NOTICE OF ARBITRATION PURSUANT TO THE AGREEMENT ESTABLISHING THE ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AREA UNDER THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

BETWEEN:

ZEPH INVESTMENTS PTE LTD

(CLAIMANT)

-AND-

THE COMMONWEALTH OF AUSTRALIA

(RESPONDENT)

NOTICE OF ARBITRATION
(Amended 30 September 2023)

Claimant's representative: Clive Frederick Palmer

Clive Frederick Palmer
[redacted]
Telephone: [redacted]
Email: [redacted]

28 March 2023

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I. INTRODUCTION

1 This Notice of Arbitration ("**Arbitration Notice**"), together with its Annexures, is submitted on behalf of Zeph Investments Pte Ltd ("**Claimant**"). The Arbitration Notice is filed pursuant to Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law 2021 (the "**UNCITRAL Arbitration Rules**") against the Commonwealth of Australia ("**Respondent**"), (collectively referred to as the "**Parties**"). In accordance with Article 3.3(a) of the UNCITRAL Arbitration Rules, the Claimant demands that the dispute (as described in this notice) be referred to arbitration.

2 The dispute is being submitted to arbitration pursuant to the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area ("**AANZFTA**") and arises out of the enactment of the *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Amendment Act 2020 (WA)* ("**2020 Amendment Act**"),[1] passed by the Western Australian Government on 13 August 2020. In accordance with Articles 20 and 21.1(d) of Chapter 11 of the AANZFTA, the Claimant submits to arbitration its claims that:

(a) The Respondent has breached obligations arising under Chapter 11 of the AANZFTA namely:
   i Article 6 (Treatment of Investment), and
   ii Article 9 (Expropriation and Compensation); and

(b) The Claimant and/or its covered investment has incurred loss or damage by reason of, or arising out of, that breach, described in this Arbitration Notice.

3 This Arbitration Notice contains information concerning the name, description and address of each of the Parties, the Parties' contractual relationship and the nature and circumstances of the Parties' dispute giving rise to the Claimant's claims, the dispute resolution clause, the proposed governing law, the seat and language of the arbitration, the Claimant's position as regards the composition of the arbitral tribunal, the Claimant's damages and a statement of the relief sought.

Documents provided with the Arbitration Notice in Support of the Claimant's Claim

4 The Claimant's Notice of Intent to Submit the Dispute to Arbitration Pursuant to the

[1] Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Act 2020 (WA) (**Exh.C-1**).

Agreement Establishing the ASEAN-Australia New Zealand Free Trade Area dated 20 October 2022 (excluding the section 11 Summary of the loss or damage to be claimed by the Claimant) ("**Notice of Intent**")[2] is incorporated herein by reference and should be read prior to reading the balance of this Arbitration Notice. The Notice of Intent comprehensively describes the factual background to this dispute and the alleged breaches of the AANZFTA.

5 A copy of the Arbitration Agreement under which this Arbitration Notice is filed, is contained in the AANZFTA at **Annexure 10C**.[3]

6 For the avoidance of doubt, the following Annexures to this Arbitration Notice are hereby incorporated by reference and should be read in the order in which they appear below. To assist in navigating the hardcopy files of the Arbitration Notice, the following list provides a reference for locating the documents in the boxes containing the hardcopies:

Annexure Number	Annexure
1C	Notice of Intent for Arbitration dated 20 October 2022[4] – Box 1
2C	Witness Statement and Submissions of [redacted] dated 22 March 2022 – Commences Box 2 – Finishes Box 6
3C	Witness Statement of [redacted] dated 13 January 2023 – Box 6
4C	Amendment Act[5] – Box 7
5C	Expert Witness Statement and Report of [redacted] dated 27 March 2023 – Box 7
6C	Addendum – Legal Principles – Operation of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area – Box 7
7C	Addendum – Sovereign Risk / Loss of Opportunity (Chance) – Box 7
8C	Addendum – Claimant's Submissions on Damages – Box 7
9C	Claimant's Legal Authorities – Commences Box 7 – Finishes Box 10
10C	Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area[6] – Box 10

[2] Notice of Intent, 20 October 2022 (**Exh. C-63**).
[3] See also Chapter 11 of AANZFTA (**Exh. CLA-1**).
[4] Notice of Intent, 20 October 2022 (**Exh. C-63**).
[5] Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Act 2020 (WA) (**Exh.C-1**).
[6] Chapter 11 of AANZFTA (**Exh. CLA-1**).

11C	Draft Submissions for the 2020 Arbitration (unable to be used in 2020 due to the 2020 Amendment Act)[7] – Box 10
12C	Witness Statement of [redacted] dated 13 February 2023 – Commences Box 10 – Finishes Box 27
13C	Witness Statement of [redacted] dated 14 February 2023 – Box 28
14C	Witness Statement of [redacted] dated 17 February 2023 – Box 29
15C	Witness Statement of [redacted] dated 14 February 2023 – Box 29
16C	Consultation Notice dated 14 October 2020[8] – Box 29
17C	Waiver dated 28 March 2023 and Consent dated 27 March 2023[9] – Box 29
18C	Legislative Assembly Hansard, Western Australia, 10 June 2014, pp 3585 – 3597[10] – Box 29
19C	Opinion of [redacted] – Box 29

7 The Claimant relies on those Annexures to prove its case and damages.

8 The above Annexures (including the witness statements and expert reports) set out the facts, points of claim, legal grounds and arguments supporting the Claimant's claim, as required by Articles 20.1 and 20.2 of Section 3 of the UNCITRAL Arbitration Rules and in accordance with Section 3 of Procedural Order No.1. These Annexures support the Claimant's position and provide the necessary particulars for the Claimant to prove liability and damages. In addition:

(a) In accordance with Article 20.3 of Section 3 of the UNCITRAL Arbitration Rules, the Claimant annexes copies of the following contracts or other legal instruments including the 2020 Amendment Act, AANZFTA, the State Agreement and the 2020 Arbitration Agreement.

(b) In accordance with Article 20.4 of Section 3 of the UNCITRAL Arbitration Rules, the Claimant exhibits copies of the documents and other evidence relied upon by the Claimant.

[7] Draft Submissions for the 2020 Arbitration, undated (**Exh. C-169**).
[8] Letter from Volterra Fietta to the Minister of Foreign Affairs of the Respondent, 14 October 2020 (**Exh. C-148**).
[9] Waiver and Consent (**Exh. C-441**).
[10] Legislative Assembly Hansard, Western Australia, 10 June 2014 (**Exh. C-444**).
[11] Opinion of [redacted], 5 April 2018 (**Exh. C-6**).

(c) This Arbitration Notice sets out the relief or remedy sought by the Claimant.

9 The Claimant reserves its right to request permission from the Tribunal to supplement or amend these submissions prior to the filing of the Respondent's Statement of Defence.

Definitions

10 Unless otherwise specifically defined herein, the terms and definitions used in this Arbitration Notice have the same meaning described in the Claimant's Notice of Intent and AANZFTA as the context requires. The "Amendment Act" or "Amending Act" means the 2020 Amendment Act. All references to articles in AANZFTA are references to Chapter 11 (Investment) of the AANZFTA, unless otherwise specified.

Pre-Arbitration Steps Fulfilled

11 In accordance with Articles 19 and 22(1) of AANZFTA:

(a) On 14 October 2020, the Claimant served on the Respondent its notice for consultation.[12]

(b) On 20 October 2022, the Claimant served on the Respondent its Notice of Intent.[13]

II. OVERVIEW OF CLAIM

Factual Background

12 The following paragraphs provide a brief overview of the background facts to the issues in dispute in this arbitration. As noted above, it should be read in conjunction with the factual summary in the Notice of Intent and the Witness Statement of [redacted].

13 The Claimant's subsidiary companies, Mineralogy Pty Ltd ("**Mineralogy**") and International Minerals Pty Limited ("**IM**") (together the "**Claimant's Subsidiaries**"), had been involved in an ongoing domestic dispute with the Western Australian Government relating to the Balmoral South Iron Ore Proposal ("**BSIOP**") under a State Agreement (a long-term Government contract ratified by legislation in 2002[14]) ("**State Agreement**"). The Claimant's Subsidiaries had been successful in establishing liability and the right to

[12] Letter from Volterra Fietta to the Minister of Foreign Affairs of the Respondent, 14 October 2020 (**Exh. C-148**).
[13] Notice of Intent, 20 October 2022 (**Exh. C-63**).
[14] A copy of the State Agreement is contained in Schedule 1 to the Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002 (WA) (**Exh. CLA-2**).

damages in the first two domestic arbitrations and were claiming approximately AUD 30 billion in damages in the third domestic arbitration (the "**2020 Arbitration**").

14 On the morning of 23 May 2020, the Attorney General of Western Australia, Mr John Quigley, sent the following SMS text message to the Premier of Western Australia, Mr Mark McGowan:[15]

> *Quigley: I have been awake since 4.15 thinking of ways to beat big fat Clive and his arbitration claim for 23.5 billion in damages remembering the turd has pulled off 2 big wins in arbitration… The solution is to be found in an amendment to legislation ostensibly [sic] to protect us Re [the possibility of an unrelated dispute] … which amendment for that purpose is merely a Trojan horse as within the very small legislative amendment will be a poison pill for the fat man… It's such a neat solution obstentially [sic] to solve one almost nonexistent problem but the side wind could drop the fat man on his big fat arse! … Hey are you glad me single again … not making love in sweet hours before dawn instead worrying how to defeat Clive!*😂 😂 😂 🤣

15 The exchange continued:[16]

> *McGowan: Let's discuss the $23 billion claim. We need to really sort out what to do. I don't want to let Parker know or any journo before we r ready*
>
> *Quigley: Absolutely secrecy of essence …* 😂 😂 😂

16 Following this text conversation, Mr Quigley and Mr McGowan, together with a small select group of legal and political advisers, developed a plan to use legislation to effectively destroy the Claimant's iron ore mining investments in Western Australia.

17 The legislation, prepared in secret and passed under urgency, was less like a "*Trojan horse*" and more like a "*juggernaut destroying everything in its path*."[17]

18 In July and August 2020, the State Solicitor for Western Australia worked from home. Not

[15] SMS Text messages between Mr Quigley and Mr McGowan, 23 May 2020 (**Exh. C-432**).
[16] SMS Text messages between Mr Quigley and Mr McGowan, 23 May 2020 (**Exh. C-432**).
[17] As the Amendment Act was described in *Mineralogy v Western Australia* [2020] QSC 344, para 133 (**Exh. CLA-54**).

because of Covid-19 restrictions, but because he was working on legislation so secret that his own team were not to know about it.[18]

19 With the help of the Attorney-General and the Solicitor-General for Western Australia, and a legal team at Clayton Utz, the Government of Western Australia introduced the 2020 Amendment Act into the Western Australian Parliament on the evening of 11 August 2020. The Attorney-General explained that knowledge about the 2020 Amendment Act was "*kept … so tight*."[19] It was introduced "*at 5pm … after every court in the land was closed and the doors were locked*" to ensure any attempt to subvert its passage by judicial means would be difficult, if not impossible.[20]

20 There was no meaningful debate. There was no select committee process. There was no regulatory impact analysis. Yet, the 2020 Amendment Act was passed unanimously and signed into law within 48 hours.

21 The reason for the Government's secrecy and haste was revealed by the shocking content of the 2020 Amendment Act. In essence, Western Australia unilaterally absolved itself of any liability for the proven breaches of the State Agreement in the long-running commercial dispute with the Claimant's Subsidiaries and, quite literally, terminated and invalidated the 2020 Arbitration in which damages for that proven breach were imminently to be determined.

22 The history of that commercial dispute is set out in [redacted] Witness Statement and briefly described below.

(a) The Claimant's Subsidiaries held mining licences and leases in relation to magnetite iron ore deposits in the Pilbara region of Western Australia. These deposits were to be developed in accordance with the State Agreement signed in 2001.[21]

(b) Mineralogy had successfully developed two iron ore mining projects, known as the Sino Iron and Korean Steel Projects.[22] In 2012, the Minister rejected the Claimant's Subsidiaries' proposal to develop a third iron ore mining project in the Balmoral South area (the proposal was known as the BSIOP). The State Agreement did not permit the Minister to reject the BSIOP.

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[18] Transcript of Mr Quigley's interview with ABC Radio, 13 August 2020, p.4 (**Exh. C-127**).
[19] Transcript of Mr Quigley's interview with ABC Radio, 13 August 2020, p.1 (**Exh. C-127**).
[20] Transcript of Mr Quigley's interview with ABC Radio, 13 August 2020, p.1 (**Exh. C-127**).
[21] [redacted] Statement, paras 109-111, 142-144 and 163-164.
[22] [redacted] Statement, paras 230-239.

(c) In May 2014, the arbitrator in the domestic arbitration, the Hon. Michael McHugh AC KC (retired judge of the High Court of Australia), found that Western Australia had breached the State Agreement with the Claimant's Subsidiaries by failing to consider properly, and unlawfully rejecting, the BSIOP (the "**First Award**").[23] That unlawful conduct caused the international investors and financiers involved immediately to abandon the BSIOP and inflicted significant financial loss and damages on the Claimant's Subsidiaries.[24]

(d) In October 2019, the Hon. Michael McHugh AC KC issued a second award permitting the Claimant's Subsidiaries to pursue damages against Western Australia for the breach of the State Agreement as determined in the First Award (the "**Second Award**").[25]

(e) Western Australia appealed the Second Award to the Supreme Court of Western Australia. The Government lost for the third time as the Award was upheld.[26] Western Australia was directed by the Supreme Court to return to the arbitration process and proceed with a hearing as to damages.

(f) In December 2019, the Claimant's Subsidiaries commenced a third arbitration against Western Australia before the Hon. Michael McHugh AC KC in which it sought damages for the losses suffered as a result of the State's breach of the State Agreement (the "**2020 Arbitration**").

23 Unbeknownst to the Claimant, Mineralogy and IM, Western Australia took fright at this point. It could not win legitimately before a distinguished Australian arbitrator or before its own Courts, so it decided to change the rules. As the Western Australian Attorney-General explained in a media conference on the passage of the 2020 Amendment Act:[27]

> *"Now how would any – how would any of the public feel in these circumstances, where they've taken three hits in front of the Arbitrator, three hits that we didn't expect in front of the Arbitrator, and are sent by the Supreme Court back now for a damages hearing?"*

[23] First Award, 20 May 2014 (**Exh. C-442**).
[24] See Witness Statement of [redacted] submitted in the domestic arbitration, paras 65-68 (**Exh. C-176**).
[25] Second Award, 11 October 2019 (**Exh. C-443**).
[26] *The State of Western Australia v Mineralogy Pty Ltd* [2020] WASC 58 (**Exh**. **CLA-8**).
[27] Transcript of Press Conference, 12 August 2020, p.11 (**Exh. C-465**).

24 The Premier of Western Australia answered that hypothetical question:[28]

> *"…if we allowed this to continue to a conclusion, by which the State was unsuccessful, all of you, in fact, the entire country, would be saying, "Why didn't you legislate? Why didn't you stop this?"*

25 Western Australia considered the risk of significant liability to Mineralogy and IM was, "*huge*".[29] The State's own expert attested before the Supreme Court of Western Australia that the EBITDA of the BSIOP was AUD 27 billion.[30] The Attorney-General said:[31]

> *"This has got to finish now. Every day this goes on, it's costing the State and the taxpayers tens and tens and tens of thousands of dollars. The State has done everything it can to defend against Mr Palmer. We've got the, one of the, the best commercial Queen's Counsel at the Sydney bar working on it. They don't come cheap. We've got teams in Western Australia working on it. They're all being paid. Enough is enough."*

26 To put it simply, when facing justice that the State did not like, it decided to take justice into its own hands. The Premier of Western Australia became judge and arbitrator:[32]

> *"I'll tell you what justice is. I'll tell you what justice is here. Justice is Western Australians not giving* [Mineralogy director] *Clive Palmer $30 billion. That's justice."*

27 Rather than comply with the agreed arbitration dispute resolution process in the State Agreement to get the result they desired, the Premier and his Government breached the rule of law by usurping the legal dispute resolution processes in which it had properly and willingly participated for over six years.

28 Western Australia proceeded to prepare in secret and pass the 2020 Amendment Act to dismantle the arbitration process and remove any liability for its breach of the State Agreement. While it was doing so, it maintained an outward charade for the arbitrator and the Claimant's Subsidiaries that it would continue to participate in the ongoing 2020 Arbitration. Western Australia, being a government required to conduct itself as a model

[28] Transcript of Press Conference, 12 August 2020, p.8 (**Exh. C-465**).
[29] Transcript of Press Conference, 12 August 2020, p.11 (**Exh. C-465**).
[30] Affidavit of William Preston, 12 July 2013, paras 28(b) and 40 (**Exh. C-410**). EBITDA = Earnings Before Interest, Taxes, Depreciation and Amortisation.
[31] Transcript of Press Conference, 12 August 2020, p.5 (**Exh. C-465**).
[32] Transcript of Press Conference, 12 August 2020, p.11 (**Exh. C-465**).

litigant, did the opposite. Western Australia:

(a) participated in a directions conference on 26 June 2020 before Mr McHugh AC KC which resulted in a timetable for the arbitration being agreed, including a three-week damages hearing beginning 30 November 2020;[33]

(b) executed an arbitration agreement on 8 July 2020 with Mineralogy, IM and the Hon. Mr McHugh AC KC confirming the terms of Mr Hugh's appointment and the terms of the arbitration (the "**2020 Arbitration Agreement**");[34]

(c) executed a Mediation Agreement on 5 August 2020 (just six days before the introduction of the 2020 Amendment Act to Parliament) with Mineralogy, IM and the Hon. Wayne Martin AC KC (retired Chief Justice of the Supreme Court of Western Australia) for a mediation on a date before 31 October 2020 (the "**Mediation Agreement**");[35] and

(d) received service of Mineralogy's and IM's claims and statements of evidence regarding damages, but Western Australia never filed any of its own statements or any defence whatsoever. It sought to make a mockery of the obligations under these Acts and agreements by secretly drafting legislation to terminate the arbitration and invalidate the arbitral awards that had been adverse to it.

2020 Amendment Act – Overview

29 The 2020 Amendment Act left no stone unturned in the objective of eviscerating the very existence of the arbitration process and insulating the State from liability for breach of the State Agreement, or any other liability consequent on the passage of this extraordinary legislation. Its relevant provisions include:

(a) the BSIOP is to have no contractual or other legal effect under the State Agreement;

(b) any relevant arbitration process or agreement is terminated with immediate effect;

(c) the First and Second Awards are of no effect and taken never to have had any effect;

(d) no conduct of Western Australia has ever had the effect of breaching the State

[33] Minute of Directions, 26 June 2020 (**Exh. C-384**).
[34] 2020 Arbitration Agreement, 8 July 2020 (**Exh. C-242**).
[35] Mediation Agreement, 5 August 2020 (**Exh. C-269**).

Agreement or any related arbitration or mediation agreement;

(e) Western Australia has no, and has never had, any liability to any person connected in any way with the BSIOP;

(f) there can be no appeal or review of, or any other challenge to, Western Australia's conduct concerning the BSIOP;

(g) the rules of natural justice including any duty of procedural fairness shall not apply;

(h) Mineralogy, IM and its director Clive Palmer (or relevant transferees), must indemnify Western Australia against any loss or liability connected with the BSIOP including those arising under international law or international treaties and for any loss or costs or liability relating to the BSIOP and the indemnity may be enforced even if Western Australia has not in fact made any payment or done anything to address any proceedings; and

(i) no conduct of Western Australia connected with the BSIOP including anything in relation to the passage of the 2020 Amendment Act itself can give rise to the commission of a civil wrong or criminal offence.

Impact on the Rule of Law

30 At a media conference following passage of the 2020 Amendment Act, the Attorney-General seemed not to appreciate the seismic adverse effect that legislation of this nature has on the fundamentals of dispute resolution in a common law country:[36]

> *Journalist: How do you legislate against natural justice? How do you possibly legislate against natural justice?*
>
> *Mr Quigley: In what way? I, I don't follow.*
>
> *Journalist: In the bill it says to absolve you from any natural justice.*
>
> *Mr Quigley: Well, from being – from, from being heard on this dispute. There won't be – [any hearing in this dispute].*

[36] Transcript of Press Conference, 12 August 2020, p.6 (**Exh. C-465**).

Journalist: That's natural justice.

Mr Quigley: Yeah, there won't be any hearing of this dispute. If I can just take you to clause 10(1), this is the hammer. This is the hammer. Clause 10(1): "Any relevant arbitration that is in progress, or otherwise not completed immediately before the commencement of this Act, is terminated." There's not an argument about natural justice; the arbitration is terminated. Subsection (2) of section – of clause 10: "Any relevant arbitration agreement, and any relevant mediation agreement, connected with a relevant arbitration terminated under Subsection 1 are also terminated."

And then, in respect of the two findings made by, um, by the, the Arbitrator already, I refer you to subclause 10 – ah, subclause (4) of clause 10: "The arbitrator- the arbitral award made in the relevant arbitration dated the 10th of May 2014, is of no effect, and is taken never to have had any effect."

And then over in Subclause (6): "The arbitral award made in a relevant arbitration and dated the 11th of October 2019 [clears throat], is of no effect, and is taken never to had any – have any effect," full stop.

Journalist: But it's not just, um, it's not just, ah, natural justice, you're also exempting the State from criminal laity- liability, from FOI scrutiny. It goes far beyond just [unintelligible 00:42:19].

31 The 2020 Amendment Act in these terms is akin to the actions of a "banana republic",[37] not a Western democracy that takes the concept of the rule of law seriously.

The 2020 Amendment Act Breaches the AANZFTA

32 The detail of the Claimant's claim for breach of the AANZFTA is set out in **Annexure 6C**. As a matter of international law, the actions of Western Australia are attributable to the Respondent and the Respondent bears responsibility for those actions, including the enactment of the 2020 Amendment Act.[38]

[37] Western Australia Parliament Hansard, 13 August 2020, p.4896 (**Exh. C-429**).
[38] See Legal Principles Addendum, **Annexure 6C**, para 42.

33 The passage of the 2020 Amendment Act, developed as it was in secret and with subterfuge by Western Australia in feigning continued compliance with the arbitral process, was a daring, bare-faced, denial of justice for the Claimant and its subsidiaries. It plainly constitutes a breach of the fair and equitable treatment obligation contained in breach of Article 6 of AANZFTA and a substantive expropriation of the Claimant's investment in breach of Article 9 of AANZFTA.

34 The 2020 Amendment Act was discriminatory and resulted in the expropriation of the Claimant's contractual, proprietary and other rights and interests of the Claimant (through its ownership of the Claimant's Subsidiaries). The Commonwealth has thereby caused the Claimant loss and damage to its investments in Australia.

35 Having drafted the 2020 Amendment Act in secret and rushed it through the Western Australian Parliament, Mr McGowan and Mr Quigley left no doubt in their public statements that the purpose of the Act was to terminate and invalidate the 2020 Arbitration and everything connected to it (including the 2020 Arbitration Agreement and the First and Second Awards), thereby avoiding any liability for the breaches of the State Agreement found by Mr McHugh AC KC in the First and Second Awards.[39] As a result of the 2020 Amendment Act, the Claimant's Subsidiaries have lost *inter alia* the ability to pursue their claims for loss and damage in the 2020 Arbitration (see Part VIII of this Arbitration Notice).

36 The 2020 Amendment Act expropriated the Claimant's investment and created enormous sovereign risk by commercially destroying the prospects of any further projects being developed under the State Agreement. [redacted], the Claimant's expert with over 30 years' experience as an investment banker, project financier and geologist, confirmed that sovereign risk, noting that no reputable financier would support the Claimant's projects under the State Agreement following the 2020 Amendment Act, as the risk was simply too great.[40]

37 The damage and loss caused by the 2020 Amendment Act demonstrate the significant extent of the Respondent's AANZFTA breaches. The heart of the dispute is the Respondent's discriminatory, arbitrary and bad faith treatment of the Claimant in breach of Article 6 of the AANZFTA.[41] That treatment is exemplified by the bad faith exhibited by

[39] See, for example, the interviews given by Mr McGowan and Mr Quigley on 12 -13 August 2020 (**Exhs. C-127** and **C-465**).
[40] [redacted] Report, pp.7 and 24 (paras 88-89).
[41] Refer to **Annexure 6C** for detail.

the Respondent in signing the 2020 Arbitration Agreement on or about 8 July 2020, knowing all the while that it would be terminated a few weeks later by the 2020 Amendment Act. The Claimant did not know and could not have known prior to the execution and 2020 Arbitration Agreement that the 2020 Arbitration would be abruptly terminated by legislation, which had been prepared in absolute and deliberate secrecy by the Respondent.

38 Through the above acts, the value of the Claimant's investments has been destroyed. This includes the value of its shares in IM, its contractual and proprietary rights and interests in the State Agreement and the 2020 Arbitration Agreement (through its subsidiaries), and its rights and interests in the First and Second Awards, all of which have been unlawfully expropriated in breach of the Respondent's obligations in Article 9 of the AANZFTA.

39 The damages to which the Claimant is entitled includes the amount that the Claimant's Subsidiaries would have received had the 2020 Arbitration proceeded to a hearing in accordance with the provisions of the 2020 Arbitration Agreement as ordered by the Hon. Michael McHugh AC KC. The evidence required to establish the Respondent's liability is provided with this Arbitration Notice in the form of the pleadings, evidence (including expert reports), sworn statements and expert reports, directions and submissions before Mr Michael McHugh AC KC in the 2020 Arbitration prior to the termination of the 2020 Arbitration. This evidence is attached to the Witness Statements of [redacted] and [redacted].

40 As noted above, further damages were incurred as a result of the sovereign risk created by the 2020 Amendment Act. The Claimant is entitled to an award of damages for this loss. It is the Claimant's position that its rights established under the State Agreement would have existed for an additional period of 40 years or longer. The Claimant demonstrates in its evidence that in the first 10 years of the State Agreement the Claimant had commenced four projects – two of which were functioning mines and two of which were in the development phase – when the Minister refused to approve the BSIOP.[42] All four projects involved the investment of billions of dollars by Chinese Government-owned companies. The two projects that had already been fully developed (known as the Sino Iron and Koren Steel Projects) form the largest magnetite iron ore project in the world to date and have been highly successful.[43]

[42] The Projects commenced in the first four years are the: (i) Sino Iron project; (ii) the Korean Steel project; (iii) the BSIOP and (iv) the Mineralogy project. These projects are described in the [redacted] Statement from para [redacted].

[43] See [redacted] Statement, paras 235-239.

41 As a result of the sovereign risk created by the 2020 Amendment Act, the Claimant has been unable to develop any further projects. The Claimant claims for the lost opportunity for the sale or development of an additional four projects every ten years under the State Agreement. These are projects which could and would have been promulgated to ensure that the Claimant could maximise use of the mining rights it had acquired, but for the 2020 Amendment Act, and *inter alia* the sovereign risk it established. That sovereign risk was acknowledged by Edelman J in the High Court of Australia as follows:[44]

> *… The decision to enact the Declaratory Provisions may reverberate with sovereign risk consequences. But those consequences are political, not legal.*

42 The Claimant also suffered moral damages by the passing of the 2020 Amendment Act as set out in the Notice of Intent.[45]

43 In short, the 2020 Amendment Act involved a shocking violation of rule of law norms, annihilated valuable existing rights and caused catastrophic loss and damage to the Claimant's investments in Australia. The legislation also created enormous sovereign risk, which has been and will be destructive of commercial opportunities that would otherwise have been worth many tens of billions of dollars to the Claimant and its subsidiaries.

III. STATEMENT OF CLAIM

44 The Claimant hereby exercises its right under Article 20.1 of Section 3 of the UNCITRAL Arbitration Rules to treat this Arbitration Notice (including the Notice of Intent, and Annexures 1C to 19C inclusive, the contents of which are incorporated herein by reference) as its Statement of Claim. Consequently, this Arbitration Notice (by incorporating the detailed contents of the Notice of Intent and annexures being Annexures 1C to 19C inclusive of this Arbitration Notice) provides a more detailed account of the Claimant's claims to fully comply with Article 20.2-20.4 of the UNCITRAL Arbitration Rules. In addition, as referred to above the Claimant has annexed evidence (including expert evidence) to support its claims as well as schedules providing additional details and legal submissions.

[44] *Mineralogy Pty Ltd & Anor v State of Western Australia* [2021] HCA 30, Separate Judgment of Edelman J, para 97 (**Exh. CLA-9**).
[45] See, in particular, **Annexure K1** at p. 785 of the Notice of Intent, 20 October 2022 (**Exh. C-63**).

IV. THE PARTIES

A. Claimant

45 The Claimant is Zeph Investments Pte Ltd, a company registered under the laws of Singapore, with its registered office located at Genting Lane #11-02 Ruby Industrial Complex Singapore, 349565. Zeph Investments Pte Ltd was incorporated on 21 January 2019 and was originally called Mineralogy International Pte Ltd.

46 The Claimant is the parent company of Mineralogy, a wholly-owned subsidiary company registered in Australia. Mineralogy in turn wholly owns IM, also registered in Australia. The Claimant was incorporated in Singapore in January 2019 and acquired Mineralogy and IM at that time.

47 In addition to its investments in Australia which are the subject of this Arbitration, the Claimant operates (or has operated) – either directly or through joint ventures – the following businesses in Singapore:

(a) a cleaning business known as "Kleenmatic"; and

(b) engineering businesses: GCS Engineering Service Pte Ltd, Visco Engineering Pte Ltd and Visco Offshore Engineering Pte Ltd.

48 At the time of the alleged breach of the AANZFTA (in August 2020), the Claimant and its businesses in Singapore employed approximately 250 people. The Claimant itself employed over 140 people directly and had an annual turnover of over SGD 4 million. In addition to its cleaning business, the Claimant owned two maritime engineering businesses in Singapore between 2019 and 2021. These businesses were shut down in 2021 due to the effect of Covid-19 regulations on the maritime industry in Singapore.[46]

49 The Claimant's ownership of Mineralogy and IM came as part of a restructure intended to facilitate the funding of a major coal development in Australia.[47] It was intended that financing from Singaporean banks procured by the Claimant would be used to establish this coal project.

50 The restructure was not motivated by coverage of the AANZFTA. It did not appear to the

[46] [redacted] Statement, from para 66 describes the employees of the Claimant and its Singapore operations from 2019. [redacted] confirms the reason for the liquidation of the engineering businesses at para 57 of his [redacted] Statement. He also describes the financial position of the Singapore businesses from para 41 of his [redacted] Statement.
[47] [redacted] Statement, paras 18-20; [redacted] Statement, from para 115.

Claimant, Mineralogy or IM at the time of the decision to restructure that treaty rights would be utilised in respect of a dispute that did not emerge until the passing of the 2020 Amendment Act, nearly two years later. The restructure occurred before the Second Award had been issued by Mr Hugh AC KC (which permitted the claim for damages to proceed) and before Western Australia's appeal to the Supreme Court. At no time did the Claimant or any of its related companies or directors have any knowledge, or reason to suspect, that the dispute process for resolving the BSIOP dispute was under threat by State action.

51 The Claimant's substantive business in Singapore is described in more detail in the Notice of Intent[48] and the [redacted] Witness Statement of [redacted].[49] The restructure is described in more detail in the [redacted] Witness Statement of [redacted].

Notifications

52 The Claimant requests that all communications, correspondence, and documents with respect to this Arbitration be transmitted to the Claimant's director and representative, Mr Clive Palmer, and to other persons assisting the Claimant, by email to the email address for the "parties assisting" which is provided below. Although the team of parties assisting the Claimant may be expanded at a later stage, it is presently comprised of:

> Mr George Spalton KC, Barrister, London, United Kingdom
> Dr Anna Kirk, Barrister, Auckland, New Zealand
> Kris Byrne of the Queensland Bar, Brisbane, Queensland, Australia
> Sam Iskander, Solicitor, Brisbane, Queensland, Australia
> Thomas Browning, Solicitor, Brisbane, Queensland, Australia
> Daniel Jacobson, Solicitor, Brisbane, Queensland, Australia
> Baljeet Singh, Administrator, Brisbane, Queensland, Australia
> Shane Bosma, Solicitor, Brisbane, Queensland, Australia
> Anna Palmer, Solicitor, Brisbane, Queensland, Australia
> Michael Sophocles, Solicitor, Sydney, New South Wales, Australia
> George Sokolov, Manager Litigation Support, Brisbane, Queensland, Australia

53 Accordingly, the Claimant requests that all communications, correspondence and documents with respect to this Notice be transmitted:

(a) to the Claimant's director and representative, Mr Clive Palmer, by email to: [redacted]; and copied to

[48] Notice of Intent, Annexure A (**Exh. C-63**).
[49] [redacted] Statement, pp.18-58.

(b) to the "parties assisting", by email to: [redacted];

(c) and, if in hard copy, to the following address:

Zeph Investments Pte Ltd
c/- Mineralogy Pty Ltd
[redacted]

B. Respondent

54 The Respondent is the Commonwealth of Australia, a sovereign state comprising the States and Territories on the Australian mainland continent, the nearby island of Tasmania (which is also an Australian State) and various smaller islands that are external territories. Australia is governed by laws passed by the Parliament of the Commonwealth of Australia and by the Constitution of Australia (although its States and Territories have their own legislatures and pass their own State and Territory laws).

55 The Government of the State of Western Australia is one such Australian State Government within Australia. As explained in the Notice of Intent,[50] under international law, and for the purposes of the AANZFTA, Australia bears responsibility for measures and actions undertaken by the Government of Western Australia.

56 The Commonwealth of Australia is a party to the AANZFTA.

57 The Government of the Commonwealth of Australia is situated in Canberra in the Australian Capital Territory. The address of the Attorney-General's Department of the Commonwealth of Australia, which deals with matters such as this, is Robert Garran Offices, 3-5 National Circuit, Barton ACT 2600, Australia.

58 Respondent's contact information is:

Commonwealth of Australia
Office of International Law
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

[50] See section 6.1 of the Notice of Intent, pp. 15-16 (**Exh. C-63**).

AUSTRALIA
Attention: Jesse Clarke
Telephone number: +61 2 6141 6666
Email: Jesse.Clarke@ag.gov.au

V. THE PARTIES' CONTRACT AND THE NATURE AND CIRCUMSTANCES OF THE PARTIES' DISPUTE GIVING RISE TO THE CLAIMS

(a) Factual Background

59 A detailed description of the factual background supporting the Claimant's claims is set out in the [redacted] Witness Statement of [redacted]. This Notice of Arbitration and the Notice of Intent,[51] including its annexures, also contains a description of the relevant facts.

(b) Legal Basis of Claim

60 A description of the Respondent's liability, and the legal basis for the Claimant's claims, is set out in the Notice of Intent[52] and **Annexures 6C to 8C** of this Arbitration Notice. The supporting evidence for these claims is found in the witness statements, expert reports and documents filed with this Arbitration Notice. The Claimant reserves the right to file supplementary legal submissions prior to the filing of the Statement of Defence, should that be necessary.

VI. DISPUTE RESOLUTION CLAUSE, GOVERNING LAW, SEAT AND LANGUAGE OF THE ARBITRATION

The Arbitration Clause

61 This arbitration is initiated pursuant to the arbitration agreement found at Articles 20, 21 and 22 of the AANZFTA, which provide as follows:

> ***Article 20***
>
> ***Claim by an Investor of a Party***
>
> *If an investment dispute has not been resolved within 180 days of the receipt by a disputing Party of a request for consultations, the disputing investor may, subject to this Article, submit to conciliation or arbitration*

[51] Notice of Intent, 20 October 2022 (**Exh. C-63**).
[52] Notice of Intent, 20 October 2022, pp. 8-16 (**Exh. C-63**).

a claim:

(a) that the disputing Party has breached an obligation arising under Article 4 (National Treatment), Article 6 (Treatment of Investment), Article 7 (Compensation for Losses), Article 8 (Transfers), and Article 9 (Expropriation and Compensation) relating to the management, conduct, operation or sale or other disposition of a covered investment; and

(b) that the disputing investor or the covered investment has incurred loss or damage by reason of, or arising out of, that breach.

Article 21
Submission of a Claim

1. A disputing investor may submit a claim referred to in Article 20 (Claim by an Investor of a Party) at the choice of the disputing investor:

(a) where the Philippines or Viet Nam is the disputing Party, to the courts or tribunals of that Party, provided that such courts or tribunals have jurisdiction over such claim; or

(b) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the disputing Party and the non-disputing Party are parties to the ICSID Convention; or

(c) under the ICSID Additional Facility Rules, provided that either of the disputing Party or non-disputing Party are a party to the ICSID Convention; or

(d) under the UNCITRAL Arbitration Rules; or

(e) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules,

provided that resort to one of the fora under Subparagraphs (a) to (e) shall exclude resort to any other.

2. A claim shall be deemed submitted to arbitration under this Article when the disputing investor's notice of or request for arbitration made in accordance with this Section (notice of arbitration) is received under the applicable arbitration rules.

3. The arbitration rules applicable under Paragraph 1(b) to (e) as in effect on the date the claim or claims were submitted to arbitration under this Article, shall govern the arbitration except to the extent modified by this Section.

4. In relation to a specific investment dispute or class of disputes, the applicable arbitration rules may be waived, varied or modified by written agreement between the disputing parties. Such rules shall be binding on the relevant tribunal or tribunals established pursuant to this Section, and on individual arbitrators serving on such tribunals.

5. The disputing investor shall provide with the notice of arbitration:

(a) the name of the arbitrator that the disputing investor appoints; or

(b) the disputing investor's written consent for the Appointing Authority to appoint that arbitrator.

Article 22

Conditions and Limitations on Submission of a Claim

1. The submission of a dispute as provided for in Article 20 (Claim by an Investor of a Party) to conciliation or arbitration under Article 21.1(b) to (e) (Submission of a Claim) in accordance with this Section, shall be conditional upon:

(a) the submission of the investment dispute to such conciliation or arbitration taking place within three years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation referred to in Article 20(a) (Claim by an Investor of a Party) causing loss or damage to the disputing investor or a covered investment;

(b) the disputing investor providing written notice, which shall be submitted at least 90 days before the claim is submitted, to the disputing Party of its intent to submit the investment dispute to such conciliation or arbitration and which briefly summarises the alleged breach of the disputing Party (including the articles or provisions alleged to have been breached) and the loss or damage allegedly caused to the disputing investor or a covered investment; and

(c) the notice of arbitration being accompanied by the disputing investor's written waiver of its right to initiate or continue any proceedings before the courts or administrative tribunals of either Party, or other dispute settlement procedures, of any proceeding with respect to any measure alleged to constitute a breach referred to in Article 20 (Claim by an Investor of a Party).

2. Notwithstanding Paragraph 1(c), no Party shall prevent the disputing investor from initiating or continuing an action that seeks interim measures of protection for the sole purpose of preserving its rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute, before the courts or administrative tribunals of the disputing Party.

3. No Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which has been submitted to conciliation or arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this Paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

4. A disputing Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the disputing investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

Waiver

62 In accordance with Article 22.1(c) of the AANZFTA, the Claimant by this signed Arbitration Notice hereby provides a written waiver of its right to initiate or continue any proceedings before the courts or administrative tribunals of either Party, or other dispute settlement procedures, of any proceeding with respect to any measure alleged to constitute a breach referred to in Article 20 of the AANZFTA.

Site tour

63 The Claimant requests that the Tribunal and the Respondent's representatives join the Claimant's representatives on a site tour to inspect the Port of Cape Preston and the site of the Sino Iron Project and the Claimant's subsidiaries' tenements and iron ore deposits in the Pilbara region of Western Australia. The Claimant submits that such a site tour will be beneficial in demonstrating the size, scale and general nature of the projects that are at issue in this arbitration.

The Place of Arbitration

64 Pursuant to Article 3.3(g) of the UNCITRAL Arbitration Rules, the Claimant proposes Geneva, Switzerland, as the place of arbitration.

65 The Claimant proposes Geneva, Switzerland as the arbitration venue because the highly targeted and political nature of the actions taken by the Respondent make the "neutrality" of the place of arbitration vitally important. It is often argued that the reasons why an international forum for the settlement of investment disputes was established in the first place, included the need to provide (i) a neutral forum as an alternative to domestic courts that were perceived as inadequate, and (ii) a substitute to traditional State-to-State "politicized" mechanisms.[53] Switzerland has traditionally been one of the most favoured seats for international arbitration and that is due, inter alia, to the country's reputation for neutrality and stability.[54]

66 Switzerland's neutrality and stability are further evidenced by the fact that Geneva is one of just four cities (alongside New York, Nairobi and Vienna) listed under the 'Departments

[53] European Yearbook of International Economic Law, "Special Issue: Investor-State Dispute Settlement and National Courts", 2020, at p.10 (**Exh. CLA-81**).
[54] European Yearbook of International Economic Law, "Special Issue: Investor-State Dispute Settlement and National Courts", 2020, at p.vi (**Exh. CLA-81**).

/ Offices' section of the Main Bodies page of the United Nations website (see https://www.un.org/en/about-us/main-bodies). Furthermore, Geneva is the location of 56 United Nations organisations (see https://www.ungeneva.org/en/organizations). This is relevant to the appropriateness and neutrality of Geneva as the arbitration venue. UNCITRAL is a subsidiary body of the United Nations General Assembly, and the Claimant submits its Arbitration Notice pursuant to the UNCITRAL Arbitration Rules.

Governing Law

67 The governing law is contained in Article 27 of AANZFTA.

The Number of Arbitrators

68 Pursuant to Article 3.3(g) of the UNCITRAL Arbitration Rules, the Claimant proposes there be three (3) arbitrators.

The Language of Arbitration

69 Pursuant to Article 3.3(g) of the UNCITRAL Arbitration Rules, the Claimant proposes that the language of the arbitration shall be English.

70 This is appropriate because:

(a) English is one of the official languages of Singapore, where the Claimant is located (and which is a party to the AANZFTA);

(b) English is the de facto official language of New Zealand, where the parent company of the Claimant is located (and which is also a party to the AANZFTA);

(c) English is the de facto official language of Australia, where the Claimant's relevant investments were made and where the relevant subsidiaries of the Claimant are located (and which is also a party to the AANZFTA);

(d) all of the documents relevant to this arbitration are written in English; and

(e) the Claimant's representatives (and witnesses) and Respondent's representatives all

speak English.

VII. THE ARBITRAL TRIBUNAL

71 Article 23 of Chapter 11 of the AANZFTA provides for the constitution of the tribunal. It is in the following terms:

Article 23

Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators:

one arbitrator appointed by each of the disputing parties; and

the third arbitrator, who shall be the presiding arbitrator, appointed by agreement of the disputing parties, shall be a national of a non-Party which has diplomatic relations with the disputing Party and non-disputing Party, and shall not have permanent residence in either the disputing Party or non-disputing Party.

2. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules, and be independent of, and not be affiliated with or take instructions from the disputing Party, the non-disputing Party, or disputing investor.

3. The Appointing Authority shall serve as appointing authority for arbitration under this Article.

4. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Appointing Authority, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

5. The disputing parties may establish rules relating to expenses incurred by the tribunal, including arbitrators' remuneration.

6. Where any arbitrator appointed as provided for in this Article resigns or becomes unable to act, a successor shall be appointed in the

same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

72 Pursuant to Article 21.5(a) of the AANZFTA, and Article 9.1 of the UNCITRAL Arbitration Rules, the Claimant appoints William Kirtley of Aceris Law LLC as the arbitrator appointed by the Claimant. To the best of the Claimant's knowledge, William Kirtley is independent of the Parties involved in this arbitration. William Kirtley's contact details are as follows:

William Kirtley
Aceris Law LLC
[redacted]

73 The Claimant invites the Respondent's proposal for the Respondent's Co-Arbitrator.

74 In accordance with Article 22.1(c) of the AANZFTA, and pursuant to Article 6.1 of the UNCITRAL Arbitration Rules, the Claimant proposes the Secretary-General of the Permanent Court of Arbitration at The Hague to be the Appointing Authority. The Claimant hereby provides its written consent for the appointing authority to appoint Mr William Kirtley as arbitrator by execution of this Notice.

VIII. CLAIMANT'S DAMAGES

75 The Claimant's damages arising from the Respondent's violation of its legal obligations fall under several different heads. Details of the Claimant's damages claims are set out in **Annexures 7C** and **8C** to this Arbitration Notice, together with supporting evidence.

76 *First*, the Claimant is entitled to damages for breaches by the Respondent of Articles 6 and 9 of AANZFTA resulting from the 2020 Amendment Act which destroyed the valuable entitlement to arbitration including an assessment of damages, and the resultant loss of opportunity to obtain such damages, under the terms of the 2020 Arbitration Agreement.

Those damages fall under a number of different heads, detailed further below, the Claimant claims for the following sums (and interest thereon):

(a) US $7,768,000,000;
(b) US $8,190,000,000;
(c) US $233,700,000; and
(d) US $31,072,000,000.

77 *Secondly*, the Claimant is entitled to wasted costs and other costs of the 2020 Arbitration and the First and Second Arbitrations (defined in the Notice of Intent). Those damages are claimed at US $5,000,000.

78 *Thirdly*, the Claimant is entitled to moral damages, which are claimed at US $10,000,000,000.

79 *Fourthly*, the Claimant is entitled to further damages caused by sovereign risk visited upon the Claimant and its investments in Australia as a consequence of the enactment of the Amendment Act. Specifically, the Amendment Act created sovereign risk of a nature and scope which commercially destroyed the prospect of any further projects being developed under the State Agreement. It is the Claimant's position that, but for the enactment of the Amendment Act, the rights of its relevant subsidiaries under the State Act and the State Agreement would have continued to have some value for an additional period of 50 years from the Minister's initial decision in 2012 (or just over 40 years from the date of the Amendment Act). The Claimant has provided evidence that, in the first 10 years of operation of the State Agreement, the Claimant's subsidiaries had commercially dealt with four projects involving *inter alia* the investment of billions of dollars by Chinese Government owned companies, (i.e., the Sino Iron Project and the Korean Steel Project, the BSIOP and the Mineralogy Project). The Claimant's evidence demonstrates, on the balance of probabilities, that an additional four projects would have been able to be commercially exploited every ten years under the State Agreement but for the decision of the Minister (Mr Colin Barnett) to reject the BSIOP as a proposal in 2012 and create sovereign risk, which continued pending the hearing of the 2020 Arbitration. In addition, but for the enactment of the Amendment Act and its inevitable impact, including the creation of a new form of permanent sovereign risk, resulting in significant loss and damage. The damages created by the passing of the Amendment Act claimed under this

head of damage are quantified at US $124,288,000,000.[55]

80 *Fifthly*, the Claimant is entitled to further damages for additional loss and damage represented by the difference between (i) the net tax position if damages had been awarded to IM and Mineralogy in the 2020 Arbitration which was being conducted pursuant to the 2020 Arbitration Agreement; and (ii) the net tax position if equivalent damages are awarded to the Claimant in the present arbitration. Those damages are US $16,645,714,285.

81 Claimant's total claimed damages for all heads of damage are therefore US $198,202,414,285.

82 The Claimant also seeks interest and costs as referred to below.

IX. RELIEF SOUGHT

83 For the reasons set out in this Notice of Arbitration, the Claimant respectfully requests that the Arbitral Tribunal award the following relief:

i. A declaration that the arbitral tribunal has jurisdiction to consider the dispute described herein between the Parties;

ii. A declaration that Respondent violated its obligations by contravening Articles 6 and 9 of AANZFTA;

iii. A declaration that the Respondent has breached its obligations under Article 6 of Chapter 11 of the AANZFTA by failing to accord to the Claimant's covered investments fair and equitable treatment;

iv. A declaration that the Respondent has breached its obligations under Article 9 of Chapter 11 of the AANZFTA by expropriating the Claimant's investments without complying with the requirements of the AANZFTA;

v. An order that the Respondent pay to the Claimant the amount of damages that the Tribunal determines that Mr McHugh AC KC would have awarded in the 2020 Arbitration;

[55] [redacted] Statement, from para 438 (particularly para 453); Independent Expert Statement of [redacted].

vi. An order that the Respondent pay to the Claimant compensation for any loss suffered through taxation payments required to be made in the amounts in paragraph 80 above, that would not have been required to be paid under the 2020 Arbitration;

vii. An order that the Respondent pay to the Claimant damages in an amount to be determined by the Tribunal for its inability to develop further projects due to the sovereign risk associated with the State Agreement;

viii. An order that the Respondent pay to the Claimant damages for the expropriation of International Minerals Pty Limited (to the extent not already compensated above);

ix. In the alternative, an order that the Respondent pay to the Claimant damages for loss of contractual rights to pursue the 2020 Arbitration and to develop projects under the State Agreement;

x. An order that the Respondent pay to the Claimant moral damages;

xi. An order that the Respondent pay to the Claimant damages in an amount equivalent to any amount sought by the Respondent against the Claimant, its subsidiaries, directors and/or any other parties pursuant to or under any provision of the Amending Act (as amended from time to time), such damages to be paid to the Claimant upon the Respondent making any such claim from time to time against any of these parties;

xii. An order that the Respondent pay to the Claimant post-Award interest at a rate of 6%, compounded daily, calculated on any amounts awarded to the Claimant from the date of the Award until payment of the Award in full;

xiii. An order that the Respondent pay to the Claimant all costs and expenses of this arbitration proceeding, including without limitation, the Tribunal's fees and expenses, the Claimant's legal costs and expenses, in-house costs, witness costs, expert costs and any other costs incurred in the preparation and conduct of this arbitration including the fees and expenses of the Tribunal and the costs of legal representation, plus interest thereon;

xiv. Further or in the alternative, orders ordering Respondent to compensate the

Claimant for the damages claimed in the document entitled *"Schedule – Relief Sought by the Claimant"* which is annexed to and forms part of this Arbitration Notice (**Relief Schedule**), granting the other relief (including the claims for awards of interest and costs) set out in the Relief Schedule;

xv. An order that:

(a) the Respondent pays damages to the Claimant of an amount equivalent to any amount sought by the Respondent against the Claimant, its directors and /or any other parties pursuant to or under any provision of the Amendment Act as amended from time to time; and

(b) that such damages be paid to the Claimant upon the Respondent making any claim from time to time against any of the parties referred to in (a) above;

xvi. An order that immediately upon the occurrence of any of the following events, the Respondent shall be liable to pay to the Claimant forthwith an additional sum of liquidated damages, in an amount which is equivalent to the total sum of damages and interest awarded to the Claimant in this arbitration:

(a) If the Respondent's State of Western Australia (which includes any "State agent" or "State authority", as those terms are defined in the Amendment Act, and any other instrumentality of the State of Western Australia) takes any action in response to the registration, enforcement or satisfaction of this award, whether such action is taken pursuant to the terms of the Amending Act (as amended from time to time) or pursuant to any other law, regulation or other instrument, being any action which imposes, or seeks to impose, any indemnity, sanction, liability, charge or other burden or obligation upon the Claimant, Mineralogy Pty Ltd, International Minerals Pty Ltd, Clive Frederick Palmer or any other person, or which otherwise causes any detriment or potential detriment to the Claimant, Mineralogy Pty Ltd, International Minerals Pty Ltd, Clive Frederick Palmer or any other person; or

(b) If the Minister for State Development of the Respondent's State of Western Australia takes any action in response to the registration, enforcement or satisfaction of this award, whether such action is taken

pursuant to section 30 of the Amending Act (as amended from time to time) or pursuant to any other law, regulation or other instrument, being any action which imposes, or seeks to impose, any indemnity, sanction, liability, charge or other burden or obligation upon the Claimant, Mineralogy Pty Ltd, International Minerals Pty Ltd, Clive Frederick Palmer or any other person, or which otherwise causes any detriment or potential detriment to the Claimant, Mineralogy Pty Ltd, International Minerals Pty Ltd, Clive Frederick Palmer or any other person; or

(c) If the Respondent (including any Australian Commonwealth officer, employee, agent or instrumentality) takes any action in response to the registration, enforcement or satisfaction of this award, whether such action is taken pursuant to the terms of the Amending Act as amended from time to time (including, without limitation, by relying on any rights assigned to it by the State of Western Australia under the Amending Act) or pursuant to any other law, regulation or other instrument, being any action which imposes, or seeks to impose, any indemnity, sanction, liability, charge or other burden or obligation upon the Claimant, Mineralogy Pty Ltd, International Minerals Pty Ltd, Clive Frederick Palmer or any other person, or which otherwise causes any detriment or potential detriment to the Claimant, Mineralogy Pty Ltd, International Minerals Pty Ltd, Clive Frederick Palmer or any other person; and

xvii. An order the Respondent to pay all other arbitration costs, including without limitation the Claimant's representative's costs and expenses and the costs of the Tribunal.

84. For the avoidance of doubt, the Claimant reserves its right to:

i. raise any and all further claims arising out of or in connection with the disputed matters described in this Notice of Arbitration or otherwise arising between the Parties;

ii. amend and/or supplement the relief sought herein;

iii. produce such factual or legal arguments or evidence (including witness testimony, expert testimony and documents) as may be necessary to present its

case or rebut any case which may be put forward by Respondent; and

iv. seek interim and provisional measures before this arbitral tribunal or any competent national court.

Respectfully submitted,

Clive F Palmer
Claimant's Representative and Director 28 March 2023

Clive Palmer
Representative for Claimant
[redacted]
Telephone: [redacted]
Email: [redacted]
Date: 28 March 2023

SCHEDULE – RELIEF SOUGHT BY THE CLAIMANT

The Claimant seeks damages for breaches of Article 6 and Article 9 of AANZFTA, *inter alia* by reason of the enactment of the Amendment Act. This Schedule contains some further detail of the individual heads of damage claimed, including:

(a) The amounts that would have been awarded to the Claimant's subsidiaries by Mr McHugh AC KC on or about 12 February 2021 in the domestic arbitration being conducted under the 2020 Arbitration Agreement (before it was terminated upon the enactment of the Amendment Act on 13 August 2020).

(b) Damages that Mr McHugh AC KC would have awarded in the 2020 Arbitration created by Sovereign risk consequent upon the rejection of the BISOP by Colin Barnett in 2012.

(c) Damages created by Sovereign risk consequent upon the enactment of the Amendment Act.

By reason of the matters set out above, the Claimant seeks the following relief:

Damages that would have been awarded in the 2020 Arbitration

Damages for First Damages Claim – IM Claim

(a) An order that, on or before the date which is 30 days after the date on which this Award is made, the Respondent shall pay damages of US $7,768,000,000 to the Claimant which Mr McHugh AC KC would have awarded in the 2020 Arbitration but for the Amendment Act in relation to the Respondent's State of Western Australia's breach of the State Agreement referred to in sub-paragraph [2](a)(1) of the "Applicants' Amended Statement of Issues, Facts and Contentions" lodged in the 2020 Arbitration before the Hon. Michael McHugh AC KC on 28 May 2020[56] (**Amended Statement**).

Damages for First Damages Claim – Mineralogy Claims

(b) An order that, on or before the date which is 30 days after the date on which this Award is made, the Respondent shall pay damages of US $8,190,000,000 to the

[56] Applicants' Amended Statement of Issues, Facts and Contentions, 28/05/2020 (**Exh. C-170**).

Claimant that would have been awarded in the 2020 Arbitration but for the Amendment Act in relation to the Respondent's State of Western Australia's breach of the State Agreement referred to in sub-paragraph [2](a)(2) of the Amended Statement.

(c) An order that, on or before the date which is 30 days after the date on which this Award is made, the Respondent shall pay further damages of US $233,700,000 to the Claimant which would have been awarded in the 2020 Arbitration but for the Amendment Act in relation to the Respondent's State of Western Australia's breach of the State Agreement referred to in sub-paragraph [2](a)(2) of the Amended Statement.

(d) An order that on or before the date which is 30 days after the date on which this Award is made, the Respondent shall pay further damages of US $31,072,000,000 to the Claimant which would have been awarded in the 2020 Arbitration but for the Amendment Act in relation to the loss of opportunity to develop four additional projects in the period 2012 to 2022, by reason of sovereign risk created by the enactment of the Amendment Act, as referred to in the Witness Statement of [redacted].[57]

Interest on damages that would have been awarded in the 2020 Arbitration

Interest on First Damages Claim – IM Claim

(e) An order that the Respondent pay interest to the Claimant on the amount of US $7,768,000,000 referred to in paragraph (a) above at the rate of 6% per annum from 9 October 2012 until 12 February 2021.

(f) An order that the Respondent pay interest to the Claimant on the amount of US $7,768,000,000 referred to in paragraph (a) above at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from 14 March 2021[58] to the date of the award in this international arbitration.

[57] [redacted] Statement, paras 240-242.
[58] Being 30 days after the date on which Mr McHugh AC KC would have issued his award in the 2020 Arbitration (i.e. 12 February 2021).

Interest on First Damages Claim – Mineralogy Claim

(g) An order that the Respondent pay interest to the Claimant on the amount of US $233,700,000 referred to in paragraph (c) above at the rate of 6% per annum from 9 October 2012 until 12 February 2021.

(h) An order that the Respondent pay interest to the Claimant on the amount of US $233,700,000 referred to in paragraph (c) above at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from 14 March 2021 to the date of the award in this international arbitration.

Interest on debt under Award

Interest on First Damages Claim – IM Claim

(i) An order that, if the amount of US $7,768,000,000 referred to in paragraph (a) above, and any interest awarded on that amount, is not paid in full by the due date referred to in that paragraph, the Respondent shall pay interest to the Claimant on such part of the amount of US $7,768,000,000 and such interest accrued on that amount as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.

Interest on First Damages Claim – Mineralogy Claim

(j) An order that, if the amount of US $8,190,000,000 referred to in paragraph (b) above is not paid in full by the due date referred to in that paragraph, the Respondent pay interest to the Claimant on such part of the amount of US $8,190,000,000 as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.

(k) An order that, if the amount of US $233,700,000 referred to in paragraph (c) above, and any interest awarded on that amount, is not paid in full by the due date referred to in that paragraph, the Respondent pay interest to the Claimant on such part of the

amount of US $233,700,000 and such interest accrued on that amount as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.

(l) An order that, if the amount of US $31,072,000,000 referred to in paragraph (d) above, and any interest awarded on that amount, is not paid in full by the due date referred to in that paragraph, the Respondent pay interest to the Claimant on such part of the amount of US $233,700,000 and such interest accrued on that amount as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.

Costs of the 2020 Arbitration

(m) An order that on, or before the date which is 30 days after the date on which this Award is made, the Respondent shall pay a lump sum of US $5,000,000 to the Claimant in respect of wasted costs and other costs of the 2020 Arbitration.

(n) An order that, if the amount of US $5,000,000 referred to in paragraph (m) above is not paid in full by the due date referred to in that paragraph, the Respondent shall pay interest to the Claimant on such part of the amount of US $5,000,000 and such interest accrued on that amount as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.

Additional sovereign risk damages

(o) An order that on or before the date which is 30 days after the date on which this Award is made, the Respondent shall pay further damages of US $124,288,000,000 to the Claimant in relation to the loss of opportunity to develop a further 16 projects in the period 2022 to 2062, by reason of sovereign risk created by the enactment of the 2020 Amendment Act, as referred to in the evidence of [redacted] and the expert report of [redacted] lodged in this international arbitration.

Interest on additional sovereign risk damages

(p) An order that, if the amount of US $124,288,000,000 referred to in paragraph (o) above is not paid in full by the due date referred to in that paragraph, the Respondent shall pay interest to the Claimant on such part of the amount of US $124,288,000,000 as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.

Damages in relation to adverse tax treatment

(q) An order that on or before the date which is 30 days after the date on which this Award is made, the Respondent shall pay further damages of US $16,645,714,285 to the Claimant in relation to further damages for additional loss and damage represented by the difference between (i) the net tax position if damages had been awarded to International Minerals and Mineralogy in the 2020 Arbitration which was being conducted pursuant to the 2020 Arbitration Agreement; and (ii) the net tax position if equivalent damages are awarded to the Claimant in the present arbitration, as referred to in the evidence of [redacted] lodged in this international arbitration, such sum being comprised of:

1) US $3,329,142,857 in respect of the sum referred to in paragraph (a) above; and

2) US $13,316,571,428 in respect of the sum referred to in paragraph (d) above.

(r) An order that, if the amount of US $16,645,714,285 referred to in paragraph (q) above is not paid in full by the due date referred to in that paragraph, the Respondent shall pay interest to the Claimant on such part of the amount of US $16,645,714,285 as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.

Moral damages

(s) An order that on, or before the date which is 30 days after the date on which this Award is made, the Respondent shall pay further damages of US $10,000,000,000 to the Claimant by way of moral damages.

(t) An order that, if the amount of US $10,000,000,000 referred to in paragraph (s) above is not paid in full by the due date referred to in that paragraph, the Respondent shall pay interest to the Claimant on such part of the amount of US $10,000,000,000 as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.

Costs of this international arbitration

(u) An order that on, or before the date which is 30 days after the date on which this Award is made, the Respondent shall pay a lump sum as determined by the Tribunal to the Claimant in respect of the costs of this international arbitration.

(v) An order that, if the amount as determined by the Tribunal referred to in paragraph (u) above is not paid in full by the due date referred to in that paragraph, the Respondent shall pay interest to the Claimant on such part of the amount as determined by the Tribunal and such interest accrued on that amount as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.

Annexures submitted with the Notice of Arbitration

Annexure Number	Annexure
1C	Notice of Intent for Arbitration dated 20 October 2022 – Commences Box 1 – Finishes Box 1
2C	Witness Statement and Submissions of [redacted] dated 22 March 2022 – Commences Box 2 – Finishes Box 6
3C	Witness Statement of [redacted] dated 13 January 2023 – Box 6
4C	Amendment Act – Box 7
5C	Expert Witness Statement and Report of [redacted] dated 27 March 2023 and Report dated 27 March 2023 – Box 7
6C	Addendum – Legal Principles – Operation of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area – Box 7
7C	Addendum – Sovereign Risk / Loss of Opportunity (Chance) – Box 7
8C	Addendum – Claimant's Submissions on Damages – Box 7
9C	Claimant's Legal Authorities – Commences Box 7 – Finishes Box 10
10C	Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area – Box 10
11C	Draft Submissions for the 2020 Arbitration (unable to be used in 2020 due to the Amendment Act) – Box 10
12C	Witness Statement of [redacted] dated 13 February 2023 – Commences Box 11 – Finishes Box 27
13C	Witness Statement of [redacted] dated 14 February 2023 – Box 28
14C	Witness Statement of [redacted] dated 17 February 2023 – Box 29
15C	Witness Statement of [redacted] dated 14 February 2023 – Box 29
16C	Consultation Notice dated 14 October 2020 – Box 29
17C	Waiver dated 28 March 2023 and Consent dated 27 March 2023 – Box 29
18C	Legislative Assembly Hansard, Western Australia, 10 June 2014, pp 3585 – 3597 – Box 29
19C	Opinion of [redacted] – Box 29