished in that video; he does not know and therefore cannot admit how many viewers the Youtube video was republished to; and he denies the words set out in paragraph 2 were republished in the SMH article to which the link is provided, because not all of them were; does not admit the particulars of publication set out in sub-paragraphs 2(a), 2(b) and 2(c)

~~(e)~~ (iv) he is not required to plead to sub-paragraph 2(d) and otherwise denies the matters set out therein.

3. As to paragraph 3 of the Statement of Claim, the Respondent:

- (a) denies the first matter complained of was capable of or in fact carried the meanings at paragraph 3 of the Statement of Claim, or any meaning defamatory of the Applicant;
- (b) says further the meanings pleaded are imprecise, repetitive and therefore embarrassing and liable to be struck out.

4. As to paragraph 4 of the Statement of Claim, the Respondent:

- (a) admits he spoke the words set out in paragraph 4 of the Statement of Claim in the course of responding to questions put to him by representatives of the media who were present at the briefing, and says further he spoke other words on that occasion, a transcript of which will be relied upon at the trial of this proceeding;
- (b) says with respect to the particulars of publication that:
  - (i) he admits sub-paragraph 4(a);
  - (ii) he admits he knew that some or all of what he said during the briefing could be republished in the media, but otherwise denies sub-paragraph 4(b) because he did not intend for just those words set out in paragraph 4 to be republished and because he had no control over the decision by those republishers as to what would be republished;
  - (iii) he admits that the first 3 sentences of the words set out in paragraph 4 were republished on the ABC website link identified at sub-paragraph 4(c) but denies that the last sentence was published on the ABC website link, and says further that other words also said by him during the briefing and upon which he will rely at the trial of the action also were republished in that video; and he admits the first and fourth sentences of the words set out in paragraph 4 were republished in the AAP article identified in sub-paragraph 4(c) does not admit the particulars of publication set out in sub-paragraphs 4(a), 4(b) and 4(c);

~~(e)~~ (iv) he is not required to plead to sub-paragraph 4(d) and otherwise denies the matters set out therein.

5. As to paragraph 5 of the Statement of Claim, the Respondent:

- (a) denies the second matter complained of was capable of or in fact carried the meanings at paragraph 5 of the Statement of Claim, or any meaning defamatory of the Applicant;
- (b) says further the meanings pleaded are imprecise, repetitive and therefore embarrassing and liable to be struck out.

6. As to paragraph 6 of the Statement of Claim, the Respondent:

- (a) admits he spoke the words set out in paragraph 6 of the Statement of Claim in the course of responding to questions put to him by representatives of the media who were present at the briefing, and says further he spoke other words on that occasion, a transcript of which will be relied upon at the trial of this proceeding;

(b) says with respect to the particulars of publication that:

(i) he admits sub-paragraph 6(a);

(ii) he admits he knew that some or all of what he said during the briefing could be republished in the media, but otherwise denies sub-paragraph 6(b) because he did not intend for just those words set out in paragraph 6 to be republished and because he had no control over the decision by those republishers as to what would be republished;

(iii) he admits the words set out in paragraph 6, after the words "Look, just so you know" were republished in the AAP article and that the words of the first sentence after the words "Look, just so you know", and the third sentence of paragraph 6 were republished in the Perth Now article at the links identified at sub-paragraph 6(c); and he admits that the ~~second and third sentences of the~~ words set out in paragraph 6 were substantially republished at the Channel Seven website link identified at sub-paragraph 6(c); ~~does not admit the particulars of publication set out in sub-paragraphs 6(a), 6(b) and 6(c);~~

~~(e)~~ (iv) he is not required to plead to sub-paragraph 6(d) and otherwise denies the matters set out therein.

7. As to paragraph 7 of the Statement of Claim, the Respondent:

- (a) denies the third matter complained of was capable of or in fact carried the meanings at paragraph 7 of the Statement of Claim, or any meaning defamatory of the Applicant;

- (b) says further the meanings pleaded are imprecise, repetitive and therefore embarrassing and liable to be struck out.
8. As to paragraph 8 of the Statement of Claim, the Respondent:
- (a) admits he spoke the words set out in paragraph 8 of the Statement of Claim in the course of responding to questions put to him by representatives of the media who were present at the briefing, and says further he spoke other words on that occasion, a transcript of which will be relied upon at the trial of this proceeding;
- (b) says with respect to the particulars of publication that:
- (i) he admits sub-paragraph 8(a);
- (ii) he admits he knew that some or all of what he said during the briefing could be republished in the media, but otherwise denies sub-paragraph 8(b) because he did not intend for just those words set out in paragraph 8 to be republished and because he had no control over the decision by those republishers as to what would be republished;
- (iii) he admits the words set out in paragraph 8 were republished on a Facebook page (wrongly described in the statement of claim as "the WA Today Facebook Page") which is located at the URL address identified at sub-paragraph 8(c) and says further that other words also said by him during the briefing and upon which he will rely at the trial of the action also were republished in that video; and he admits that the second sentence of the words set out in paragraph 8 was republished in the West Australian article identified at sub-paragraph 8(c); ~~does not admit the particulars of publication set out in sub-paragraphs 8(a), 8(b) and 8(c);~~
- ~~(c)~~ (iv) is not required to plead to sub-paragraph 8(d) and otherwise denies the matters set out therein.
9. As to paragraph 9 of the Statement of Claim, the Respondent:
- (a) denies the fourth matter complained of was capable of or in fact carried the meanings at paragraph 9 of the Statement of Claim, or any meaning defamatory of the Applicant;
- (b) says further the meanings pleaded are imprecise, repetitive and therefore embarrassing and liable to be struck out.
10. As to paragraph 10 of the Statement of Claim, the Respondent:
- (a) admits he spoke the words set out in paragraph 10 of the Statement of Claim in the course of responding to questions put to him by representatives of the media who were present at

the briefing, and says further he spoke other words on that occasion, a transcript of which will be relied upon at the trial of this proceeding;

- (b) says with respect to the particulars of publication that:
  - (i) he admits sub-paragraph 10(a):
  - (ii) he admits he knew that some or all of what he said during the briefing could be republished in the .media, but otherwise denies sub-paragraph 10(b) because he did not intend for just those words set out in paragraph 10 to be republished and because he had no control over the decision by those republishers as to what would be republished:
  - (iii) he admits the words set out in paragraph 10 were republished on the Canberra Times website at the link identified at sub-paragraph 10(c), ~~does not admit the particulars of publication set out in sub-paragraphs 10(a), 10(b) and 10(c)~~
  - (c) (iv) is not required to plead to sub-paragraph 10(d) ~~and otherwise denies the matters set out therein.~~

11. As to paragraph 11 of the Statement of Claim, the Respondent:

- (a) denies the fifth matter complained of was capable of or in fact carried the meanings at paragraph 11 of the Statement of Claim, or any meaning defamatory of the Applicant;
- (b) says further the meanings pleaded are imprecise, repetitive and therefore embarrassing and liable to be struck out.

12. As to paragraph 12 of the Statement of Claim, the Respondent:

- (a) admits he is responsible as publisher for the conduct of his staff in uploading to Facebook, Annexure A to the Statement of Claim;
- (b) says with respect to the particulars of publication that:
  - ~~(a)~~ (i) he admits ~~he authored~~ the post set out in sub-paragraph 12(a) ~~was authored by his staff on his behalf~~ but denies that he approved the post prior to it being uploaded;
  - ~~(b)~~ (ii) he denies ~~does not admit~~ the particulars of publication set out in sub-paragraphs 12(b) ~~and 12(c)~~
  - (iii) as to sub-paragraph 12(c) he admits that the post was uploaded on or about 14 August 2020, but does not know and therefore cannot admit that it was "downloaded and read across Australia"; ~~does not admit sub-paragraph 12(c);~~

~~(e)~~ (iv) he admits sub-paragraph 12(d);

~~(d)~~ (v) he is not required to plead to sub-paragraph 12(e) and otherwise denies the matters set out therein.

13. As to paragraph 13 of the Statement of Claim, the Respondent:

- (a) denies the sixth matter complained of was capable of or in fact carried the meanings at paragraph 13 of the Statement of Claim, or any meaning defamatory of the Applicant;
- (b) says further the meanings pleaded are imprecise, repetitive and therefore embarrassing and liable to be struck out.

14. Further, or in the alternative to paragraphs 3, 5, 7, 9, 11, and 13 above, the Respondent reiterates his denial of the imputations contended for by the Applicant and say that if the first to sixth matters complained of (the Matters Complained Of) are found to be defamatory of the Applicant:

- (a) The first to fifth matters complained of were spoken words and therefore could not be read or heard in isolation;
- (b) The Matters Complained Of were published on an occasion of common law qualified privilege or further, or alternatively on an occasion of qualified privilege pursuant to section 30 of the *Defamation Act 2005*;
- (c) The Matters Complained Of were published on an occasion of qualified privilege, being the implied Constitutional freedom of communication about governmental or political matters;

(d) The First and Second Matters Complained of arise from a single publication, being the media briefing given by the Respondent on 31 July 2020, and therefore comprise a single cause of action pursuant to section 8 of the *Defamation Act 2005*.

#### Particulars of Defences

15. The Applicant was, at all material times;

- (a) the leader of the United Australia Party;
- (b) a businessman with significant business interests in Western Australia;
- (c) the majority owner of shares in Mineralogy Pty Ltd (Mineralogy)

16. The Respondent is the Premier of the State of Western Australia and a member of the Legislative Assembly of the State of Western Australia.

17. On 5 April 2020 the Police Commissioner for the State of Western Australia, Christopher Dawson (the Police Commissioner), pursuant to sections 61, 67, 70 and 72A of the Emergency

Management Act 2005 (WA), directed the closure of the Western Australian border save for certain exempt travellers, through the Quarantine (Closing the Border) Direction.

18. On 20 May 2020 the Applicant's solicitor sent a letter to the Respondent and to the Police Commissioner claiming that an application made by the Applicant for approval to enter Western Australia as an exempt traveller was refused (the Border Application).
19. The Applicant's stated purpose to enter Western Australia was to encourage research and the use of hydroxychloroquine for the treatment of COVID-19, via, inter alia, the donation of 33 million doses of hydroxychloroquine to be provided free of charge on prescription for treatment or prevention of COVID -19.
20. On 20 May 2020 at approximately 5pm, the Applicant's solicitor Mr Jonathan Shaw was contacted by the State Solicitor's Office during which the Applicant was invited to apply for a general travel exemption for entry into Western Australia.
21. The Applicant did not apply for exempt traveller status.
22. On 25 May 2020 the Applicant and Mineralogy commenced proceedings in the High Court of Australia against the State of Western Australia and the Police Commissioner, seeking a declaration that the Quarantine (Closing the Border) Direction was a breach of the Commonwealth Constitution (the Border Proceedings).
23. At all material times, until the pronouncement of the High Court on 6 November 2020, the State of Western Australia and the Police Commissioner ~~are~~ were defending the Border Proceedings.
24. On 13 August 2020, the Parliament of Western Australia passed the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Act 2020, which had the effect of, inter alia, extinguishing Mineralogy's existing legal claim against the State of Western Australia in respect of conditions imposed on the Balmoral South iron ore project.
25. The First Matter Complained of was published during and in the context of a press briefing which covered matters related to:
  - (a) The Border Proceedings;
  - (b) The intervention of the Commonwealth of Australia (the Commonwealth) in the Border Proceedings;
  - (c) The underlying reasons for the State Government of Western Australia (the State Government) in making the Quarantine (Closing the Border) Direction;
  - (d) Maintaining the health of Western Australians by limiting the spread of COVID-19;
  - (e) The medical advice given to the State Government regarding the COVID-19 pandemic;



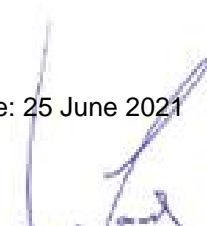
- (f) The power of a State of the Commonwealth of Australia to govern in accordance with the wishes of its residents.
26. The Second Matter Complained was published during and in the context of a press briefing which covered matters related to:
- (1) Maintaining the health of Western Australians by limiting the spread of COVID -19;
  - (2) The Border Proceedings;
  - (3) The medical evidence given in the Border Proceedings in respect of ways to avoid the spread of COVID -19, the medical advice given to the State Government and any apparent conflict with the decision of the State Government to maintain the Quarantine (Closing the Border) Direction.
  - (4) The Commonwealth's intervention in the Border Proceedings;
  - (5) The power of a State of the Commonwealth to govern in accordance with the wishes of its residents;
27. The Third Matter Complained was published during and in the context of a press briefing which covered matters related to:
- (1) The Border Proceedings;
  - (2) Maintaining the health of Western Australians by limiting the spread of COVID -19;
  - (3) Concerns regarding the Applicant entering Western Australia to promote hydroxychloroquine as a prevention and / or cure of COVID-19;
  - (4) The danger to the health of Western Australians in the use of hydroxychloroquine;
  - (5) The relationship between the State and Federal Governments regarding the Commonwealth's intervention in the Border Proceedings.
28. The Fourth Matter Complained was published during and in the context of a press briefing which covered matters related to:
- (1) Maintaining the health of Western Australians by limiting the spread of COVID -19;
  - (2) The quarantine measures being implemented by the State Government and the effectiveness of the decision to maintain a hard border with other States of Australia;
  - (3) The rates of COVID -19 spread in other States of Australia;

- (4) The Border Proceedings and the Applicant's resolve to proceed with the Border Proceedings given the public sentiment towards retaining a closed border in Western Australia.
29. The Fifth Matter Complained was published during and in the context of a press briefing which covered matters related to:
  - (1) Maintaining the health of Western Australians by limiting the spread of COVID -19;
  - (2) The Border Proceedings;
  - (3) The relationship between the State and Federal Governments regarding the Commonwealth's withdrawal of involvement in the Border Proceedings.
30. The Sixth Matter Complained was published during and in the context the provision of information to the public relating to:
  - (1) The reason the Parliament of Western Australia enacted the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Act 2020;
  - (2) The risk to the financial stability of the State of Western Australia if the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Act 2020 was not enacted;
  - (3) The conduct of the Applicant and Mineralogy in respect of legal claims made against the State of Western Australia;
  - (4) The iron ore reserves at Balmoral South.
31. The words spoken by the Respondent together with the First to Fifth Matters Complained and the Sixth Matters Complained of was published to persons:
  - (1) enrolled as electors of the Legislative Assembly of Western Australia; and
  - (2) resident in the state of Western Australia.
32. In the premises, the Respondent had an interest in disseminating, and members of the public had corresponding interest, or apparent interest in receiving, the Matters Complained Of.
33. Further, by reason of the matters particularised above, the Matters Complained Of were of significant public interest and concerning matters of governmental and political significance.
34. The Respondent believed the Matters Complained Of be true and had reasonable grounds for so believing.
35. The Respondent was not aware of any falsity in the Matters Complained Of.

Loss and Damage

36. The Respondent denies each and every allegation in paragraphs 14, 15 and 16 of the Statement of Claim.
37. The Respondent denies that the Applicant is entitled to damages, including special damages and says further the claim for special damages has not been properly pleaded and is therefore embarrassing.
38. Further, if, which is denied, the Applicant is found to be entitled to any damages as a result of publication of any of the Matters Complained Of, the Respondent will rely in mitigation of damages upon the following:
- (a) The facts matters and circumstances proven in support of the defences pleaded;
  - (b) The circumstances in which it is proved the Matters Complained Of were published;
  - (c) Such further matters as may be identified following discovery.
39. The Respondent otherwise denies the Applicant is entitled to the relief claimed, or at all.

Date: 25 June 2021

  
.....  
Signed by Nicholas Cooper  
Lawyer for the respondent

This Further Amended Defence was prepared by Nicholas Cooper, lawyer, and R Anderson QC.

### **Certificate of lawyer**

I Nicholas Cooper certify to the Court that, in relation to the further amended defence filed on behalf of the respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 25 June 2021



.....  
Signed by Nicholas Cooper  
Lawyer for the respondent