

NOTICE OF FILING

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Details of Filing

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



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

Dated: 12/11/2021 11:05:38 AM AEDT

Registrar

Important Information

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

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



Further Amended Defence to Cross Claim

No. NSD 912 of 2020

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

CLIVE FREDERICK PALMER

Applicant/Cross-Respondent

MARK MCGOWAN

Respondent/Cross-Claimant

1. The Cross-Respondent (**Mr Palmer**) admits that the Cross-Claimant (**Mr McGowan**) is the Premier of Western Australia but otherwise does not know and cannot admit the allegations in paragraph 1 of the statement of cross-claim filed by Mr McGowan on 17 September 2020 (**Cross Claim**).
2. In answer to paragraph 2 of the Cross Claim, Mr Palmer:
 - (a) admits that he spoke the following words publicly, during the course of a press conference held in Brisbane on or about 31 July 2020:

“I’d call upon the Western Australian government to maintain border closures in relation to hotspots in Australia but not to lie to the Western Australian people about threats that don’t exist.

One of the most disappointing things in the Court this week has been the situation where the Chief Medical Officer from Western Australia, Dr Andy [Robertson], explained to the Court that Tasmania, South Australia, Queensland, the Northern Territory and the [ACT] all were more successful than Western Australia in eradicating the virus. That was his testimony. A very courageous testimony it was because he went on to say that he’d advised the government that they could have a travel bubble between Western Australia and Northern Territory for example and the government failed to respond to his advice or get back to him.

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Now that's a lot different to the lies that Mark McGowan has told the people of Western Australia that he's acting on the advice of the Chief Medical Officer.

....

The whole situation in Western Australia is a shambles.

There is no threat to Western Australia certainly here in Queensland, in South Australia, the Northern Territory, the [ACT] and Tasmania we all have a better record in dealing with the virus than Western Australia. Yet Mark McGowan, by keeping the borders hard closed, is destroying the lives of many Western Australians”;

- (b) admits it was the natural and probable consequence that the words spoken at the press conference would be republished by some of those present; and
 - (c) otherwise denies the allegations therein.
3. In answer to paragraph 3 of the Cross Claim, Mr Palmer:
- (a) denies that the first matter complained of is capable of being defamatory or is in fact defamatory of Mr McGowan whether in the sense of the imputations particularised under paragraph 3 (those imputations referred to immediately below as **Mr McGowan's Imputations**) or otherwise; and
 - (b) denies that Mr McGowan's Imputations are capable of being conveyed or are in fact conveyed by the first matter complained of.
4. In answer to paragraph 4 of the Cross Claim, Mr Palmer:
- (a) admits, subject to the correction of typographical errors, that he spoke the words attributed to him in Attachment 2 during the course of a press conference held in Brisbane on or about 12 August 2020;
 - (b) admits it was the natural and probable consequence that the words spoken at the press conference would be republished by some of those present; and
 - (c) otherwise denies the allegations therein.
5. In answer to paragraph 5 of the Cross Claim, Mr Palmer:
- (a) denies that the second matter complained of is capable of being defamatory or is in fact defamatory of Mr McGowan whether in the sense of the imputations particularised under

paragraph 5 (those imputations referred to immediately below as **Mr McGowan's Imputations**) or otherwise; and

- (b) denies that Mr McGowan's Imputations are capable of being conveyed or are in fact conveyed by the second matter complained of.

6. In answer to paragraph 6 of the Claim, Mr Palmer:

- (a) admits that he authored and signed the letter appearing as Attachment 3;
- (b) admits that he caused the letter headed "Cover Up" appearing as Attachment 4 to be provided to *The West Australian* with the intention that it be published in that newspaper;
- (c) admits that a copy of the letter appearing as Attachment 5 was included in a post created on Mr Palmer's Facebook account on 13 August 2020, and was thereby made available for downloading from that social media platform;
- (d) admits that a copy of the letter appearing as Attachment 6 was included in a post or "Tweet" created on Mr Palmer's Twitter account on 13 August 2020, and was thereby made available for downloading from that social media platform;
- (e) admits that he caused printed copies of the document headed "Cover Up", appearing as Attachment 7, to be delivered to residents of Western Australia through the post; and
- (f) otherwise denies the allegations therein.

7. In answer to paragraph 7 of the Cross Claim, Mr Palmer:

- (a) denies that the third to seventh matters complained of, or any of them, are capable of being defamatory or are in fact defamatory of Mr McGowan whether in the sense of the imputation particularised under paragraph 7 (that imputation referred to immediately below as **Mr McGowan's Imputation**) or otherwise; and
- (b) denies that Mr McGowan's Imputation is capable of being conveyed or is in fact conveyed by any of the third to seventh matters complained of.

8. In answer to paragraph 8 of the Cross Claim, Mr Palmer:

- (a) admits, subject to the correction of typographical errors, that he spoke the words attributed to him in Attachment 8 during the course of an interview by Hamish

Macdonald on the ABC's "RN Breakfast" radio program on or about 14 August 2020;
and

(b) otherwise denies the allegations therein.

9. In answer to paragraph 9 of the Cross Claim, Mr Palmer:

(a) denies that the eighth matter complained of is capable of being defamatory or is in fact defamatory of Mr McGowan whether in the sense of the imputations particularised under paragraph 9 (those imputations referred to immediately below as **Mr McGowan's Imputations**) or otherwise; and

(b) denies that Mr McGowan's Imputations are capable of being conveyed or are in fact conveyed by the eighth matter complained of.

10. In answer to paragraph 10 of the Cross Claim, Mr Palmer:

(a) admits, subject to the correction of typographical errors, that he spoke the words attributed to him in Attachment 9 during the course of an interview by Sky News journalist Peter Gleeson on or about 1 September 2020; and

(b) otherwise denies the allegations therein.

11. In answer to paragraph 11 of the Cross Claim, Mr Palmer:

(a) denies that the ninth matter complained of is capable of being defamatory or is in fact defamatory of Mr McGowan whether in the sense of the imputation particularised under paragraph 11 (that imputation referred to immediately below as **Mr McGowan's Imputation**) or otherwise;

(b) denies that Mr McGowan's Imputation is capable of being conveyed or is in fact conveyed by the ninth matter complained of.

12. In answer to paragraph 12 of the Cross Claim Mr Palmer:

(a) admits that, in the event Mr McGowan's Imputations referred to in sub-paragraphs 3, 5, 9 and 11 of the Cross Claim are found to have been conveyed, they were of and concerning Mr McGowan; and

(b) otherwise denies the allegations therein.

13. In answer to paragraphs 13 to 17 inclusive of the Cross Claim, Mr Palmer denies the matters alleged therein and denies that Mr McGowan is entitled to the relief claimed or any relief at all.

TRUTH – DEFAMATION ACT 2005, SECTION 25

14. In further or alternative answer to paragraphs 2 to 9 of the Cross Claim, to the extent that it is found that the matters complained of conveyed any of Mr McGowan’s Imputations referred to therein and that those imputations are defamatory of Mr McGowan (all of which is denied), Mr Palmer says that each of Mr McGowan’s Imputations 3(a), 3(b) and 5(b) is a matter of substantial truth.

CONTEXTUAL TRUTH – DEFAMATION ACT 2005, SECTION 26

First matter complained of

15. In further or alternative answer to paragraphs 2 and 3 of the Cross Claim, to the extent that it is found that the first matter complained of conveyed any of Mr McGowan’s Imputations referred to therein and that those imputations are defamatory of Mr McGowan (all of which is denied), Mr Palmer says as follows:

- (a) the first matter complained of (in the terms set out at paragraph 2(a) above) carried, in addition to Mr McGowan’s Imputations, the following imputations:

Mr McGowan is a liar (Contextual Imputation 1); and

Mr McGowan deliberately misrepresented the nature of the medical advice which his government had received concerning COVID-19 and the appropriate response to it (Contextual Imputation 2);

- (b) each of those contextual imputations was substantially true; and
- (c) by reason of the substantial truth of those contextual imputations, any publication of so many of Mr McGowan’s Imputations as are not found to be substantially true did not further harm the reputation of Mr McGowan.

Second matter complained of

16. In further or alternative answer to paragraphs 4 and 5 of the Cross Claim, to the extent that it is found that the second matter complained of conveyed any of Mr McGowan’s Imputations

referred to therein and that those imputations are defamatory of Mr McGowan (all of which is denied), Mr Palmer says as follows:

- (a) the second matter complained of carried, in addition to Mr McGowan's Imputations, the following imputations:

Mr McGowan caused the State of Western Australia to renege on a mediation agreement made between it, a former Chief Justice of Western Australia and the Applicant (Contextual Imputation 3);

Mr McGowan abused his position as Premier by overseeing the passing of laws designed to protect his government from criminal liability (Contextual Imputation 4);

Mr McGowan abused his position as Premier by overseeing the passing of laws designed to abolish the right of the media to obtain information by way of Freedom of Information Applications (Contextual Imputation 6);

- (b) each of those contextual imputations was substantially true; and
- (c) by reason of the substantial truth of those contextual imputations, any publication of so many of Mr McGowan's Imputations as are not found to be substantially true did not further harm the reputation of Mr McGowan.

Third to seventh matters complained of

17. In further or alternative answer to paragraphs 6 and 7 of the Cross Claim, to the extent that it is found that the third to seventh matters complained of (or any of them) conveyed Mr McGowan's Imputation referred to therein and that such imputation is defamatory of Mr McGowan (all of which is denied), Mr Palmer says as follows:

- (a) the third to seventh matters complained of carried, in addition to Mr McGowan's Imputation, the following imputations:

Mr McGowan behaved disgracefully as Premier by overseeing the passing of laws which gave Mr McGowan and others an exemption from the criminal law (Contextual Imputation 9);

Mr McGowan behaved disgracefully as Premier by overseeing the passing of laws which abolished the right of the media, or any member of the Western Australian public, to

make FOI applications to find out what had been done by Mr McGowan (Contextual Imputation 10);

Mr McGowan behaved disgracefully as Premier by overseeing the passing of important legislation in an absurdly short time (Contextual Imputation 12); and

Mr McGowan is a dishonourable man (Contextual Imputation 14);

- (b) each of those contextual imputations was substantially true; and
- (c) by reason of the substantial truth of those contextual imputations, any publication of Mr McGowan's Imputation if found not to be substantially true did not further harm the reputation of Mr McGowan.

Eighth matter complained of

18. In further or alternative answer to paragraphs 8 and 9 of the Cross Claim, to the extent that it is found that the eighth matter complained of conveyed any of Mr McGowan's Imputations referred to therein and that those imputations are defamatory of Mr McGowan (all of which is denied), Mr Palmer says as follows:

- (a) the eighth matter complained of carried, in addition to Mr McGowan's Imputations, the following imputations:

Mr McGowan behaved disgracefully as Premier by overseeing the passing of laws which abolished the right of the media to make FOI applications, so that the press could not find out what Mr McGowan and his government had done (Contextual Imputation 17);

Mr McGowan has overseen the passing of legislation which has destroyed the reputation, and long-standing value to the State, of State Agreements entered into by the State of Western Australia (Contextual Imputation 20); and

Mr McGowan is a dishonourable man (Contextual Imputation 24);

- (b) each of those contextual imputations was substantially true; and
- (c) by reason of the substantial truth of those contextual imputations, any publication of so many of Mr McGowan's Imputations as are not found to be substantially true did not further harm the reputation of Mr McGowan.

Ninth matter complained of

19. In further or alternative answer to paragraphs 10 and 11 of the Cross Claim, to the extent that it is found that the ninth matter complained of conveyed Mr McGowan's Imputation referred to therein and that such imputation is defamatory of Mr McGowan (all of which is denied), Mr Palmer says as follows:

- (a) the ninth matter complained of carried, in addition to Mr McGowan's Imputation, the following imputation:

Mr McGowan abused his position as Premier by overseeing the passing of laws which gave Mr McGowan and members of his government an exemption from the criminal law (Contextual Imputation 26);

- (b) that contextual imputation was substantially true; and
- (c) by reason of the substantial truth of that contextual imputation, any publication of Mr McGowan's Imputation if not found to be substantially true did not further harm the reputation of Mr McGowan.

QUALIFIED PRIVILEGE – DEFAMATION ACT 2005, SECTION 30; COMMON LAW

20. In further or alternative answer to paragraphs 2 to 3 of the Cross Claim, to the extent that it is found that the first to eighth matters complained of conveyed any of Mr McGowan's Imputations and that those imputations are defamatory of Mr McGowan (all of which is denied), Mr Palmer says that the first to eighth matters complained of were published under common law qualified privilege.

MITIGATION OF DAMAGES

21. Further or alternatively Mr Palmer relies in mitigation of damages on:
- (a) the substantial truth of Mr McGowan's Imputations and/or such of Mr Palmer's contextual imputations as are proved to be true;
- (b) the facts, matters and circumstances proven by Mr Palmer in evidence in support of the truth, contextual truth and qualified privilege defences; and

- (c) the circumstances in which the publications were made.

PARTICULARS

PARTICULARS OF TRUTH AND CONTEXTUAL TRUTH

As to Respondent's Imputations 3(a), 3(b) and 3(c); and Contextual Imputations 1, 2

Imputation 3(a):

As Premier, Mr McGowan lied to the people of Western Australia when he said he acted upon the advice of the Chief Medical Officer in closing the borders.

Imputation 3(b):

As Premier, Mr McGowan lied to the people of Western Australia when he told them their health would be threatened if the borders did not remain closed.

Imputation 5(b):

As Premier, Mr McGowan lied to the people of Western Australia about his justification for imposing travel bans.

Contextual Imputation 1

Mr McGowan is a liar.

Contextual Imputation 2:

Mr McGowan deliberately misrepresented the nature of the medical advice which his government had received concerning COVID-19 and the appropriate response to it.

1. On or about 2 April 2020, Mr McGowan held a press conference at which he stated, *inter alia*, that:

"Based on the medical advice, we will move to introduce a hard border closure effective from midnight or 11.59 p.m. on Sunday night."
2. On and following 2 April 2020, Mr McGowan made public statements, or caused public statements to be made, to the effect that:
 - (a) he and his government had acted upon medical advice, including the advice of the Chief Medical Officer, in introducing the "hard border closure" which would take effect from 11.59 p.m. on 5 April 2020; and/or
 - (b) he and his government were acting upon such medical advice in maintaining, and resisting the removal of, the "hard border closure".

(c) Mr Palmer relies on the following statements:

- i. On 2 April 2020, at a media briefing held in Western Australia, Mr McGowan said the following about the forthcoming “hard border closure”:

“Some might think it’s over the top and unnecessary. I can assure them that it’s not. Based on the medical advice, we will move to introduce a hard border closure effective from midnight – or 11.59 p.m. – on Sunday night”.

- ii. On 2 April 2020 a media statement from the office of Mr McGowan was published on the website of the Government of Western Australia which stated, *inter alia*, that:

“The McGowan Government has taken the extraordinary, but necessary step to place a hard border closure on the State of Western Australia, to further protect the community from the COVID-19 pandemic.

Based on the best medical advice, effective from midnight, or 11.59pm, on Sunday, April 5, people will no longer be able to enter Western Australia without an exemption.

....

If we follow the advice, abide by the new rules and practise good social distancing, we can take a different direction to the rest of the country and the rest of the world for that matter”.

- iii. On or about 20 April 2020 Mr McGowan made public statements to the following effect:

“We need everyone to stay the course.

....

Any adjustments will be based on the best of health advice and will be considered in detail.

....

The only way forward really is to listen to the medical advice.”

- iv. Further particulars will be provided following discovery and other interlocutory steps.

3. On 27 July 2020 Dr Andrew Robertson, the Chief Health Officer for Western Australia, gave sworn evidence in proceedings before the Federal Court of Australia to the effect that:

- (a) in the period between about late March 2020 and late June 2020, he had advised members of the Western Australian government, and the Commissioner of Police in the Western Australia Police Force, that proposals for Western Australia to open the borders

to jurisdictions with no community spread, such as South Australia and the Northern Territory, if legally viable, could be considered on public health grounds, as the risk of re-introduction of COVID-19 from such jurisdictions remained very low (and was estimated by Dr Robertson and other experts to be less than one per cent);

- (b) on 29 March 2020, Dr Robertson had participated in an oral consultation with Dr Paul Armstrong, who is the Director, Communicable Disease Control in the Government of Western Australia Department of Health, during the course of which Dr Robertson had given oral advice to Dr Armstrong with which Dr Armstrong had agreed;
- (c) the advice which Dr Robertson had given orally on 29 March 2020, and with which Dr Armstrong had agreed, were accurately recorded in a document created on 29 March 2020 and approved by Dr Robertson which contained the following statements:

“Dr Robertson and Dr Armstrong agree that closing the border will have the effect of slowing the spread of COVID-19. This measure may not reduce the risk significantly further than that which is achieved by measures already in place (i.e., finding cases and their close contacts and placing them into isolation; or telling people crossing the border to isolate themselves; or closing and restricting businesses and restricting mass gatherings) but may have a similar risk reduction to other measures, such as closures of further categories of retail outlets.

Closing all of the WA borders will have an impact, but is a relatively small impact compared to the effect of the other measures taken to date (such as the examples listed above)”;

- (d) in the period between about late March 2020 and late June 2020, he had invited Mr McGowan’s government to come back to him to discuss an intermediate position between leaving the existing restrictions in place and lifting those restrictions entirely to allow free travel; and
 - (e) Mr McGowan’s government did not respond to him or ask him to provide any further advice on such an intermediate position.
4. It is to be inferred that Mr McGowan, as Premier of Western Australia, became aware of Dr Robertson’s advice and the absence of any response or request from further advice from his government.
 5. Further, Mr McGowan made a series of public statements on or about 1 October 2020, which were widely reported by *The Australian*, the ABC and other media outlets:

“Honestly, the benefit to opening to the Northern Territory or South Australia for Western Australia is not there.

Far more West Australians will go there on holidays than people from South Australia and the Northern Territory come here on holidays. All we'll do is lose jobs were we to open to those States.

The other States want us to open the border so that West Australian tourists will flood east, not so that people from the east will come here.

They're only saying all this for very self-interested reasons because we have higher incomes, we have people that are more used to travelling and therefore we'll have more tourists from Western Australia go to the east.

They're not advocating it for any other reason than they want to see WA incomes spent in Sydney or Brisbane or wherever it might be."

6. These statements demonstrated that Mr McGowan's true motives for the border closures, at least with respect to South Australia and the Northern Territory, had nothing to do with COVID-19 or health reasons and were in fact based on economic reasons. Mr Palmer relies on these statements as further material pointing to the dishonesty of the statements made at paragraph 2 of these particulars.

7. In addition Mr Palmer relies upon the following:

(a) on or about 3 August 2020, Mr McGowan made the following statements of and concerning Mr Palmer:

"He wanted to come to Western Australia to promote Hydroxychloroquine to the people of the State as some sort of cure for COVID. All the evidence is not only is it not a cure, it's actually dangerous. 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";

(b) those statements were untruthful because Mr McGowan knew from information submitted by Mr Palmer (namely, an application for an exemption permitting Mr Palmer to travel to Western Australia in May 2020, attaching a copy of a letter dated 23 April 2020 from the Australian Government Department of Health to Mr Palmer, in his capacity as Chairman of the Palmer Foundation) that Mr Palmer's reasons for wishing to come to Western Australia were quite otherwise:

1) during his proposed visit to Western Australia, Mr Palmer wished to meet with Senator Cormann to update him about the Palmer Foundation (a philanthropic entity headed by Mr Palmer) donating a supply of hydroxychloroquine to the national stockpile at no cost to the taxpayer;

2) in relation to their dealings with hydroxychloroquine, the Palmer Foundation and its officers and representatives (including Mr Palmer) were acting in accordance

with a documented arrangement with the Australian Commonwealth Government, namely that the Palmer Foundation and its officers and representatives (including Mr Palmer) were “*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*”; and

- 3) pursuant to that documented arrangement between the Palmer Foundation and the Australian Government,
 - (i) all such products “*will be placed on the Australian Government’s National Medical Stockpile*”; and
 - (ii) all such products “*will remain at all times under the control of the Australian Government and their medical officers*”.

As to Contextual Imputations 14 and 24

Mr McGowan is a dishonourable man.

Background

8. Mineralogy Pty Ltd (**Mineralogy**), a company controlled and ultimately beneficially owned by Mr Palmer, holds a number of mining leases in the area of Cape Preston in the Pilbara district of Western Australia.
9. In or about March 1993, the Government of Western Australia commenced negotiations with Mineralogy to develop a State Agreement for industrial projects in the north of Western Australia, which negotiations continued at various times until December 2001.
10. 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 certain other parties including International Minerals Pty Ltd (**International Minerals**), entered into an agreement dated 5 December 2001 with the Honourable Geoffrey Ian Gallop in his capacity as the Premier of the State of Western Australia (**the State**) acting for and on behalf of the State and its instrumentalities from time to time (**State Agreement**).

11. The State Agreement was ratified by the *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002* (WA) (**the Act**) which came into operation upon the receipt of Royal Assent on 24 September 2002.
12. The State Agreement takes effect as a contract between the State, Mineralogy, International Minerals and the other companies which are parties to the State Agreement.
13. The administration of the State Agreement on behalf of the State rests with the Minister in the Government of the State who is for the time being responsible for the administration of the Act (**the Minister**).
14. 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 (**Project Proponents**).
15. 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.
16. 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 Minister for approval pursuant to clause 7 of the State Agreement (**Project Proposals**).
17. On or about 8 August 2012, Mineralogy and International Minerals submitted a very comprehensive and detailed Project Proposal to the Minister pursuant to clause 6 of the State Agreement (**BSIOP Proposal**).
18. On or about 22 August 2012, Mineralogy and International Minerals provided the Minister with an addendum to the BSIOP Proposal, submitted in accordance with clause 6(3) of the State Agreement, to finalise the section of the BSIOP Proposal in respect of water requirements.
19. In circumstances where Mineralogy and International Minerals notified the Minister, at the time of submission of the BSIOP Proposal, that they were applying to an Export Credit Agency for financial support in connection with the project the subject of the BSIOP Proposal, clause 6(7) of the State Agreement imposed a mandatory obligation on the Minister to “proceed with consideration of the Project Proposal pursuant to clause 7”.

20. Pursuant to clause 7 of the State Agreement, and subject to the *Environmental Protection Act 1986* (WA), the powers of the Minister in respect of each proposal submitted pursuant to clause 6 of the State Agreement were limited to the following powers:
- (a) a power, pursuant to clause 7(1)(a), to “approve of the proposal without qualification or reservation”;
 - (b) a power, pursuant to clause 7(1)(b), to “defer consideration upon the same until such time as the Project Proponents submit a further proposal or proposals in respect of some other of the matters mentioned in subclause (2) of clause 6 not covered by the said proposal”; and
 - (c) a power, pursuant to clause 7(1)(c), to “require as a condition precedent to the giving of his approval to the said proposal that the Project Proponents make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable”, provided that “no such alteration or conditions shall require the Project Proponents to grant access to their mineral resources to any third party” and provided also that “the Minister shall disclose his reasons for such alteration or conditions”.
21. The powers granted to the Minister by clause 7 of the State Agreement are therefore of a very limited nature and the Minister’s powers under that clause are significantly circumscribed, particularly in light of the fact that the Minister does not have any power to reject or refuse to approve a proposal outright and cannot simply refuse to approve, or reject, a proposal submitted for approval pursuant to clause 6 of the State Agreement. The matters referred to in this paragraph were authoritatively established by a decision of the Court of Appeal of Western Australia in *Mineralogy Pty Ltd & Ors v The State of Western Australia & Anor* [2005] WASCA 6, [4], [34], [58].
22. Pursuant to clause 7 of the State Agreement, the Minister therefore had no power simply to refuse to approve, or reject, the BSIOP Proposal.
23. By letters to Mineralogy and International Minerals both dated 4 September 2012, the Minister responded to the BSIOP Proposal by refusing to consider the BSIOP Proposal on the purported ground that the BSIOP Proposal was not “a valid proposal”.
24. As at the date of receipt and consideration of the BSIOP Proposal, and as at the date of the purported decision dated 4 September 2012, the Minister knew or must be taken to have known that he had no power simply to refuse to approve, or reject, the BSIOP Proposal, by reason of matters including the following:

- (a) the express terms of clause 7 of the State Agreement;
 - (b) the decision of the Court of Appeal of the Supreme Court of Western Australia in *Mineralogy Pty Ltd & Ors v The State of Western Australia & Anor* [2005] WASCA 69, [4], [34], [58]; and
 - (c) a document entitled “State Agreements”, published by on a Western Australian Government website and elsewhere in the period since at least about 2009 which states on page 3 that “The Minister is not able to reject a proposal”.
25. By separate letters dated 6 and 7 November 2012, Mineralogy and International Minerals each notified the Minister that a dispute had arisen between them and the State, which dispute involved the Minister’s purported refusal to consider the BSIOP Proposal and those letters each noted that clause 42 of the State Agreement provided for such disputes to be settled by arbitration.
26. Mineralogy and International Minerals subsequently proceeded to challenge the purported decision conveyed by the Minister’s letter dated 4 September 2012 by referring the matter to Arbitration.
27. Mr M H McHugh AC QC was subsequently appointed as the Arbitrator on or about 19 March 2013 and an arbitration concerning a dispute arising under the State Agreement was subsequently heard by him (**the First Arbitration**).
28. The First Arbitration was heard on 14 and 15 April 2014.
29. The First Arbitration resulted in the making of an Award dated 20 May 2014 (**2014 Award**).
30. In the 2014 Award, the Arbitrator made observations which included the following:
- (a) *“The Court of Appeal of the Supreme Court of Western Australia had held that the Minister has no power to reject a proposal. He must approve it, defer a Proposal until a further proposal is submitted or require the Proposal to comply with such conditions as he thinks are reasonable”*: paragraph [9].
 - (b) Clause 7(1)(b) of the State Agreement *“expressly recognises that a document may be a proposal for the purposes of the State Agreement although it fails to deal with all matters mentioned in Clause 6(2)(a)-(q)”* [Emphasis added]: paragraph [48].
 - (c) *“The provisions of Clause 7(3), like those of Clause 7(1)(b), indicate that a document submitted to the Minister may be a proposal even though it fails to comply with the provisions of Clause 6(2) or other provisions of the State Agreement. It shows that, where a proposal is defective or ambiguous, consultation, not rejection, is the remedy propounded by the State Agreement”*: paragraph [50].

- (d) *“The parties have intentionally deprived the Minister of the power to reject a proposal. Instead, they have used the mechanism of consultation to iron out defects or problems in proposals submitted to the Minister. Instead of granting a power of rejection, the parties have given the Minister two limited powers, both of which involve consultation with the Proponents before they are exercised. This compulsory obligation of consultation imposed on the Minister points strongly against a document being denied the character of a proposal merely because it fails to meet the requirements of Clause 6 or other provisions of the State Agreement”*: paragraph [53].
- (e) *“It is difficult to escape the conclusion that the attempt to categorise the August 2012 submission as not being a proposal is an attempt to circumvent the Court of Appeal’s ruling that the Minister has no power to reject a proposal: *Mineralogy Pty Ltd v Western Australia* [2005] WASCA 69 at [58]”*: paragraph [57].
- (f) *“It follows then that the August 2012 submission was a proposal for the purposes of the State Agreement. The Minister was required to deal with it under Clause 7 of [the State Agreement], which he has failed to do”*: paragraph [66].
- (g) *“The failure of the Minister to give a decision within that time means that he is in breach of the State Agreement and is liable in damages for any damage that the Applicants [i.e. Mineralogy and International Minerals] may have suffered as the result of the breach” (the Breach of the State Agreement)*: paragraph [67].

31. The 2014 Award contained the following declaration by the arbitrator:

“Declare that the August 2012 Submission was a proposal submitted pursuant to clause 6 of the State Agreement with which the Minister was required to deal under clause 7(1) of the [State] Agreement.”

32. In a further arbitral award dated 11 October 2019 (**2019 Award**), the Arbitrator made declarations which included the following:

*“**DECLARE** that the Applicants’ right to recover damages was not heard and determined in the Award of 20 May 2014.*

***DECLARE** that the Applicants are not foreclosed from further pursuing claims for damages arising from any breach or breaches of the State Agreement”*

33. In or about late 2019, the Arbitrator was appointed to hear, as part of a third arbitral proceeding, any claims for damages suffered by Mineralogy and International Minerals as a result of the Breach of the State Agreement. Those arbitral proceedings were on foot in June 2020 when the directions referred to below were made.

Arbitration Directions

34. On 26 June 2020, a direction was made that the arbitration which was then on foot between Mr Palmer’s two companies (Mineralogy and International Minerals) and the State would be heard for 15 business days commencing on 30 November 2020.

35. On 26 June 2020, a direction was also made that “*The Arbitrator shall deliver his award in the Arbitration by 12 February 2021*”.
36. The Western Australia State Election was and is scheduled for 31 March 2021. Mr McGowan feared an adverse outcome in the arbitration, particularly at or about the time of the election campaign. As a result, in or about early July 2020, Mr McGowan and other members of his government started work in secret on the preparation of what would become the *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Act 2020 (WA) (the Amendment Act)*. Secret work in relation to this legislation continued over a period of about six weeks until its enactment on 13 August 2020.
37. The objective of Mr McGowan in ensuring the preparation and enactment of the Amendment Act in such haste was to seek to avoid the negative political consequences of any adverse arbitral award being delivered in February or March 2021, and subsequently becoming public as a result of steps being taken to enforce the award, which would have been embarrassing for Mr McGowan, and damaging to his political position, especially as it would occur shortly prior to a State election.

The Mediation Agreement

38. On or about 5 August 2020 the State of Western Australia executed a counterpart of a mediation agreement between it, Mr Palmer (on behalf of Mineralogy and International Minerals) and a former Chief Justice of Western Australia, the Hon. Wayne Martin AC QC, both of whom were entitled to assume that the State had been acting *bona fide* in executing the mediation agreement on or about 5 August 2020.
39. On or about 6 August 2020, that mediation agreement was executed in counterparts by Mr Palmer and by the Hon. Wayne Martin AC QC.
40. In fact, Mr McGowan’s government had no intention of attending any mediation and must by 6 August 2020 have prepared or substantially prepared the Amendment Bill tabled on the evening of 11 August 2020 which included a provision which would have the effect of destroying any mediation agreement. Mr McGowan’s government thereby engaged in a dishonest charade, which misled Mr Palmer and the former Chief Justice of Western Australia, and which was intended to keep the intentions of Mr McGowan’s government secret until the proposed legislation could be introduced on the evening of 11 August 2020. Mr McGowan knew and intended that the mediation agreement would be breached.

The Amendment Act

41. On 11 August 2020, the proposed legislation was introduced to the Legislative Assembly in the WA Parliament.
42. Events surrounding the preparation of the proposed legislation, which passed the Legislative Assembly on 12 August 2020, were detailed in statements made outside the Parliament by Mr McGowan's Attorney-General on the morning of 13 August 2020 when, in the course of an interview of ABC Radio Perth, Mr McGowan's Attorney-General made statements to the following effect:
- (a) *"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"*;
 - (b) *"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 the job so secret that people in his own office wouldn't know"*;
 - (c) *"[W]e kept it so tight and then brought it in at 5 p.m. on Tuesday after every court in the land was closed and the doors were locked"*;
 - (d) *"We got that legislation into the Assembly on Tuesday night while all the courts were locked"*;
 - (e) *"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 or whatever, I don't care, but we've got to unleash the left hook today. We've got to knock [Mr Palmer] 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?'"*;
 - (f) *"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"*; and
 - (g) *"I want to see the Governor's signature on this legislation this evening"*.
43. The Amendment Act passed the Legislative Council at about 10.35 p.m. on the evening of 13 August 2020.
44. The Amendment Act received the Royal Assent and came into law at approximately 11.15 p.m. (AWST) on 13 August 2020 when the Governor of Western Australia gave it the Royal Assent.
45. Mr McGowan was personally closely associated with the preparation and enactment of the Amendment Act, as demonstrated by the statements by Mr McGowan's Attorney-General referred to in paragraph 42 of these particulars and the statements by Mr McGowan himself on

12, 13 and 14 August 2020 which are referred to in paragraphs 70 to 72, 80 and 81 of these particulars.

46. Section 7 of the Amendment Act took the extraordinary step of naming Mr Palmer personally in its definition of “Mr Palmer”.

The Amendment Act – as to the Mediation

47. Section 10(2) of the Amendment Act provides that “*Any relevant arbitration arrangement, and any relevant mediation agreement, connected with a relevant arbitration terminated under subsection (1) are terminated*”.
48. Accordingly, the Amendment Act destroyed the mediation agreement signed only the previous week.

The Amendment Act – as to the Arbitrations

49. The Amendment Act contained the following provisions in relation to the arbitrations:
- (a) section 10(1) of the Amendment Act provides that any relevant arbitration “*that is in progress, or otherwise not completed, immediately before commencement is terminated*” and this provision had the effect of terminating an arbitration between Mr Palmer’s companies and the State which was due to commence on 30 November 2020 for the purpose of hearing and determining claims by Mr Palmer’s companies for damages for breaches by the State of the “Agreement” defined in section 7 of the Amendment Act;
 - (b) section 10(2) of the Amendment Act terminated any relevant arbitration arrangement, and any relevant mediation arrangement, connected with an arbitration terminated under section 10(1);
 - (c) sections 11(1)-(2) and 19(1)-(2) of the Amendment Act respectively provide that the State can have no liability to any person that is in any way connected with a “disputed matter” or “protected matter” and that any existing liability of that kind “is extinguished”; and
 - (d) sections 11(3)-(6) and 19(3)-(6) of the Amendment Act respectively provide that no proceedings can be brought against the State for the purposes of establishing, quantifying or enforcing a liability of the type just described or otherwise in any other way connected with a “disputed matter” or “protected matter” as the case may be, that any proceedings

of that type are “terminated” and that any “*remedy, relief, order, direction, award or ruling*” resulting from any such proceedings is “extinguished”.

50. Accordingly, the Amendment Act invalidated previous contractual agreements, extinguished previous arbitral awards and terminated the arbitration which still remained on foot and had a final hearing scheduled to commence on 30 November 2020.

The Amendment Act – as to Immunity/Exemption from Criminal Law

51. The Amendment Act included the contents of section 20(8) of the Amendment Act, which is in the following terms:

“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.”

52. The definition of “State” which appears in section 7 of the Amendment Act is broad, includes “the Government of the State” and also includes, *inter alia*, a “State authority” as defined in that section. The definition of “State authority” includes, *inter alia*, “a Minister of the Crown in right of the State” and this would extend to Mr McGowan (who, in addition to being Premier, is Western Australia’s Minister for Public Sector Management; State Development, Jobs and Trade; and Federal-State Relations).
53. Further, section 20(9) of the Amendment Act provides that, in section 20, “*references to the State include a State agent*” and “State agent” is defined in section 7 of the Amendment Act as meaning “*an agent, representative, advisor or contractor of the State (but, to avoid doubt, does not include, apart from the State, a party to the Agreement or Mr Palmer)*”. This would of course also extend to Mr McGowan.
54. By reason of the operation of those provisions of the Amendment Act, the words “*conduct of the State*” in section 20(8) apply to conduct of Mr McGowan which “*occurs or arises before, on or after commencement*” and “commencement” is defined in section 7 of the Amendment Act as the coming into operation of that section.
55. A consequence of the Amendment Act is that any conduct of Mr McGowan which is or is connected with a “protected matter” (as defined in section 7 of that Act), and which would otherwise have constituted criminal conduct, “*does not constitute an offence and is taken never to have constituted an offence*” and that is so whether the relevant conduct “*occurs or arises before, on or after commencement*” and regardless of the seriousness of the conduct.

The Amendment Act – as to Freedom of Information

56. Further, Mr Palmer relies upon the contents of the following provisions of the Amendment Act:

- (a) sections 13 and 21 of the Amendment Act which respectively provide, *inter alia*, that:
- 1) the *Freedom of Information Act 1992* (WA) Parts 2 and 4 do not apply to a document connected with a “disputed matter” or a “protected matter” as those terms are defined in section 7 of the Amendment Act;
 - 2) applications under the *Freedom of Information Act 1992* (WA) for access to documents connected with such matters are “extinguished”; and
 - 3) on and after commencement of the Amendment Act, “*no proceedings can be brought, made or begun to the extent that the proceedings are connected with seeking, by or from the State, discovery, provision, production, inspection or disclosure*” of any document or other thing connected with a “disputed matter” or “protected matter” as the case may be, any such proceedings are “terminated” and any existing “*remedy, relief, order, direction, award or ruling*” resulting from any such proceedings is “extinguished”; and
- (b) sections 18(5) to (7) of the Amendment Act provide that:
- 1) no document or other thing, and no oral testimony, connected with a “protected matter” is admissible in evidence and nor can it be relied upon or used in any proceedings against, or against the interests of, the State;
 - 2) no document or other thing connected with a “protected matter” can be required to be discovered, produced, made available for inspection or disclosed in any proceedings or otherwise under a written law;
 - 3) no person is compellable and nor can any person be required “*in any proceedings or otherwise under a written law*” to “*discover, provide, produce, make available for inspection or disclose a document or other thing connected with a protected matter*” or “*answer a question connected with a protected matter*” or “*provide information connected with a protected matter*” or “*give any other type of testimony or evidence connected with a protected matter*”.

57. Accordingly the Amendment Act had the effect of extinguishing Freedom of Information rights in relation to virtually any matter connected with the arbitration, mediation or underlying dispute

between Mr Palmer's companies and Mr McGowan's government. It also had the effect of removing rights of disclosure and discovery in civil litigation.

Public Statements by Mr McGowan

58. Mr Palmer relies on the following statements by Mr McGowan in relation to his state of mind:

- (a) on 12 August 2020, in the course of a media briefing which he held in Western Australia, Mr McGowan spoke the following words in relation to the decision of the Western Australian Government Minister in 2012:

"I want to be clear on this. We believe Premier Colin Barnett took the right course of action to protect Western Australia at the time as the proposal by Mr Palmer was flawed and without appropriate detail";

- (b) the statement referred to in sub-paragraph immediately above demonstrates that Mr McGowan and his government have contempt for the rule of law, and for decisions of courts and arbitral tribunals which go against them, and will seek to circumvent such decisions, because:

- 1) those statements are directly contrary to what the arbitrator had determined in his final and binding arbitral award dated 20 May 2014;
- 2) those statements are directly contrary to what the State's highest court had decided in *Mineralogy Pty Ltd & Ors v The State of Western Australia & Anor* [2005] WASCA 69, [34], [58] (McLure JA, Steytler P and Roberts-Smith JA concurring), namely that the Minister does not have any power to reject or refuse to approve a proposal outright and cannot simply refuse to approve, or reject, a proposal submitted for approval under the relevant State Agreement; and
- 3) those statements were especially defiant in the light of the fact that, in his award dated 20 May 2014, the arbitrator had specifically observed that:

"It is difficult to escape the conclusion that the attempt to categorise the August 2012 submission as not being a proposal is an attempt to circumvent the Court of Appeal's ruling that the Minister has no power to reject a proposal: Mineralogy Pty Ltd v Western Australia [2005] WASCA 69 at [58]";

- (c) Mr McGowan showed a contemptuous disregard for the importance of the Australian Constitution and for the institution of the High Court of Australia when he spoke

dismissively of a case pending before that Court by stating during a media conference held on or about 31 July 2020 that:

“[W]e’re in a pandemic. Constitutional niceties, I think, should go out the window”.

58A. In view of each of the matters raised above, Mr Palmer also relies on Mr McGowan’s decision to require the taxpayers of Western Australia to fund this defamation claim by him and alleges that conduct is dishonourable.

As to Contextual Imputation 12:

Mr McGowan behaved disgracefully as Premier by overseeing the passing of important legislation in an absurdly short time.

58B. Mr Palmer relies on Particulars [8]-[56] above.

As to Contextual Imputation 3

Contextual Imputation 3:

Mr McGowan caused the State of Western Australia to renege on a mediation agreement made between it, a former Chief Justice of Western Australia and Mr Palmer.

59. Mr Palmer relies on Particulars [8]-[48] above.

As to Contextual Imputations 4, 9 and 26

Contextual Imputation 4:

Mr McGowan abused his position as Premier by overseeing the passing of laws designed to protect his government from criminal liability.

Contextual Imputation 9:

Mr McGowan behaved disgracefully as Premier by overseeing the passing of laws which gave Mr McGowan and others an exemption from the criminal law.

Contextual Imputation 26:

Mr McGowan abused his position as Premier by overseeing the passing of laws which gave Mr McGowan and members of his government an exemption from the criminal law.

60. Mr Palmer relies on particulars [8]-[46] and [51]-[55] above.

As to Contextual Imputations 6, 10 and 17

Contextual Imputation 6:

Mr McGowan abused his position as Premier by overseeing the passing of laws designed to abolish the right of the media to obtain information by way of Freedom of Information Applications.

Contextual Imputation 10:

Mr McGowan behaved disgracefully as Premier by overseeing the passing of laws which abolished the right of the media, or any member of the Western Australian public, to make FOI applications to find out what had been done by Mr McGowan.

Contextual Imputation 17:

Mr McGowan behaved disgracefully as Premier by overseeing the passing of laws which abolished the right of the media to make FOI applications, so that the press could not find out what Mr McGowan and his government had done.

61. Mr Palmer relies on particulars [8]-[46] and [56]-[57] above.

As to Contextual Imputation 20**Contextual Imputation 20:**

Mr McGowan has overseen the passing of legislation which has destroyed the reputation, and long-standing value to the State, of State Agreements entered into by the State of Western Australia.

62. Mr Palmer repeats particulars [8]-[50] above.

63. Mr Palmer relies on the following matters as demonstrating that it has been accepted in Western Australia for decades that State Agreements are very important for attracting investment in Western Australia and ensuring the prosperity of that State, such that it would be detrimental to the financial future of Western Australia and its people to treat a party to a State Agreement in any manner which might give rise to a perception of “sovereign risk”:

- 1) documents entitled “State Agreements”, published by the Government of Western Australia in the period since at least 2009, contained the following statements:

“Since 1952 State Agreements have been regularly used by successive Western Australian Governments to foster resource development such as mineral, petroleum, or wood extraction, and related downstream processing projects, together with essential related infrastructure investments.

....

Such developments often require long term certainty, extensive or complex land tenure and are located in relatively remote areas of the State. Ratification of the Agreement through an Act, and the fact that State Agreement provisions can only substantially be changed by mutual consent, provide certainty with regards to the project itself, security of tenure and reduction of sovereign risk”;

- 2) in 1996, a former Western Australian Premier, the Hon. Colin Barnett published an article entitled “State Agreements” (AMPLA Yearbook 1996, pp. 314-327) in which he stated, *inter alia*, that:

“An important feature of State Agreements is that they, unlike all other statutes of the Parliament of Western Australia, are facilitating documents. Other statutes perform regulatory functions of one sort or another Whereas other statutes are able to be changed at will, the provisions of State Agreements are only able to be changed by mutual agreement in writing between the parties to each State Agreement. State Agreements therefore provide certainty that ground rules for the life of each agreement project cannot be changed unilaterally.

....

Unlike other statutes of Western Australia that can be changed by Parliament, State Agreement provisions can only be amended by mutual agreement by the parties thereto”;

- 3) State Agreements have been in regular use in Western Australia since 1952, for the benefit of the people of Western Australia. See R. Hillman, *The Future Role for State Agreements in Western Australia* (2006) 25 ARELJ 293 at 295:

“A State Agreement is a highly visible signal of the State’s support for and commitment to a project. This commitment effectively reduces sovereign risk, the risk of adverse decisions and actions by the State, and makes the project more attractive to key stakeholders. The effectiveness of the commitment is increased by the public nature of the document and the implications for future investment (and bond ratings) if the State unilaterally modifies the agreement”;

64. The enactment of the Amendment Act and its consequent destruction of value of the State Agreement and the arbitration and mediation process in relation to that agreement materially damaged the reputation, and long-standing value to the State, of State Agreements in Western Australia. Further, the enactment of the Amendment Act has given rise to a perception of “sovereign risk”. This is apparent from statements made by numerous commentators in the period since the Amendment Act was enacted, including the statement issued by the Law Society of Western Australia on 19 August 2020 which stated, *inter alia*, that “damaging the State’s reputation for negligible sovereign risk” is not “for the peace, order and good government of Western Australia”.

PARTICULARS OF QUALIFIED PRIVILEGE

First matter complained of

65. On or about 31 July 2020, in the course of a media briefing which he held in Western Australia, Mr McGowan attacked Mr Palmer publicly by calling him:
- (a) “*the enemy of Western Australia*”; and
 - (b) “*the enemy of the State*”.

66. That attack (which is the subject of the second matter complained of in Mr Palmer’s statement of claim in this proceeding) had been preceded by numerous other public attacks by Mr McGowan on Mr Palmer including:
- (a) Mr McGowan attacking Mr Palmer by publicly describing him as “*a menace to Australia*”, and by stating that Mr Palmer’s conduct in bringing a case before the High Court of Australia was “*irresponsible*” and “*playing with people’s lives*”, in statements which Mr McGowan made during a media conference held on or about 26 July 2020.
 - (b) Mr McGowan publicly insulting and ridiculing Mr Palmer in the course of a television appearance on or about 28 July 2020, in which Mr McGowan described Mr Palmer as “*the biggest loser*”.
 - (c) Mr McGowan publicly attacking Mr Palmer on or about 30 July 2020, in the course of a media briefing which he held in Western Australia, by calling him “*the enemy of Western Australia*”, “*the enemy of the State*” and “*the enemy of Australia*” (which is the subject of the first matter complained of in Mr Palmer’s statement of claim in this proceeding).
67. Mr Palmer published the first matter complained of pursuant to a social or moral duty to do so and specifically to inform viewers of his response to Mr McGowan’s attacks referred to in paragraphs 65 and 66 of these particulars of qualified privilege.
68. The recipients had a reciprocal interest in receiving the first matter complained of containing Mr Palmer’s response.

Second matter complained of

69. On the evening of 11 August 2020 it was publicly announced that a bill had been introduced into the Legislative Assembly, which would become the Amendment Act.
70. On 12 August 2020, in the course of a media briefing which he held in Western Australia, Mr McGowan attacked Mr Palmer publicly by describing the need for the proposed legislation as having been caused by Mr Palmer “*trying ... to bankrupt Western Australia*” and otherwise by saying words which included the following:

“The potential financial consequences could be dire, absolutely dire for Western Australia.

A payment to the tune of \$30 billion would cripple, cripple the State of Western Australia. That is \$12,000 paid by every person in Western Australia direct into Mr Palmer’s pocket.

That's why, as a government, we had no choice but to take this course of action to protect every West Australian. I will not risk selling Western Australia down the drain to Clive Palmer.

....

In total it would probably be way in excess of \$30 billion that Mr Palmer is seeking.

Mr Palmer's actions here are unprecedented. What he is trying to do here is bankrupt Western Australia. He is trying to take our money.

And, if he's successful, that would mean mass closures of hospitals, of schools, of police stations. Mass sacking of public servants, of child protection workers, of police officers. It is an extreme risk to Western Australia and we cannot allow it to stand."

71. On 12 August 2020 Mr McGowan also attacked Mr Palmer publicly by publishing a post on his Facebook account which included the following words:

"A payment to the tune of \$30 billion would cripple, cripple the State of Western Australia.

That is, \$12,000 paid by every person in WA, direct to Mr Palmer.

That's why, as a Government, we had no choice but to take this course of action to protect every Western Australian.

I will not risk selling Western Australia down the drain to Clive Palmer."

72. On 12 August 2020 Mr McGowan also attacked Mr Palmer publicly by publishing a further post on his Facebook account which contained the following words:

"I wanted to make sure you had the latest on the Clive Palmer matter.

My conscience is clear, I know we are doing the right thing.

We are doing the right thing by the State.

When I was elected Premier, I wasn't elected to be soft.

I wasn't elected to give in.

I wasn't elected to cave in to these sorts of personal interests.

I was elected to do the right thing by the people of the State

And that is exactly what we are doing in this matter.

I think the idea that a single individual can take this State for \$30 billion because he was rejected on a flawed proposal is absolutely obscene.

There's two sides here - the people of Western Australia, 2.6 million of us - versus one individual who wants to take us for \$30 billion.

We have to act in the interests of the 2.6 million people, not in the interests of the one person from Queensland.

And you have to pick a side.

We are on the side of the people, and we're up against someone who is trying to bankrupt our State.

Mr Palmer has said [publicly] he takes a million dollars in royalties from his WA Sino Iron project per day.

On top of that, he still has the Balmoral South Deposit that is sitting in the ground.

None of that is being taken away from him.

What we're taking away from one person is the capacity to bankrupt Western Australia.

To force us to close hospitals and schools and police stations.

To sack child protection workers, council rangers, police officers, nurses.

That would be the consequence if Mr Palmer was successful.

And we cannot risk that.

So what we are doing, whilst controversial, and whilst, to a degree, extraordinary, is necessary in these circumstances."

73. The proposed legislation introduced on 11 August 2020, which personally named Mr Palmer (and two companies beneficially owned and controlled by him), itself constituted a direct ad hominem attack on Mr Palmer by reason of the matters set out in paragraph 8 to 46 of the particulars of contextual truth above.
74. The statements made by Mr McGowan on 12 August 2020 which are referred to in paragraphs 70 to 72 of these particulars of qualified privilege constituted further attacks by Mr McGowan on Mr Palmer.
75. Mr Palmer published the second matter complained of pursuant to a social or moral duty to do so and specifically to inform viewers of his response to Mr McGowan's attacks referred to in paragraphs 69 to 74 of these particulars of qualified privilege.
76. The recipients had a reciprocal interest in receiving the first matter complained of containing Mr Palmer's response.

Third to seventh matters complained of

77. Mr Palmer relies upon and repeats the particulars of qualified privilege referred to in paragraphs 69 to 76 of these particulars of qualified privilege.

78. Mr Palmer published the third to seventh matters complained of pursuant to a social or moral duty to do so and specifically to inform viewers of his response to Mr McGowan's attacks referred to in paragraphs 69 to 74 of these particulars of qualified privilege.
79. The recipients had a reciprocal interest in receiving the third to seventh matters complained of containing Mr Palmer's response.

Eighth matter complained of

80. Late on the evening of 13 August 2020, Mr McGowan attacked Mr Palmer publicly by publishing a post on his Facebook account which included the following words:

“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.

This law protects the taxpayers of Western Australia, so essential services won't be under threat.

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.”

81. Late on the evening of 13 August 2020, or in the early hours of the morning of 14 August 2020, Mr McGowan attacked Mr Palmer publicly by publishing by posted a message or “Tweet” on his Twitter account, with reference to Mr Palmer and the enactment of the Amendment Act, consisting of the following words:

“This law shows that Western Australians will not be bullied.

We will never give in.

We will never give up.”

82. The attacks referred to in paragraphs 80 and 81 of these particulars of qualified privilege had been preceded by numerous other public attacks by Mr McGowan on Mr Palmer including Mr McGowan's attacks referred to in paragraphs 69 to 74 of these particulars.

83. Mr Palmer published the eighth matter complained of pursuant to a social or moral duty to do so and specifically to inform listeners of his response to Mr McGowan's attacks referred to in paragraphs 80 and 81 of these particulars of qualified privilege.
84. The recipients had a reciprocal interest in receiving the eighth matter complained of containing Mr Palmer's response.
85. Further particulars will be provided by the Application following discovery and other interlocutory steps.

Date: 12th November 2021

Michael J. Sophocles

Signed by Michael John Sophocles
Lawyer for the Cross-Respondent

This pleading was prepared by Michael Sophocles, lawyer, Peter Gray SC and Matthew Richardson SC of Counsel.

Certificate of lawyer

I Michael John Sophocles certify to the Court that, in relation to the further amended defence filed on behalf of the Cross-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: 12th November 2021

Michael J. Sophocles

Signed by Michael John Sophocles
Lawyer for the Cross-Respondent