

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 11/06/2021 2:57:30 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: Reply - Form 34 - Rule 16.33
File Number: NSD912/2020
File Title: CLIVE FREDERICK PALMER v MARK MCGOWAN
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 11/06/2021 3:55:54 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 34
Rule 16.33

Reply to Amended Defence to Cross-Claim

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

No. NSD 912 of 2020

Clive Frederick Palmer

Applicant/Cross-Respondent

Mark McGowan

Respondent/Cross-Claimant

In Reply to the Amended Defence to Cross-Claim filed by the Cross-Respondent (**Mr Palmer**) on 31 May 2021 (**Amended Defence**) the Cross-Claimant (**Mr McGowan**) says:

1. Save and except insofar as it contains admissions, Mr McGowan joins issue with the Amended Defence.
2. In reply to the defence of common law qualified privilege and/or statutory qualified privilege under section 30 of the *Defamation Act 2005* Mr McGowan says that Mr Palmer was actuated by malice within the meaning of s30(4) of the *Defamation Act 2005* and at common law in publishing the words in each of the First to Eighth Defamatory Publications.

Particulars of Malice

- 1) Mr Palmer published each of the matters complained of for an improper purpose, that is, to hurt and harm Mr McGowan and damage his reputation and discredit him politically and personally. This purpose is to be inferred from the following matters.
- 2) Mr Palmer's knowledge of, or alternatively, reckless indifference to the falsity of the allegations contained within each of the matters complained of giving rise to each of the imputations set out in the Amended Statement of Cross-Claim filed on 20 November 2020.
- 3) The statements by Mr Palmer, which he knew or must have known to be false given he had read the Act, that the purpose of the *Iron Ore Processing (Mineralogy Pty Ltd*

Filed on behalf of: The Respondent/Cross-Claimant

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Agreement Amendment Act 2020 (WA) (Amending Act) was to provide Mr McGowan and the Attorney-General with some kind of general "immunity from criminal prosecution" including the allegation "he can murder, shoot you, raid your house and he's immune from the criminal law".

- 4) Mr Palmer's false claims that the Mineralogy Parties were not seeking approximately AUD\$30 Billion in the Damages Arbitration.
- 5) The failure of Mr Palmer to put any of the allegations to Mr McGowan, or give him any opportunity to respond to any of the allegations.
- 6) The extreme and sensational nature of the words adopted by Mr Palmer, including for instance the use of the words "lies" and "criminal".
- 7) Mr Palmer's conduct in persisting in making further insulting and derogatory statements of and concerning Mr McGowan, of a kind calculated to lead to further harm and loss and damage to Mr McGowan's reputation and increase the hurt and indignity suffered by Mr McGowan, including:
 - a. multiple radio advertisements placed by Mr Palmer airing on 6PR Perth between 7:25am and 3:56pm on 14 August 2020;
 - b. various Facebook posts posted on Mr Palmer's Facebook page including:
 - i. on 20 August 2020 a post titled "*Politicians protect themselves*" which includes the following statement attributed to Mr Palmer: "*The Act against me and my companies are unconstitutional and are against the ethics of freedom that so many Australians before us have died for in two world wars. We don't need a Chinese or Soviet model of government where governments rule over the courts*".
 - ii. on 23 August 2020 a post which contains the following statements attributed to Mr Palmer:
 1. that Mr McGowan "*instigated the people of Western Australia to hate me so he could bring into law the greatest abrogation of human rights ever encountered in the history of Australia,*"; and
 2. that Mr McGowan and the Attorney General, are "*nothing more than Keystone Cops who have given themselves exemption from criminal laws and civil liability.*"
 - iii. on 28 August 2020 a post titled "*Western Australian Parliament attacks the Rule of Law- North Korea Laws in Australia*" which includes the

following words: "*The Act gives the Premier the power to make laws without reference to Parliament. In essence, the Act allows the Premier to rule by decree. North Korea in an Australian setting,*" Mr Palmer said. "*Our way of life and the Australian Constitution is all we have. We cannot allow Mark McGowan and John Quigley to destroy it. Don't believe their cover-up. First they have come for me. What will you do when they come for you?*"

iv. on 1 September 2020 a post containing a video recording of Mr Palmer's Skynews interview with Alan Jones in which Mr Palmer makes the following statements:

1. "*To be exempt from the Criminal Code means that you can kill someone, you can break into their house... This Act also has the Premier having the power and authority to make legislation, make acts, without references to Parliament. It's very similar to what happened in Germany in the 1930s and this is an Act that takes away all human rights from all people in relation to these things...*";and
2. "*The Nuremburg trials in 1947 in Germany said quite clearly that what happened in Germany happened because lawyers and the courts didn't stand up to the Nazi Government. And of course it's not an extreme thing when they're exempt from the criminal law that means they've got a licence virtually to kill you, to rob from you, to steal from you, they can't be prosecuted, all public servants are exempt so these sort of principles are un-Australian*".

8) Further and better particulars will be provided after discovery, subpoenas and interrogatories.

Date: 11 June 2021

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Signed by Nicholas Jonathon Cooper
Lawyer for the Respondent/Cross-Claimant

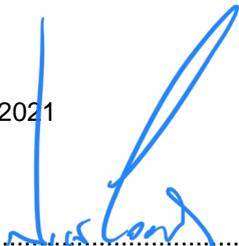
This pleading was prepared by Nicholas Jonathon Cooper, Lawyer for the Cross-Claimant, and settled by R J Anderson QC.

Certificate of lawyer

I Nicholas Jonathon Cooper certify to the Court that, in relation to the reply filed on behalf of the Respondent/Cross-Claimant, 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: 11 June 2021



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Signed by Nicholas Jonathon Cooper
Lawyer for the Respondent/Cross-Claimant