



Western Australia

**Iron Ore Processing (Mineralogy Pty. Ltd.)
Agreement Amendment Act 2020**

As at 13 Aug 2020

No. 32 of 2020

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Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Act 2020

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Western Australia

Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Act 2020

No. 32 of 2020

**An Act to amend the *Iron Ore Processing (Mineralogy Pty. Ltd.)
Agreement Act 2002*.**

[Assented to 13 August 2020]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Act 2020*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Act amended

This Act amends the *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act 2002*.

4. Part 1 heading inserted

Before section 1 insert:

Part 1 — Preliminary

5. Part 2 heading inserted

After section 2 insert:

Part 2 — Ratification

6. Section 3 amended

In section 3 delete “Act —” and insert:

Part —

Note: The heading to amended section 3 is to read:

Terms used

7. **Part 3 inserted**

After section 6 insert:

**Part 3 — Provisions relating to Balmoral South
Iron Ore Project and certain other matters**

Division 1 — Preliminary provisions

7. **Terms used**

(1) In this Part —

adjudicator means any of the following —

- (a) a court;
- (b) a tribunal;
- (c) an arbitrator;

Agreement means the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement, a copy of which is set out in Schedule 1 —

- (a) as varied from time to time in accordance with its provisions; and
- (b) as varied by the agreement a copy of which is set out in Schedule 2;

amending Act means the *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Act 2020*;

arbitration agreement means —

- (a) an arbitration agreement as defined in the *Commercial Arbitration Act 1985* section 4(1) immediately before its repeal; or
- (b) an arbitration agreement as defined in the *Commercial Arbitration Act 2012* section 7;

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arrangement includes (without limitation) the following —

- (a) the Agreement;
- (b) a relevant arbitration arrangement or relevant mediation arrangement;
- (c) any other contract, deed, agreement or other instrument;
- (d) an understanding;
- (e) a part of an arrangement (including a part of an agreement or other thing referred to in any of paragraphs (a) to (d));

Balmoral South Iron Ore Project means the project known as the “Balmoral South Iron Ore Project” as proposed or described from time to time;

civil wrong includes (without limitation) the following —

- (a) a tort;
- (b) a breach of trust;
- (c) a breach of confidence;
- (d) a breach of a duty in equity;
- (e) a breach of a written law;
- (f) maladministration, misconduct or any other conduct that, under an Act or law, could be the subject of an adverse report, adverse finding, penalty or other sanction of a disciplinary, regulatory or other civil type;

commencement means the coming into operation of section 7 of the amending Act;

conduct includes (without limitation) the following —

- (a) a decision or purported decision;
- (b) an omission, or purported omission, to make a decision;

- (c) any other act or omission or purported act or omission;
- (d) without limiting paragraphs (a) to (c) —
 - (i) behaviour;
 - (ii) the consideration of a matter or thing, or an omission to consider a matter or thing;
 - (iii) the taking into account of, or an omission to take into account, the interests of a particular person;
 - (iv) the knowing, or the believing or suspecting (rightly or wrongly), of something;
 - (v) the commission of a civil wrong;
 - (vi) a breach of an arrangement;

connected with —

- (a) means directly or indirectly, and wholly or partly —
 - (i) in anticipation of; or
 - (ii) preparatory to; or
 - (iii) relating to; or
 - (iv) caused by; or
 - (v) arising out of; or
 - (vi) resulting from; or
 - (vii) in consequence of; or
 - (viii) contributed to by; or
 - (ix) connected with in any other way;and
- (b) has the extended meaning given in subsection (3);

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disputed matter means any of the following —

- (a) the Minister’s refusal or purported refusal, on or around 4 September 2012 —
 - (i) to accept the first Balmoral South proposal as valid proposals; and
 - (ii) therefore to consider the first Balmoral South proposal for the purposes of clause 7 of the Agreement;
- (b) the Minister’s omission or purported omission, in respect of the first Balmoral South proposal, to give notice to the Project Proponents under clause 7(2) of the Agreement within the 2-month period referred to in that clause;
- (c) the Minister’s requirement or purported requirement, on or around 22 July 2014, that the Project Proponents make alterations to the first Balmoral South proposal and comply with various conditions precedent concerning the first Balmoral South proposal;
- (d) the Minister’s refusal or purported refusal, on or around 22 August 2013 —
 - (i) to accept the second Balmoral South proposal as valid proposals; and
 - (ii) therefore to consider the second Balmoral South proposal for the purposes of clause 7 of the Agreement;
- (e) the Minister’s omission or purported omission, in respect of the second Balmoral South proposal, to give notice to the Project Proponents under clause 7(2) of the Agreement within the 2-month period referred to in that clause;

- (f) to the extent not covered by paragraphs (a) to (e), any conduct of the State, or of a State agent, occurring or arising before commencement and connected with the Balmoral South Iron Ore Project;
- (g) any other conduct of the State, or of a State agent, occurring or arising before, on or after commencement and connected with a disputed matter referred to in any of paragraphs (a) to (f);
- (h) pre-agreement State conduct;

document has the meaning given in the *Freedom of Information Act 1992* in the Glossary clause 1;

first Balmoral South proposal means —

- (a) the Project Proponents' proposals titled "Balmoral South Iron Ore Project; Project Proposal for the Western Australian Government" submitted, or purportedly submitted, under clause 6 of the Agreement on or around 8 August 2012; and
- (b) the addendum to those proposals titled "Balmoral South Iron Ore Project; Project Proposal addendum for the Western Australian Government" submitted, or purportedly submitted, under clause 6 of the Agreement on or around 22 August 2012;

indemnify includes (without limitation) hold harmless;

International Minerals means International Minerals Pty Ltd (ACN 058 341 638);

introduction time means the beginning of the day on which the Bill for the amending Act is introduced into the Legislative Assembly;

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legal costs means costs or expenses connected with bringing, making or beginning, or defending or responding to, or otherwise participating in, proceedings or purported proceedings;

liability, except in the definition of **non-WA liability** in this subsection —

- (a) means a liability, obligation or duty (whether actual, contingent, prospective or otherwise and whether incurred alone or jointly or jointly and severally or otherwise) arising —
 - (i) in contract or tort; or
 - (ii) under the law of restitution; or
 - (iii) in equity; or
 - (iv) under a written law; or
 - (v) under an order, award, ruling, finding or declaration made by an adjudicator; or
 - (vi) under a direction or other requirement (however described) made by a body or person appointed under a written law or under an arrangement; or
 - (vii) on any other basis;and
- (b) includes (without limiting paragraph (a)) a liability, obligation or duty of the type described in paragraph (a) (whether liquidated or unliquidated) to pay any of the following —
 - (i) damages;
 - (ii) compensation;
 - (iii) a debt;
 - (iv) an amount by way of restitution;
 - (v) interest;
 - (vi) legal costs;

(vii) any other type of amount;
and

(c) includes (without limiting paragraphs (a) and (b)) a non-WA liability;

loss —

(a) means any loss, harm, damage, cost or expense (whether economic, non-economic or otherwise and whether actual, contingent, prospective or otherwise); and

(b) includes (without limiting paragraph (a)) the following —

- (i) loss, harm or damage to reputation;
- (ii) wasted cost or expense;
- (iii) loss of value of rights or other assets (including loss of value to nil);
- (iv) loss of royalties or other income or profit;
- (v) loss of funding or revenue;
- (vi) loss of opportunity;

Mineralogy means Mineralogy Pty Ltd (ACN 010 582 680);

Mr Palmer —

(a) means the individual who, on 10 August 2020, is named Clive Frederick Palmer and is a director of Mineralogy; and

(b) includes any executor, administrator or trustee of the estate of the individual referred to in paragraph (a);

non-WA liability —

(a) means a liability, obligation or duty (whether actual, contingent, prospective or otherwise and

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whether incurred alone or jointly or jointly and severally or otherwise) arising on any basis —

- (i) under the law of the Commonwealth, another State or a Territory; or
 - (ii) under the law of a country or territory, or of a part of a country or territory, outside Australia; or
 - (iii) under international law (including an international treaty or other agreement or instrument); or
 - (iv) otherwise outside Western Australia;
- and
- (b) includes (without limiting paragraph (a)) a liability, obligation or duty of the type described in paragraph (a) that corresponds to, or is substantially the same as, or is similar to, a liability, obligation or duty of a type described in the definition of **liability** in this subsection;

non-WA proceedings means anything that corresponds to, or is substantially the same as, or is similar to, any proceedings as defined in this subsection and that takes place or occurs —

- (a) under the law of the Commonwealth, another State or a Territory; or
- (b) under the law of a country or territory, or of a part of a country or territory, outside Australia; or
- (c) under international law (including an international treaty or other agreement or instrument); or
- (d) outside Western Australia on any other basis;

Part 3 subsidiary legislation means regulations under section 29 or an order under section 30;

pre-agreement State conduct means any conduct of the State, or of a State agent —

- (a) occurring or arising before the making of the agreement, a copy of which is set out in Schedule 1, and connected with the making of that agreement; or
- (b) occurring or arising before the making of the agreement, a copy of which is set out in Schedule 2, and connected with the making of that agreement;

proceedings —

- (a) means any of the following —
 - (i) an action, suit, complaint, arbitration or other proceedings brought or made before or to an adjudicator or before or to any other body or person appointed under a written law or under an arrangement;
 - (ii) an application, claim, counterclaim or demand (however described) brought or made before or to an adjudicator or before or to any other body or person appointed under a written law or under an arrangement;
 - (iii) to the extent not covered by subparagraphs (i) and (ii), a disciplinary, regulatory or other civil investigation, inquiry or proceedings under an Act or law;
 - (iv) a complaint or allegation (however described) that leads to, or is capable of leading to, an investigation, inquiry or proceedings referred to in subparagraph (iii);

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and

- (b) includes (without limiting paragraph (a)) proceedings (as defined in paragraph (a)) connected with any of the following —
 - (i) establishing, quantifying or enforcing a liability;
 - (ii) seeking a remedy by way of injunction, declaration, prohibition, mandamus or certiorari or seeking a remedy having the same effect as any of those remedies or otherwise seeking judicial review of any conduct;
 - (iii) seeking discovery, provision, production, inspection or disclosure of a document or other thing;
 - (iv) seeking recognition or enforcement of an arbitral award;
 - (v) seeking any other type of remedy, relief, order, direction, award, ruling or finding (whether interim or permanent and whether procedural or substantive);

and

- (c) includes (without limiting paragraphs (a) and (b)) non-WA proceedings; and
- (d) includes (without limiting paragraphs (a) to (c)) proceedings (as defined in paragraphs (a) to (c)) brought, made or begun as part of, or otherwise in the course of, other proceedings (as so defined);

Project Proponents means Mineralogy and International Minerals;

protected matter means any of the following (whether occurring or arising before, on or after commencement) —

- (a) the consideration of courses of action for resolving, addressing or otherwise dealing with a disputed matter or liabilities or proceedings, or potential liabilities or proceedings, connected with a disputed matter;
- (b) the preparation of the Bill for the amending Act (including any drafts of that Bill);
- (c) any decision or recommendation to introduce that Bill into Parliament;
- (d) the introduction of that Bill into Parliament or that Bill's passage through Parliament (including any amendment of it during its passage);
- (e) the enactment or coming into operation of the amending Act;
- (f) the consideration of courses of action for resolving, addressing or otherwise dealing with matters or things to be, or potentially to be, the subject of Part 3 subsidiary legislation;
- (g) the preparation of any Part 3 subsidiary legislation (including any drafts of Part 3 subsidiary legislation);
- (h) any decision or recommendation to make any Part 3 subsidiary legislation;
- (i) the making, publication or coming into operation of any Part 3 subsidiary legislation;
- (j) the operation of this Part or any Part 3 subsidiary legislation;

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- (k) any of the following connected with a protected matter referred to in any of paragraphs (a) to (j) —
 - (i) any explanation, advice, consultation, discussion, communication, announcement, disclosure or statement;
 - (ii) any omission to explain, advise, consult, discuss or communicate or to make an announcement, disclosure or statement;
 - (iii) any other conduct;
- (l) any matter or thing connected with a protected matter referred to in any of paragraphs (a) to (k);

relevant arbitration means an arbitration —

- (a) that begins before commencement (whether or not it is completed before commencement); and
- (b) that concerns a disputed matter; and
- (c) to which the State and the Project Proponents are parties;

relevant arbitration arrangement means an agreement connected with a relevant arbitration that is made before commencement by the State, the Project Proponents and the arbitrator;

relevant mediation arrangement means an agreement for mediation connected with a relevant arbitration that is made before commencement by the State, the Project Proponents and the mediator;

second Balmoral South proposal means the Project Proponents' proposals titled "Balmoral South Iron Ore Project; Project Proposal for the Western Australian Government" submitted, or purportedly submitted, under clause 6 of the Agreement on or around 21 June 2013;

State includes (without limitation) the following —

- (a) the Crown in right of the State;
- (b) the Government of the State;
- (c) a State authority;

State agent means an agent, representative, advisor or contractor of the State (but, to avoid doubt, does not include, apart from the State, a party to the Agreement or Mr Palmer);

State authority means any of the following —

- (a) the Governor;
- (b) a Minister of the Crown in right of the State;
- (c) a department of the Public Service;
- (d) an agency, authority, instrumentality or other body (whether or not a body corporate) established or continued for a public purpose —
 - (i) under a written law; or
 - (ii) otherwise by the State;
- (e) to the extent not covered by paragraph (d), a government trading enterprise as defined in the *Infrastructure Western Australia Act 2019* section 3;
- (f) a person holding, or exercising the powers of, an office established or continued for a public purpose —
 - (i) under a written law; or
 - (ii) otherwise by the State;
- (g) a ministerial officer, or any other employee, as those terms are defined in the *Public Sector Management Act 1994* section 3(1);
- (h) a member, officer or employee of a State authority referred to in any of paragraphs (d) to (f);

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- (i) a person who is appointed to any office or other position under a written law, or otherwise by the State, for a public purpose and who is not covered by paragraphs (a) to (h).
- (2) Subsection (3) applies if, in accordance with paragraph (a) of the definition of ***connected with*** in subsection (1), a matter or thing (***matter A***) is connected with another matter or thing (***matter B***).
- (3) For the purposes of this Part, matter B is also ***connected with*** matter A (if that would not otherwise be the case in accordance with paragraph (a) of the definition of ***connected with*** in subsection (1)).
- (4) References in this Part to proceedings being brought, made or begun against the State include (without limitation) the following —
 - (a) proceedings connected with any of the following being brought, made or begun —
 - (i) establishing, quantifying or enforcing a liability of the State;
 - (ii) in relation to any conduct of the State, seeking a remedy by way of injunction, declaration, prohibition, mandamus or certiorari or seeking a remedy having the same effect as any of those remedies or otherwise seeking judicial review of the conduct;
 - (iii) seeking, by or from the State, discovery, provision, production, inspection or disclosure of a document or other thing;
 - (iv) seeking recognition or enforcement of an arbitral award made in a relevant arbitration;

- (v) seeking any other type of remedy, relief, order, direction, award, ruling or finding (whether interim or permanent and whether procedural or substantive) that would be against, or unfavourable to, the State or otherwise require the State to do, or not to do, anything;
 - (b) a disciplinary, regulatory or other civil investigation, inquiry or proceedings under an Act or law being brought, made or begun in relation to any conduct of the State.
- (5) In applying subsection (4) for the purposes of section 11 or 19, references in that subsection to the State are to be read in accordance with section 11(9) or 19(8) (as the case requires).
- (6) To avoid doubt, references in this Part to conduct of the State, or of a State agent, include conduct of a State authority or State agent (as the case requires) even though —
 - (a) the State authority or State agent subsequently ceases to exist; or
 - (b) the person who is the State authority or State agent subsequently ceases to be a State authority or State agent.

8. Other preliminary provisions

- (1) This Part has effect despite Part 2 and any other Act or law.
- (2) Subject to subsection (1) and the rest of this Part, the Agreement continues to operate in accordance with its provisions and as provided for under Part 2.
- (3) The Agreement (or any part of the Agreement) is taken not to have been, and never to have been, repudiated by

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- any conduct of the State, or of a State agent, occurring or arising on or before commencement.
- (4) A provision of this Part, or a provision of any Part 3 subsidiary legislation, does not apply to a matter or thing to the extent (if any) that is necessary to avoid the provision or any part of the provision —
- (a) applying to the matter or thing inconsistently with a law of the Commonwealth; or
 - (b) not being valid for any other reason.
- (5) If, despite subsection (4), a provision of this Part, or a part of a provision of this Part, is not valid for any reason, the rest of this Part is to be regarded as divisible from, and capable of operating independently of, the provision, or the part of a provision, that is not valid.
- (6) This Part applies in relation to matters or things occurring or arising outside Western Australia so far as the legislative power of the Parliament permits.
- (7) To avoid doubt, the provisions of this Part, and of any Part 3 subsidiary legislation, contain matters that are substantive law and are not procedural in nature.

Division 2 — Main provisions

Subdivision 1 — Disputed matters

9. Proposals for Balmoral South Iron Ore Project

- (1) To the extent that it would not otherwise be the case, on and after commencement, neither the first Balmoral South proposal nor the second Balmoral South proposal has, nor can have, any contractual or other legal effect under the Agreement or otherwise.

- (2) For the Balmoral South Iron Ore Project —
 - (a) only proposals submitted under the Agreement on or after commencement can be proposals for the purposes of the Agreement; and
 - (b) no document provided to the State, or of which the State is otherwise aware, before commencement can be proposals for the purposes of the Agreement.

10. Relevant arbitrations and awards

- (1) Any relevant arbitration that is in progress, or otherwise not completed, immediately before commencement is terminated.
- (2) Any relevant arbitration arrangement, and any relevant mediation arrangement, connected with a relevant arbitration terminated under subsection (1) are terminated.
- (3) The following provisions of the *Commercial Arbitration Act 2012* continue to apply in relation to a relevant arbitration terminated under subsection (1) —
 - (a) sections 27E and 27F;
 - (b) section 27G in relation to any order made under that section before commencement;
 - (c) sections 27H and 27I.
- (4) The arbitral award made in a relevant arbitration and dated 20 May 2014 is of no effect and is taken never to have had any effect.
- (5) The arbitration agreement applicable to that relevant arbitration, and under which that arbitral award is made, is not valid, and is taken never to have been valid, to the extent that, apart from this subsection, the arbitration agreement would underpin, confer

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jurisdiction to make, authorise or otherwise allow the making of that arbitral award.

- (6) The arbitral award made in a relevant arbitration and dated 11 October 2019 is of no effect and is taken never to have had any effect.
- (7) The arbitration agreement applicable to that relevant arbitration, and under which that arbitral award is made, is not valid, and is taken never to have been valid, to the extent that, apart from this subsection, the arbitration agreement would underpin, confer jurisdiction to make, authorise or otherwise allow the making of that arbitral award.

11. State to have no liability connected with disputed matters

- (1) On and after commencement, the State has, and can have, no liability to any person that is or would be —
 - (a) in respect of any loss, or other matter or thing, that is the subject of a claim, order, finding or declaration made against the State in a relevant arbitration; or
 - (b) in respect of any other loss, or other matter or thing, that is, or is connected with, a disputed matter (whether the loss, or other matter or thing, occurs or arises before, on or after commencement); or
 - (c) in any other way connected with a disputed matter.
- (2) Any liability of the type described in subsection (1) that the State has to any person before commencement is extinguished.

- (3) On and after commencement, no proceedings can be brought, made or begun against the State to the extent that the proceedings are or would be —
- (a) for the purpose of establishing, quantifying or enforcing a liability of the type described in subsection (1); or
 - (b) otherwise —
 - (i) in respect of any loss, or other matter or thing, that is the subject of a claim, order, finding or declaration made against the State in a relevant arbitration; or
 - (ii) in respect of any other loss, or other matter or thing, that is, or is connected with, a disputed matter (whether the loss, or other matter or thing, occurs or arises before, on or after commencement); or
 - (iii) in any other way connected with a disputed matter.
- (4) Any proceedings brought, made or begun against the State, to the extent that they are of the type described in subsection (3), are terminated if either or both of the following apply —
- (a) the proceedings are brought, made or begun before commencement but are not completed before commencement;
 - (b) the proceedings are brought, made or begun before the end of the day on which the amending Act receives the Royal Assent but are not completed before the end of that day.
- (5) Subsection (6) applies to any proceedings, to the extent that they are of the type described in subsection (3), if the proceedings are —

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- (a) brought, made or begun against the State at or after introduction time; and
 - (b) completed before the end of the day on which the amending Act receives the Royal Assent.
- (6) Any remedy, relief, order, direction, award or ruling resulting from, or any other outcome of, the proceedings is extinguished to the extent that it is against, or unfavourable to, the State or otherwise requires the State to do, or not to do, anything.
- (7) A person cannot seek payment from the State for any legal costs connected with any proceedings to which subsection (4) or (6) applies, and the State has no liability, and is taken never to have had any liability, for any of a person's legal costs connected with the proceedings.
- (8) A person cannot seek payment from the State for any legal costs connected with a relevant arbitration terminated under section 10(1), and the State has no liability, and is taken never to have had any liability, for any of a person's legal costs connected with the relevant arbitration.
- (9) In this section, references to the State include the following —
 - (a) a person who is a former State authority, if the liability or proceedings in question are, or would be, connected with —
 - (i) the person's conduct while and as a State authority; or
 - (ii) otherwise the person's role while and as a State authority;
 - (b) a State agent;

- (c) a person who is a former State agent, if the liability or proceedings in question are, or would be, connected with —
 - (i) the person's conduct while and as a State agent; or
 - (ii) otherwise the person's role while and as a State agent.

12. No appeal or review in respect of disputed matters

- (1) Any conduct of the State that is, or is connected with, a disputed matter cannot in any proceedings —
 - (a) be appealed against, reviewed, challenged, quashed or called into question on any basis; or
 - (b) be the subject of, on any basis —
 - (i) a remedy by way of injunction, declaration, prohibition, mandamus or certiorari; or
 - (ii) a remedy having the same effect as a remedy referred to in subparagraph (i).
- (2) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to, or in relation to, any conduct of the State that is, or is connected with, a disputed matter.
- (3) The conduct of the State covered by subsections (1) and (2) includes conduct that occurs or arises before commencement.
- (4) Any proceedings, to the extent that anything described in subsection (1) is being done or sought in the proceedings, are terminated if either or both of the following apply —
 - (a) the proceedings are brought, made or begun before commencement but are not completed before commencement;

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- (b) the proceedings are brought, made or begun before the end of the day on which the amending Act receives the Royal Assent but are not completed before the end of that day.
- (5) Subsection (6) applies to any proceedings, to the extent that anything described in subsection (1) is done or sought in the proceedings, if the proceedings are —
 - (a) brought, made or begun at or after introduction time; and
 - (b) completed before the end of the day on which the amending Act receives the Royal Assent.
- (6) Any remedy, relief, order, direction, award or ruling resulting from, or any other outcome of, the proceedings is extinguished to the extent that it is against, or unfavourable to, the State or otherwise requires the State to do, or not to do, anything.
- (7) A person cannot seek payment from the State for any legal costs connected with any proceedings to which subsection (4) or (6) applies, and the State has no liability, and is taken never to have had any liability, for any of a person's legal costs connected with the proceedings.
- (8) In this section, references to the State include a State agent.
- (9) In subsections (6) and (7), references to the State also include the following —
 - (a) a person who is a former State authority, if the proceedings in question are, or would be, connected with —
 - (i) the person's conduct while and as a State authority; or
 - (ii) otherwise the person's role while and as a State authority;

- (b) a person who is a former State agent, if the proceedings in question are, or would be, connected with —
 - (i) the person's conduct while and as a State agent; or
 - (ii) otherwise the person's role while and as a State agent.

13. Documents

- (1) The *Freedom of Information Act 1992* Parts 2 and 4 do not apply to a document connected with a disputed matter.
- (2) An application under the *Freedom of Information Act 1992* section 11 for access to a document connected with a disputed matter is extinguished if either or both of the following apply —
 - (a) the application is made before commencement but no notice under section 13(1)(b) of that Act is given before commencement;
 - (b) the application is made at or after introduction time.
- (3) Without limiting section 8(1), subsections (1) and (2) have effect despite any provision of the *Freedom of Information Act 1992*.
- (4) On and after commencement, 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.

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- (5) Any proceedings, to the extent that they are of the type described in subsection (4), are terminated if either or both of the following apply —
 - (a) the proceedings are brought, made or begun before commencement but are not completed before commencement;
 - (b) the proceedings are brought, made or begun before the end of the day on which the amending Act receives the Royal Assent but are not completed before the end of that day.
- (6) Subsection (7) applies to any proceedings, to the extent that they are of the type described in subsection (4), if the proceedings are —
 - (a) brought, made or begun at or after introduction time; and
 - (b) completed before the end of the day on which the amending Act receives the Royal Assent.
- (7) Any remedy, relief, order, direction, award or ruling resulting from, or any other outcome of, the proceedings is extinguished to the extent that it is against, or unfavourable to, the State or otherwise requires the State to do, or not to do, anything.
- (8) A person cannot seek payment from the State for any legal costs connected with any proceedings to which subsection (5) or (7) applies, and the State has no liability, and is taken never to have had any liability, for any of a person's legal costs connected with the proceedings.
- (9) In this section, references to the State include the following —
 - (a) a person who is a former State authority, if the proceedings in question are, or would be, connected with —

- (i) the person's conduct while and as a State authority; or
- (ii) otherwise the person's role while and as a State authority;
- (b) a State agent;
- (c) a person who is a former State agent, if the proceedings in question are, or would be, connected with —
 - (i) the person's conduct while and as a State agent; or
 - (ii) otherwise the person's role while and as a State agent.

14. Indemnity by Mineralogy, International Minerals, Mr Palmer and relevant transferees

- (1) In this section —

loss includes (without limiting the definition of that term in section 7(1)) a loss of, or reduction in, revenue or funding that would otherwise have been received by the State from the Commonwealth;

non-WA right —

- (a) means a right, entitlement or interest (whether legal or beneficial or otherwise and whether actual, contingent, prospective or otherwise and whether held alone or jointly or jointly and severally or otherwise) arising on any basis —
 - (i) under the law of the Commonwealth, another State or a Territory; or
 - (ii) under the law of a country or territory, or of a part of a country or territory, outside Australia; or
 - (iii) under international law (including an international treaty or other agreement or instrument); or

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(iv) otherwise outside Western Australia;
and

- (b) includes (without limiting paragraph (a)) a right, entitlement or interest of the type described in paragraph (a) that corresponds to, or is substantially the same as, or is similar to, a right, entitlement or interest of a type described in paragraph (b) of the definition of **right** in this subsection;

protected proceedings means proceedings brought, made or begun, or purportedly brought, made or begun, and connected with a disputed matter;

relevant person — see subsection (2);

relevant transferee — see subsection (3);

right, except in the definition of **non-WA right** in this subsection —

- (a) means a right, entitlement or interest (whether legal or beneficial or otherwise and whether actual, contingent, prospective or otherwise and whether held alone or jointly or jointly and severally or otherwise) arising on any basis;
and
- (b) includes (without limiting paragraph (a)) a right, entitlement or interest of the type described in paragraph (a) arising —
- (i) in contract or tort; or
 - (ii) under the law of restitution; or
 - (iii) under a trust or otherwise in equity; or
 - (iv) under a written law; or
 - (v) under an order, award, ruling, finding or declaration made by an adjudicator; or

- (vi) under a direction or other requirement (however described) made by a body or person appointed under a written law or under an arrangement;

and

- (c) includes (without limiting paragraphs (a) and (b)) a non-WA right; and
- (d) includes a part or share of a right, entitlement or interest of a type described in paragraphs (a) to (c);

State includes the following —

- (a) a person who is a former State authority, if the proceedings, liability or loss in question are, or would be, connected with —
 - (i) the person's conduct while and as a State authority; or
 - (ii) otherwise the person's role while and as a State authority;
- (b) a State agent;
- (c) a person who is a former State agent, if the proceedings, liability or loss in question are, or would be, connected with —
 - (i) the person's conduct while and as a State agent; or
 - (ii) otherwise the person's role while and as a State agent;

transfer, in relation to a right, means assign, transmit, vest or otherwise transfer the right, whether by instrument, by operation of law or in any other way.

- (2) For the purposes of this section, each of the following persons is a **relevant person** —
 - (a) Mineralogy;

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- (b) International Minerals;
 - (c) Mr Palmer;
 - (d) every relevant transferee;
 - (e) every former relevant transferee.
- (3) For the purposes of this section, a person (*person A*) is a *relevant transferee* if —
- (a) person A has a right in, or in respect of —
 - (i) any protected proceedings or the subject matter of any protected proceedings; or
 - (ii) any liability of the State connected with a disputed matter or the subject matter of such a liability;
- and
- (b) that right was (before, on or after commencement) —
 - (i) transferred to person A from a relevant person; or
 - (ii) created in favour of person A out of a right held by a relevant person.
- (4) Every relevant person must indemnify, and must keep indemnified, the State against the following —
- (a) any protected proceedings;
 - (b) any loss, or liability to any person, connected with a disputed matter;
 - (c) without limiting paragraphs (a) and (b) —
 - (i) any legal costs of the State connected with any protected proceedings;
 - (ii) any liability of the State to pay any legal costs of any person connected with any protected proceedings;

- (iii) any loss connected with a stated intention of, or a threat by, any person to bring, make or begin protected proceedings.
- (5) The liability of the relevant persons to indemnify the State under subsection (4) is joint and several.
- (6) However, the joint and several liability of a relevant person, other than Mineralogy, International Minerals or Mr Palmer, is limited to indemnifying the State against —
 - (a) any protected proceedings in which or in the subject matter of which, or in respect of which or of the subject matter of which, the relevant person has, or had, a right that the relevant person acquired as described in subsection (3)(b); or
 - (b) any liability of the State connected with a disputed matter in which or in the subject matter of which, or in respect of which or of the subject matter of which, the relevant person has, or had, a right that the relevant person acquired as described in subsection (3)(b).
- (7) The State may (without limitation) enforce the indemnity under subsection (4) —
 - (a) even if the State has not made any payment, or done anything else, to meet, perform or address the proceedings, liability or loss in question; and
 - (b) by setting off the liability of the relevant persons under the indemnity against any liability that the State has to 1 or more of them.

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- (8) The matters or things covered by the indemnity under subsection (4) include (without limitation) the following —
- (a) protected proceedings that are brought, made or begun, or purportedly brought, made or begun, before commencement;
 - (b) liabilities or losses that arise or occur before commencement;
 - (c) protected proceedings that are brought, made or begun, or purportedly brought, made or begun, by 1 or more relevant persons themselves;
 - (d) liabilities to 1 or more relevant persons themselves.
- (9) In relation to a liability of the type referred to in subsection (8)(d), the State may enforce the indemnity under subsection (4) by not paying, or otherwise meeting or performing, the liability.

15. Further indemnity

- (1) In this section —
- protected proceedings*** has the meaning given in section 14(1);
- relevant person*** —
- (a) in relation to any protected proceedings, means any person who has, or has had, a right in, or in respect of, the protected proceedings or their subject matter; and
 - (b) in relation to a liability of the State connected with a disputed matter, means any person who has, or has had, a right in, or in respect of, the liability or its subject matter;
- right*** has the meaning given in section 14(1);
- State*** has the meaning given in section 14(1).

- (2) Every relevant person in relation to any protected proceedings must indemnify, and must keep indemnified, the State against —
 - (a) the protected proceedings; and
 - (b) without limiting paragraph (a) —
 - (i) any legal costs of the State connected with the protected proceedings; and
 - (ii) any liability of the State to pay any legal costs of any person connected with the protected proceedings.
- (3) Every relevant person in relation to a liability of the State connected with a disputed matter must indemnify, and must keep indemnified, the State against the liability.
- (4) If there is more than 1 relevant person, the liability of the relevant persons to indemnify the State under subsection (2) or (3) is joint and several.
- (5) The State may (without limitation) enforce the indemnity under subsection (2) or (3) —
 - (a) even if the State has not made any payment, or done anything else, to meet, perform or address the proceedings or liability in question; and
 - (b) by setting off the liability of the relevant persons under the indemnity against any liability that the State has to 1 or more of them.
- (6) The protected proceedings covered by the indemnity under subsection (2) include (without limitation) the following —
 - (a) protected proceedings that are brought, made or begun, or purportedly brought, made or begun, before commencement;

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- (b) protected proceedings that are brought, made or begun, or purportedly brought, made or begun, by 1 or more relevant persons themselves.
- (7) The liabilities covered by the indemnity under subsection (3) include (without limitation) the following —
 - (a) liabilities that arise before commencement;
 - (b) liabilities to 1 or more relevant persons themselves.
- (8) In relation to a liability of the type referred to in subsection (7)(b), the State may enforce the indemnity under subsection (3) by not paying, or otherwise meeting or performing, the liability.

16. Matters relating to Commonwealth

- (1) In this section —
Commonwealth includes (without limitation) the following —
 - (a) the Crown in right of the Commonwealth;
 - (b) the Government of the Commonwealth;
 - (c) a Commonwealth authority;
 - (d) a Commonwealth agent;
 - (e) a person who is a former Commonwealth authority or Commonwealth agent if the proceedings, liability or loss in question is connected with —
 - (i) the person's conduct while and as a Commonwealth authority or Commonwealth agent; or
 - (ii) otherwise the person's role as a Commonwealth authority or Commonwealth agent;

Commonwealth agent means an agent, representative, advisor or contractor of the Commonwealth (but, to avoid doubt, does not include a party to the Agreement or Mr Palmer);

Commonwealth authority means any of the following —

- (a) the Governor-General of the Commonwealth;
- (b) a Minister of the Crown in right of the Commonwealth;
- (c) a department of the Government of the Commonwealth;
- (d) an agency, authority, instrumentality or other body (whether or not a body corporate) established or continued for a public purpose —
 - (i) under a law of the Commonwealth; or
 - (ii) otherwise by the Commonwealth;
- (e) a person holding, or exercising the powers of, an office established or continued for a public purpose —
 - (i) under a law of the Commonwealth; or
 - (ii) otherwise by the Commonwealth;
- (f) a staffer, member, officer or employee of a Commonwealth authority referred to in paragraphs (a) to (e);
- (g) a person who is appointed to any office or other position under a law of the Commonwealth, or otherwise by the Commonwealth, for a public purpose and who is not covered by paragraphs (a) to (f);

indemnity means an indemnity under section 14(4) or 15(2) or (3).

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- (2) Subsection (3) applies if —
 - (a) proceedings are brought, made or begun against the Commonwealth or the Commonwealth incurs a liability to any person or a loss; and
 - (b) the proceedings, liability or loss are connected with a disputed matter.
- (3) Without limiting the scope of any indemnity —
 - (a) each indemnity applies as if the proceedings were brought, made or begun against the State or the liability or loss were incurred by the State; and
 - (b) the State may enforce each indemnity accordingly.
- (4) To avoid doubt —
 - (a) nothing in subsection (3) makes the State liable to indemnify the Commonwealth against the proceedings, liability or loss nor otherwise affects any liability of the State to the Commonwealth; and
 - (b) subsection (3) applies even if the State has no liability to indemnify the Commonwealth against the proceedings, liability or loss.
- (5) The State may assign to the Commonwealth —
 - (a) the State's right to receive a particular amount owed to the State under an indemnity (whether by virtue of this section or otherwise); or
 - (b) any other right the State has under or connected with an indemnity (whether by virtue of this section or otherwise).

17. Further provisions about liability of State

- (1) This section applies to a liability of the State (whether arising before, on or after commencement) connected with a disputed matter.
- (2) No amount can be charged to, or paid out of, the Consolidated Account to meet the liability.
- (3) No amount can be borrowed by or on behalf of the Crown in right of the State to meet the liability.
- (4) No asset, right or entitlement of the State can be taken or used by any person to enforce the liability.
- (5) No execution or other process in the nature of execution can be issued out of any court against the State in relation to the liability.
- (6) In subsections (1), (4) and (5), references to the State include the following —
 - (a) a person who is a former State authority, if the liability is connected with —
 - (i) the person's conduct while and as a State authority; or
 - (ii) otherwise the person's role as a State authority;
 - (b) a State agent;
 - (c) a person who is a former State agent, if the liability is connected with —
 - (i) the person's conduct while and as a State agent; or
 - (ii) otherwise the person's role as a State agent.

Subdivision 2 — Protected matters

18. Protected matters not to have certain effects and related provisions

- (1) No protected matter has the effect of —
- (a) causing or giving rise to the commission of a civil wrong by the State; or
 - (b) placing the State in breach of an arrangement or causing or giving rise to the repudiation of an arrangement by the State; or
 - (c) giving rise to a right or remedy against the State that is a right or remedy —
 - (i) of a party to an arrangement; or
 - (ii) of any other person and connected with an arrangement;
- or
- (d) causing or permitting the termination of an arrangement; or
 - (e) causing or permitting the exercise of rights of a party to an arrangement (other than rights of the State); or
 - (f) being, or causing or giving rise to, an event of default under an arrangement; or
 - (g) frustrating an arrangement; or
 - (h) causing an arrangement to be void or otherwise unenforceable; or
 - (i) releasing, or allowing the release of, any person (other than the State) who is a surety, or other obligee, under an arrangement from the whole or a part of an obligation under the arrangement.

- (2) If a protected matter has an effect described in subsection (1)(a) to (i) at a time (the *relevant time*) before commencement —
- (a) subsection (1) applies as if that subsection were in force at the relevant time; and
 - (b) accordingly, the protected matter is taken never to have had the effect.
- (3) In subsections (1) and (2), references to a protected matter include the following —
- (a) a protected matter combined with another matter or thing;
 - (b) a matter or thing connected with a protected matter.
- (4) In subsection (1), references to the State include the following —
- (a) a person who is a former State authority, if the effect of the protected matter would be connected with —
 - (i) the person's conduct while and as a State authority; or
 - (ii) otherwise the person's role while and as a State authority;
 - (b) a State agent;
 - (c) a person who is a former State agent, if the effect of the protected matter would be connected with —
 - (i) the person's conduct while and as a State agent; or
 - (ii) otherwise the person's role while and as a State agent.

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- (5) No document or other thing, and no oral testimony, connected with a protected matter is admissible in evidence, or can otherwise be relied upon or used, in any proceedings in a way that is against, or against the interests of, any of the following —
- (a) the State;
 - (b) a person who is a former State authority, if the proceedings are connected with —
 - (i) the person’s conduct while and as a State authority; or
 - (ii) otherwise the person’s role while and as a State authority;
 - (c) a State agent;
 - (d) a person who is a former State agent, if the proceedings are connected with —
 - (i) the person’s conduct while and as a State agent; or
 - (ii) otherwise the person’s role while and as a State agent.
- (6) No document or other thing connected with a protected matter can be required to be discovered, provided, produced, made available for inspection or disclosed in any proceedings or otherwise under a written law.
- (7) No person is compellable, or can be required, in any proceedings or otherwise under a written law, to do any of the following (whether orally, in writing or in any other way) —
- (a) discover, provide, produce, make available for inspection or disclose a document or other thing connected with a protected matter;
 - (b) answer a question connected with a protected matter;

- (c) provide information connected with a protected matter;
 - (d) give any other type of testimony or evidence connected with a protected matter.
- (8) Subsections (5) to (7) do not limit any other basis on which a person is not compellable, or can refuse, to do anything referred to in those subsections.

19. State to have no liability connected with protected matters

- (1) On and after commencement, the State has, and can have, no liability to any person that is or would be —
- (a) in respect of any loss, or other matter or thing, that is, or is connected with, a protected matter (whether the loss, or other matter or thing, occurs or arises before, on or after commencement); or
 - (b) in any other way connected with a protected matter.
- (2) Any liability of the type described in subsection (1) that the State has to any person before commencement is extinguished.
- (3) On and after commencement, no proceedings can be brought, made or begun against the State to the extent that the proceedings are or would be —
- (a) for the purpose of establishing, quantifying or enforcing a liability of the type described in subsection (1); or
 - (b) otherwise —
 - (i) in respect of any loss, or other matter or thing, that is, or is connected with, a protected matter (whether the loss, or

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- other matter or thing, occurs or arises before, on or after commencement); or
- (ii) in any other way connected with a protected matter.
- (4) Any proceedings brought, made or begun against the State, to the extent that they are of the type described in subsection (3), are terminated if either or both of the following apply —
- (a) the proceedings are brought, made or begun before commencement but are not completed before commencement;
- (b) the proceedings are brought, made or begun before the end of the day on which the amending Act receives the Royal Assent but are not completed before the end of that day.
- (5) Subsection (6) applies to any proceedings, to the extent that they are of the type described in subsection (3), if the proceedings are —
- (a) brought, made or begun against the State at or after introduction time; and
- (b) completed before the end of the day on which the amending Act receives the Royal Assent.
- (6) Any remedy, relief, order, direction, award or ruling resulting from, or any other outcome of, the proceedings is extinguished to the extent that it is against, or unfavourable to, the State or otherwise requires the State to do, or not to do, anything.
- (7) A person cannot seek payment from the State for any legal costs connected with any proceedings to which subsection (4) or (6) applies, and the State has no liability, and is taken never to have had any liability, for any of a person's legal costs connected with the proceedings.

- (8) In this section, references to the State include the following —
- (a) a person who is a former State authority, if the liability or proceedings in question are, or would be, connected with —
 - (i) the person's conduct while and as a State authority; or
 - (ii) otherwise the person's role while and as a State authority;
 - (b) a State agent;
 - (c) a person who is a former State agent, if the liability or proceedings in question are, or would be, connected with —
 - (i) the person's conduct while and as a State agent; or
 - (ii) otherwise the person's role while and as a State agent.

20. No appeal or review or criminal liability in respect of protected matters

- (1) Any conduct of the State that is, or is connected with, a protected matter cannot in any proceedings —
- (a) be appealed against, reviewed, challenged, quashed or called into question on any basis; or
 - (b) be the subject of, on any basis —
 - (i) a remedy by way of injunction, declaration, prohibition, mandamus or certiorari; or
 - (ii) a remedy having the same effect as a remedy referred to in subparagraph (i).

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- (2) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to, or in relation to, any conduct of the State that is, or is connected with, a protected matter.
- (3) The conduct of the State covered by subsections (1) and (2) includes conduct that occurs or arises before commencement.
- (4) Any proceedings, to the extent that anything described in subsection (1) is being done or sought in the proceedings, are terminated if either or both of the following apply —
 - (a) the proceedings are brought, made or begun before commencement but are not completed before commencement;
 - (b) the proceedings are brought, made or begun before the end of the day on which the amending Act receives the Royal Assent but are not completed before the end of that day.
- (5) Subsection (6) applies to any proceedings, to the extent that anything described in subsection (1) is done or sought in the proceedings, if the proceedings are —
 - (a) brought, made or begun at or after introduction time; and
 - (b) completed before the end of the day on which the amending Act receives the Royal Assent.
- (6) Any remedy, relief, order, direction, award or ruling resulting from, or any other outcome of, the proceedings is extinguished to the extent that it is against, or unfavourable to, the State or otherwise requires the State to do, or not to do, anything.

- (7) A person cannot seek payment from the State for any legal costs connected with any proceedings to which subsection (4) or (6) applies, and the State has no liability, and is taken never to have had any liability, for any of a person's legal costs connected with the proceedings.
- (8) 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.
- (9) In this section, references to the State include a State agent.
- (10) In subsections (6) and (7), references to the State also include the following —
 - (a) a person who is a former State authority, if the proceedings in question are, or would be, connected with —
 - (i) the person's conduct while and as a State authority; or
 - (ii) otherwise the person's role while and as a State authority;
 - (b) a person who is a former State agent, if the proceedings in question are, or would be, connected with —
 - (i) the person's conduct while and as a State agent; or
 - (ii) otherwise the person's role while and as a State agent.

21. Documents

- (1) The *Freedom of Information Act 1992* Parts 2 and 4 do not apply to a document connected with a protected matter.

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- (2) An application under the *Freedom of Information Act 1992* section 11 for access to a document connected with a protected matter is extinguished if either or both of the following apply —
 - (a) the application is made before commencement but no notice under section 13(1)(b) of that Act is given before commencement;
 - (b) the application is made at or after introduction time.
- (3) Without limiting section 8(1), subsections (1) and (2) have effect despite any provision of the *Freedom of Information Act 1992*.
- (4) On and after commencement, 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 protected matter.
- (5) Any proceedings, to the extent that they are of the type described in subsection (4), are terminated if either or both of the following apply —
 - (a) the proceedings are brought, made or begun before commencement but are not completed before commencement;
 - (b) the proceedings are brought, made or begun before the end of the day on which the amending Act receives the Royal Assent but are not completed before the end of that day.
- (6) Subsection (7) applies to any proceedings, to the extent that they are of the type described in subsection (4), if the proceedings are —
 - (a) brought, made or begun at or after introduction time; and

- (b) completed before the end of the day on which the amending Act receives the Royal Assent.
- (7) Any remedy, relief, order, direction, award or ruling resulting from, or any other outcome of, the proceedings is extinguished to the extent that it is against, or unfavourable to, the State or otherwise requires the State to do, or not to do, anything.
- (8) A person cannot seek payment from the State for any legal costs connected with any proceedings to which subsection (5) or (7) applies, and the State has no liability, and is taken never to have had any liability, for any of a person's legal costs connected with the proceedings.
- (9) In this section, references to the State include the following —
 - (a) a person who is a former State authority, if the proceedings in question are, or would be, connected with —
 - (i) the person's conduct while and as a State authority; or
 - (ii) otherwise the person's role as a State authority;
 - (b) a State agent;
 - (c) a person who is a former State agent, if the proceedings in question are, or would be, connected with —
 - (i) the person's conduct while and as a State agent; or
 - (ii) otherwise the person's role as a State agent.

**22. Indemnity by Mineralogy, International Minerals,
Mr Palmer and relevant transferees**

(1) In this section —

loss includes (without limiting the definition of that term in section 7(1)) a loss of, or reduction in, revenue or funding that would otherwise have been received by the State from the Commonwealth;

non-WA right —

- (a) means a right, entitlement or interest (whether legal or beneficial or otherwise and whether actual, contingent, prospective or otherwise and whether held alone or jointly or jointly and severally or otherwise) arising on any basis —
 - (i) under the law of the Commonwealth, another State or a Territory; or
 - (ii) under the law of a country or territory, or of a part of a country or territory, outside Australia; or
 - (iii) under international law (including an international treaty or other agreement or instrument); or
 - (iv) otherwise outside Western Australia;and

- (b) includes (without limiting paragraph (a)) a right, entitlement or interest of the type described in paragraph (a) that corresponds to, or is substantially the same as, or is similar to, a right, entitlement or interest of a type described in paragraph (b) of the definition of **right** in this subsection;

protected proceedings means proceedings brought, made or begun, or purportedly brought, made or begun, and connected with a protected matter;

relevant person — see subsection (2);

relevant transferee — see subsection (3);

right, except in the definition of *non-WA right* in this subsection —

- (a) means a right, entitlement or interest (whether legal or beneficial or otherwise and whether actual, contingent, prospective or otherwise and whether held alone or jointly or jointly and severally or otherwise) arising on any basis; and
- (b) includes (without limiting paragraph (a)) a right, entitlement or interest of the type described in paragraph (a) arising —
 - (i) in contract or tort; or
 - (ii) under the law of restitution; or
 - (iii) under a trust or otherwise in equity; or
 - (iv) under a written law; or
 - (v) under an order, award, ruling, finding or declaration made by an adjudicator; or
 - (vi) under a direction or other requirement (however described) made by a body or person appointed under a written law or under an arrangement;and
- (c) includes (without limiting paragraphs (a) and (b)) a non-WA right; and
- (d) includes a part or share of a right, entitlement or interest of a type described in paragraphs (a) to (c);

State includes the following —

- (a) a person who is a former State authority, if the proceedings, liability or loss in question are, or would be, connected with —
 - (i) the person's conduct while and as a State authority; or

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- (ii) otherwise the person's role while and as a State authority;
- (b) a State agent;
- (c) a person who is a former State agent, if the proceedings, liability or loss in question are, or would be, connected with —
 - (i) the person's conduct while and as a State agent; or
 - (ii) otherwise the person's role while and as a State agent;

transfer, in relation to a right, means assign, transmit, vest or otherwise transfer the right, whether by instrument, by operation of law or in any other way.

- (2) For the purposes of this section, each of the following persons is a *relevant person* —
 - (a) Mineralogy;
 - (b) International Minerals;
 - (c) Mr Palmer;
 - (d) every relevant transferee;
 - (e) every former relevant transferee.
- (3) For the purposes of this section, a person (*person A*) is a *relevant transferee* if —
 - (a) person A has a right in, or in respect of —
 - (i) any protected proceedings or the subject matter of any protected proceedings; or
 - (ii) any liability of the State connected with a protected matter or the subject matter of such a liability;

and

- (b) that right was (before, on or after commencement) —
 - (i) transferred to person A from a relevant person; or
 - (ii) created in favour of person A out of a right held by a relevant person.
- (4) Every relevant person must indemnify, and must keep indemnified, the State against the following —
 - (a) any protected proceedings;
 - (b) any loss, or liability to any person, connected with a protected matter;
 - (c) without limiting paragraphs (a) and (b) —
 - (i) any legal costs of the State connected with any protected proceedings;
 - (ii) any liability of the State to pay any legal costs of any person connected with any protected proceedings;
 - (iii) any loss connected with a stated intention of, or a threat by, any person to bring, make or begin protected proceedings.
- (5) The liability of the relevant persons to indemnify the State under subsection (4) is joint and several.
- (6) However, the joint and several liability of a relevant person, other than Mineralogy, International Minerals or Mr Palmer, is limited to indemnifying the State against —
 - (a) any protected proceedings in which or in the subject matter of which, or in respect of which or of the subject matter of which, the relevant person has, or had, a right that the relevant person acquired as described in subsection (3)(b); or

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- (b) any liability of the State connected with a protected matter in which or in the subject matter of which, or in respect of which or of the subject matter of which, the relevant person has, or had, a right that the relevant person acquired as described in subsection (3)(b).
- (7) The State may (without limitation) enforce the indemnity under subsection (4) —
 - (a) even if the State has not made any payment, or done anything else, to meet, perform or address the proceedings, liability or loss in question; and
 - (b) by setting off the liability of the relevant persons under the indemnity against any liability that the State has to 1 or more of them.
- (8) The matters or things covered by the indemnity under subsection (4) include (without limitation) the following —
 - (a) protected proceedings that are brought, made or begun, or purportedly brought, made or begun, before commencement;
 - (b) liabilities or losses that arise or occur before commencement;
 - (c) protected proceedings that are brought, made or begun, or purportedly brought, made or begun, by 1 or more relevant persons themselves;
 - (d) liabilities to 1 or more relevant persons themselves.
- (9) In relation to a liability of the type referred to in subsection (8)(d), the State may enforce the indemnity under subsection (4) by not paying, or otherwise meeting or performing, the liability.

23. Further indemnity

(1) In this section —

protected proceedings has the meaning given in section 22(1);

relevant person —

- (a) in relation to any protected proceedings, means any person who has, or has had, a right in, or in respect of, the protected proceedings or their subject matter; and
- (b) in relation to a liability of the State connected with a protected matter, means any person who has, or has had, a right in, or in respect of, the liability or its subject matter;

right has the meaning given in section 22(1);

State has the meaning given in section 22(1).

(2) Every relevant person in relation to any protected proceedings must indemnify, and must keep indemnified, the State against —

- (a) the protected proceedings; and
- (b) without limiting paragraph (a) —
 - (i) any legal costs of the State connected with the protected proceedings; and
 - (ii) any liability of the State to pay any legal costs of any person connected with the protected proceedings.

(3) Every relevant person in relation to a liability of the State connected with a protected matter must indemnify, and must keep indemnified, the State against the liability.

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- (4) If there is more than 1 relevant person, the liability of the relevant persons to indemnify the State under subsection (2) or (3) is joint and several.
- (5) The State may (without limitation) enforce the indemnity under subsection (2) or (3) —
 - (a) even if the State has not made any payment, or done anything else, to meet, perform or address the proceedings or liability in question; and
 - (b) by setting off the liability of the relevant persons under the indemnity against any liability that the State has to 1 or more of them.
- (6) The protected proceedings covered by the indemnity under subsection (2) include (without limitation) the following —
 - (a) protected proceedings that are brought, made or begun, or purportedly brought, made or begun, before commencement;
 - (b) protected proceedings that are brought, made or begun, or purportedly brought, made or begun, by 1 or more relevant persons themselves.
- (7) The liabilities covered by the indemnity under subsection (3) include (without limitation) the following —
 - (a) liabilities that arise before commencement;
 - (b) liabilities to 1 or more relevant persons themselves.
- (8) In relation to a liability of the type referred to in subsection (7)(b), the State may enforce the indemnity under subsection (3) by not paying, or otherwise meeting or performing, the liability.

24. Matters relating to Commonwealth

(1) In this section —

Commonwealth includes (without limitation) the following —

- (a) the Crown in right of the Commonwealth;
- (b) the Government of the Commonwealth;
- (c) a Commonwealth authority;
- (d) a Commonwealth agent;
- (e) a person who is a former Commonwealth authority or Commonwealth agent if the proceedings, liability or loss in question is connected with —

- (i) the person's conduct while and as a Commonwealth authority or Commonwealth agent; or
- (ii) otherwise the person's role as a Commonwealth authority or Commonwealth agent;

Commonwealth agent means an agent, representative, advisor or contractor of the Commonwealth (but, to avoid doubt, does not include a party to the Agreement or Mr Palmer);

Commonwealth authority means any of the following —

- (a) the Governor-General of the Commonwealth;
- (b) a Minister of the Crown in right of the Commonwealth;
- (c) a department of the Government of the Commonwealth;

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- (d) an agency, authority, instrumentality or other body (whether or not a body corporate) established or continued for a public purpose —
 - (i) under a law of the Commonwealth; or
 - (ii) otherwise by the Commonwealth;
- (e) a person holding, or exercising the powers of, an office established or continued for a public purpose —
 - (i) under a law of the Commonwealth; or
 - (ii) otherwise by the Commonwealth;
- (f) a staffer, member, officer or employee of a Commonwealth authority referred to in paragraphs (a) to (e);
- (g) a person who is appointed to any office or other position under a law of the Commonwealth, or otherwise by the Commonwealth, for a public purpose and who is not covered by paragraphs (a) to (f);

indemnity means an indemnity under section 22(4) or 23(2) or (3).

- (2) Subsection (3) applies if —
 - (a) proceedings are brought, made or begun against the Commonwealth or the Commonwealth incurs a liability to any person or a loss; and
 - (b) the proceedings, liability or loss are connected with a protected matter.
- (3) Without limiting the scope of any indemnity —
 - (a) each indemnity applies as if the proceedings were brought, made or begun against the State or the liability or loss were incurred by the State; and

- (b) the State may enforce each indemnity accordingly.
- (4) To avoid doubt —
 - (a) nothing in subsection (3) makes the State liable to indemnify the Commonwealth against the proceedings, liability or loss nor otherwise affects any liability of the State to the Commonwealth; and
 - (b) subsection (3) applies even if the State has no liability to indemnify the Commonwealth against the proceedings, liability or loss.
- (5) The State may assign to the Commonwealth —
 - (a) the State's right to receive a particular amount owed to the State under an indemnity (whether by virtue of this section or otherwise); or
 - (b) any other right the State has under or connected with an indemnity (whether by virtue of this section or otherwise).

25. Further provisions about liability of State

- (1) This section applies to a liability of the State (whether arising before, on or after commencement) connected with a protected matter.
- (2) No amount can be charged to, or paid out of, the Consolidated Account to meet the liability.
- (3) No amount can be borrowed by or on behalf of the Crown in right of the State to meet the liability.
- (4) No asset, right or entitlement of the State can be taken or used by any person to enforce the liability.
- (5) No execution or other process in the nature of execution can be issued out of any court against the State in relation to the liability.

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- (6) In subsections (1), (4) and (5), references to the State include the following —
- (a) a person who is a former State authority, if the liability is connected with —
 - (i) the person’s conduct while and as a State authority; or
 - (ii) otherwise the person’s role as a State authority;
 - (b) a State agent;
 - (c) a person who is a former State agent, if the liability is connected with —
 - (i) the person’s conduct while and as a State agent; or
 - (ii) otherwise the person’s role as a State agent.

**Subdivision 3 — Interaction between provisions of
Subdivisions 1 and 2**

26. Interaction

- (1) In this section —
- applicable provision*** means a provision of Subdivision 1 or Subdivision 2;
- terminated arbitration arrangement*** means a relevant arbitration arrangement terminated under section 10(2).
- (2) Subject to the rest of this section, an applicable provision does not limit any other applicable provision.
- (3) Despite any applicable provision, the State must pay the full amount of the following in respect of a terminated arbitration arrangement —
- (a) any fees or expenses of the arbitrator that are payable under the arrangement and that accrue before commencement; and

- (b) any additional fee that would have been payable to the arbitrator under the arrangement had the relevant arbitration been settled on commencement.
- (4) No applicable provision affects a liability that the State has to any person under an order of a court made before commencement to pay any of the person's legal costs connected with any proceedings before the court that are completed before commencement.
- (5) Subsection (4) does not apply to proceedings to which section 11(6), 12(6), 13(7), 19(6), 20(6) or 21(7) applies.
- (6) No applicable provision affects the jurisdiction of a court to grant relief for jurisdictional error.
- (7) The reference in section 18(1)(a) to the commission of a civil wrong includes (without limitation) a breach of a provision of the *Commercial Arbitration Act 2012* that continues to apply under section 10(3).

Division 3 — Other provisions

Subdivision 1 — Further provisions about liability and indemnity

27. Consideration of proposals

The State has, and can have, no liability, and is taken never to have had any liability, to any person to pay damages, compensation or any other type of amount connected with any of the following occurring or arising at or after introduction time —

- (a) the Minister's consideration of any proposals, or purported proposals, under clause 7 or 8 of the Agreement;

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- (b) an omission of the Minister to consider any proposals, or purported proposals, under clause 7 or 8 of the Agreement;
- (c) any other conduct of the State, or of a State agent, under, or in relation to, clause 7 or 8 of the Agreement.

28. Indemnity for State authorities and State agents

- (1) This section applies to a person (the *respondent*) who is —
 - (a) a State authority; or
 - (b) a former State authority, if the proceedings are connected with —
 - (i) the person’s conduct while and as a State authority; or
 - (ii) otherwise the person’s role while and as a State authority;or
 - (c) a State agent; or
 - (d) a former State agent, if the proceedings are connected with —
 - (i) the person’s conduct while and as a State agent; or
 - (ii) otherwise the person’s role while and as a State agent.
- (2) If proceedings connected with a disputed matter are brought, made or begun, or purportedly brought, made or begun, against the respondent, the State must, if requested by the respondent —
 - (a) indemnify the respondent against the proceedings; and

- (b) without limiting paragraph (a), pay the respondent's legal costs connected with the proceedings.
- (3) If the respondent makes a request under subsection (2), the respondent must —
 - (a) allow the State to conduct the respondent's defence or response to the proceedings; and
 - (b) comply with any directions given by the State, and otherwise cooperate with the State, in that regard.
- (4) The State must indemnify the respondent against any loss connected with a stated intention of, or a threat by, any person to bring, make or begin proceedings connected with a disputed matter against the respondent.
- (5) If proceedings connected with a protected matter are brought, made or begun, or purportedly brought, made or begun, against the respondent, the State must, if requested by the respondent —
 - (a) indemnify the respondent against the proceedings; and
 - (b) without limiting paragraph (a), pay the respondent's legal costs connected with the proceedings.
- (6) If the respondent makes a request under subsection (5), the respondent must —
 - (a) allow the State to conduct the respondent's defence or response to the proceedings; and
 - (b) comply with any directions given by the State, and otherwise cooperate with the State, in that regard.

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- (7) The State must indemnify the respondent against any loss connected with a stated intention of, or a threat by, any person to bring, make or begin proceedings connected with a protected matter against the respondent.
- (8) This section applies despite any other provision of this Part.
- (9) The State's liability to the respondent under subsection (2) or (4) is a liability to which the indemnity under section 14(4) applies.
- (10) The State's liability to the respondent under subsection (5) or (7) is a liability to which the indemnity under section 22(4) applies.
- (11) Section 7(4) applies for the purposes of this section as if references to the State were to the respondent.

Subdivision 2 — Subsidiary legislation

29. Regulations

The Governor may make regulations prescribing any matters that are necessary or convenient to be prescribed for giving effect to this Part.

30. Orders

- (1) Subsection (2) applies if the Minister is of the opinion, having regard to the purposes and subject matter of this Part, that 1 or more of the following circumstances exist or may exist —
 - (a) this Part does not deal adequately or appropriately with a matter or thing;
 - (b) this Part does not apply to a matter or thing to which it is appropriate for this Part to apply;
 - (c) this Part applies to a matter or thing to which it is not appropriate for this Part to apply;

- (d) it is appropriate to make provision for improving the effectiveness of an indemnity under section 14(4), 15(2) or (3), 22(4) or 23(2) or (3), including (without limitation) provision for or in connection with the following —
 - (i) the creation of security interests, rights or restrictions in respect of land, or any other type of property, in which, or in respect of which, 1 or more of the persons who are liable under the indemnity have, or have had, any interests or rights;
 - (ii) the enforcement of the indemnity against persons to whom 1 or more of the persons who are liable under the indemnity have assigned or otherwise transferred interests or rights in, or in respect of, land or any other type of property;
 - (e) it is appropriate for this Part to be otherwise improved —
 - (i) by removing from this Part an inconsistency with a law of the Commonwealth; or
 - (ii) in any other way.
- (2) The Governor may, on the Minister's recommendation, by order do either or both of the following —
- (a) amend this Part to address the circumstances;
 - (b) make any other provision necessary or convenient to address the circumstances.
- (3) The matters or things in respect of which an order can be made under this section include matters or things occurring or arising before commencement.

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- (4) An order under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

31. Supplementary provision

Part 3 subsidiary legislation may —

- (a) be expressed to have effect despite the Agreement, Part 2, this Part or any other Act or law; and
- (b) provide that a specified provision of the Agreement, this Part or a written law does not apply, or applies with specified modifications, to or in relation to any matter or thing; and
- (c) be expressed to take effect before the day on which the legislation is published in the *Gazette*, but not earlier than commencement.

8. Schedule 1 amended

Delete the reference after the heading to Schedule 1 and insert:

[s. 3 and 7]

9. Schedule 2 amended

Delete the reference after the heading to Schedule 2 and insert:

[s. 3 and 7]

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