

UNDER THE 2021 ARBITRATION RULES OF THE UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW

AND UNDER THE AGREEMENT ESTABLISHING THE ASEAN – AUSTRALIA – NEW
ZEALAND FREE TRADE AREA

PCA Case No. 2023-40

ZEPH INVESTMENTS PTE LTD

Claimant

and

THE COMMONWEALTH OF AUSTRALIA

Respondent

RESPONDENT'S STATEMENT OF COSTS

7 February 2025

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I. INTRODUCTION AND SUMMARY

1. The Commonwealth of Australia (**Australia** or **Respondent**) submits this Statement of Costs (**Costs Statement**) in accordance with paragraph 6 of the Tribunal's Procedural Order No. 6 (Post-Hearing Matters) dated 23 September 2024 (**PO6**). All capitalised terms used but not defined herein have the meaning ascribed in the Respondent's Statement on Preliminary Objections dated 22 January 2024 (**SOP0**) and Reply on Preliminary Objections dated 19 July 2024 (**ROPO**). All costs referenced herein are in Australian dollars (**AUD**).¹
2. As explained herein, the Respondent claims **AUD \$13,672,574.65** in costs incurred in relation to PCA Case No. 2023-40 (**Proceeding**), excluding interest. The Respondent incurred these costs in relation to the Proceeding (**Claimed Costs**) between 14 October 2020 (the date of the Claimant's Written Request for Consultations)² and 31 December 2024 (the "cut-off" date selected by the Respondent to allow for calculation and confirmation of the Claimed Costs) (**Costs Period**). The Claimed Costs were reasonably incurred by the Respondent in the course of responding to this unprecedented claim of more than AUD \$300 billion,³ particularly taking into account the Claimant's conduct in this Proceeding, which has materially increased the Respondent's costs.
3. As set out below, the Respondent's Claimed Costs (**AUD \$13,672,574.65**) consist of:
 - a. The costs of the arbitration, in terms of the Respondent's share of the advances on costs paid to the PCA for the Tribunal's fees and expenses, and the PCA's administration of this Proceeding, in the total amount of AUD \$769,390.55.
 - b. Legal and other costs incurred by the Respondent during the Costs Period, in the total amount of AUD \$11,182,757.76, including professional fees and disbursements of: (i) the Solicitor-General of Australia (**Solicitor-General**); (ii) counsel; (iii) expert and fact witnesses engaged by the Respondent for purposes of the Proceeding; (iv) employees of the Commonwealth of Australia's Attorney-General's Department (**AGD**) which includes the Office of International Law (**OIL**) and the Australian Government Solicitor (**AGS**); and (v) other reasonable costs and disbursements. These costs are further detailed in the Witness Statement of Mr Jesse Clarke dated 5 February 2025 (**Clarke Statement**). This amount does not include the Respondent's legal and other costs associated with the Claimant's application for interim measures dated 4 August 2023 (**IM Application**) (see below paragraph 3.d).
 - c. Legal and other costs incurred by the Western Australian Government (**WA Government**) during the Costs Period, in the total amount of AUD \$1,971,787.96, including professional fees and disbursements of the Western Australia State

¹ Where applicable, conversions to AUD are based on the exchange rates published by the Reserve Bank of Australia (**RBA**), available at <https://www.rba.gov.au/statistics/frequency/exchange-rates.html>.

² Letters from Volterra Fietta (on behalf of Claimant) to Respondent's Minister for Foreign Affairs dated 14 October 2020, **Exhs. C-148, R-147, and R-148** (request for consultations); see also AANZFTA, Chapter 11, **Exh. CLA-1**, Article 19 ("Consultations...[T]he disputing parties shall as far as possible resolve the dispute through consultation, with a view towards reaching an amicable settlement. Such consultations (...) shall be initiated by a written request for consultations (...)", before any claim is submitted).

³ Claimant's Amended Notice of Arbitration dated 30 September 2023 (**Amended NOA**), "Schedule of Relief Sought by Zeph" (claiming damages of US \$198,202,414,285, excluding interest and costs, which amounts to ~AUD \$318 billion, based on conversion rate as of 31 January 2025).

Solicitor's Office (**WASSO**). These costs, and the legal relationship between the WA Government and the Respondent in the context of this Proceeding, are further detailed in the Witness Statement of Ms Louise Seery dated 6 February 2025 (**Seery Statement**).⁴ This amount does not include the WA Government's legal and other costs associated with the IM Application (see below paragraph 3.d).

- d. Pursuant to paragraph 6 of PO6, the Respondent and the WA Government have separated out their costs associated with the IM Application, which was decided by the Tribunal's Procedural Order No. 2 dated 17 November 2023 (Claimant's Interim Measures Application) (**PO2**). These costs amount to AUD \$518,028.93.
4. For the avoidance of doubt, the Respondent confirms that none of the Claimed Costs include or contain costs incurred in responding to the other three ISDS proceedings brought by Zeph Investments Pte Ltd (**Zeph** or **Claimant**) against the Respondent.⁵
5. This Costs Statement is structured as follows: **Section II** briefly sets out the relevant legal framework and principles governing the allocation of costs in this Proceeding; **Section III** summarises the Claimed Costs, and demonstrates the reasonableness of the Claimed Costs, with further information provided in the Clarke and Seery Statements; **Section IV** sets out the Respondent's request for interest on the Claimed Costs; and **Section V** updates the Respondent's request for relief.
6. This Costs Statement is accompanied by the Clarke Statement, the Seery Statement, seven fact exhibits and one legal authority.⁶

II. RELEVANT LEGAL FRAMEWORK AND GENERAL PRINCIPLES

7. Article 25(4) of Chapter 11 of AANZFTA, headed "Conduct of the Arbitration", states:

*The tribunal may, if warranted, award the prevailing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manifestly without merit, and shall provide the disputing parties a reasonable opportunity to comment.*⁷

8. Article 28(2) of Chapter 11 of AANZFTA is headed "Awards", and states: "A tribunal may also award costs and attorney's fees in accordance with this Section [B – Investment Disputes between a Party and an Investor] and the applicable arbitration rules."
9. The UNCITRAL Rules (2021) include the following provisions on costs:

Article 40 – Definition of costs

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

⁴ See also Clarke Statement, paras. 20-22 (addressing relationship between Respondent and WA Government for purposes of this Proceeding). For convenience, references herein to costs incurred by "the Respondent" include costs incurred by both the Respondent and the WA Government, as detailed in the Clarke and Seery Statements.

⁵ PCA Case Nos. 2023-40, 2023-67, 2024-23 and 2024-48.

⁶ In accordance with Procedural Order No. 1 dated 1 September 2023 (**PO1**), the Respondent's fact exhibits begin at **Exh. R-874** and the Respondent's legal authorities begin at **Exh. RLA-171**.

⁷ AANZFTA, Chapter 11 Art. 25(4), **Exh. CLA-1**.

2. The term “costs” includes only:

(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;

(b) The reasonable travel and other expenses incurred by the arbitrators;

(c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;

(d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA....

Article 41 – Fees and expenses of arbitrators

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case....

Article 42 – Allocation of costs

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

10. Pursuant to these provisions, the general principle in relation to allocation of costs is that “costs follow the event”, *i.e.*, the costs of the arbitration shall be borne by the unsuccessful party, subject to the Tribunal’s discretion to apportion the costs if it determines that apportionment is reasonable, taking into account the circumstances of the case. In this context, the Respondent respectfully submits that:

- a. If the Respondent prevails in one or more of its preliminary objections to jurisdiction and admissibility, then the Tribunal should award the Respondent its Claimed Costs in full, in the Tribunal’s decision/award on preliminary objections (**PO Ruling**) because: (i) this is consistent with the “costs follow the event” principle; (ii) all of the Respondent’s preliminary objections are serious and substantial, and none is “frivolous or manifestly without merit”, as referenced in Article 25(4) of Chapter 11 of AANZFTA; (iii) each of the Respondent’s preliminary objections is discrete but arises from some common factual issues, such as the nature and alleged purpose of the Mineralogy Group Restructure and the Claimant’s alleged business operations in Singapore, which required similar factual inquiries and underlying work for each objection; and (iv) the Claimant’s conduct in this Proceeding has substantially increased the costs incurred by the Respondent (and the Tribunal and the PCA), as detailed below in **Section III**.
- b. If the Tribunal dismisses the Respondent’s preliminary objections in the PO Ruling, then the Tribunal should not award the Claimant its costs; to the contrary, the

Tribunal should award the Respondent a substantial part of its Claimed Costs (and, at a minimum, the costs associated with the Claimant's unsuccessful IM Application), because: (i) the Claimant's extraordinary damages claim of more than AUD \$300 billion required the Respondent to divert significant public resources to respond to this claim; (ii) all of the Respondent's preliminary objections are serious and substantial and none is "frivolous or manifestly without merit"; and (iii) the Claimant's conduct in this Proceeding has substantially increased the costs incurred by the Respondent (and the Tribunal and the PCA), as detailed below in **Section b**.

III. RESPONDENT'S CLAIMED COSTS

A. Summary of Claimed Costs

11. The Respondent's Claimed Costs are explained in detail in the Clarke and Seery Statements, which should be read together with this Costs Statement and are an integral part hereof. For present purposes, the Respondent's Claimed Costs are set out in the following table for each category identified in PO6 and the UNCITRAL Rules:

Category	Claimed Costs (AUD)
<i>Tribunal fees, travel costs and other expenses</i>	
Respondent's Share of Advances to PCA	\$769,390.55
<i>Legal and other costs (excluding costs associated with IM Application)</i>	
Solicitor-General Professional Fees	\$249,066.56
Counsel Professional Fees ⁸	\$2,180,708.16
Expert and Fact Witnesses' Fees	\$3,138,197.03
AGD Professional Fees	\$4,460,384.62
Travel and Related Costs	\$294,183.17
Other Reasonable Disbursements	\$90,827.67
WA Government Costs	\$1,971,787.96
Sub-total excluding IM Application Costs	\$13,154,545.72
<i>Costs associated with IM Application</i>	
Solicitor-General Professional Fees	\$42,083.32
Counsel Professional Fees	\$107,820.40
AGD Professional Fees	\$347,855.21
WA Government Costs	\$20,270.00
Sub-total for IM Application Costs	\$518,028.93
TOTAL AMOUNT OF CLAIMED COSTS (Including IM Application Costs)	\$13,672,574.65

B. Reasonableness of Claimed Costs

12. The Respondent confirms that the Claimed Costs are reasonable for the following inter-related reasons.
13. **First**, the Respondent's Claimed Costs of approximately AUD \$13.7 million are *prima facie* reasonable when considered in the context of the Claimant's extraordinary and unprecedented damages claim of more than AUD \$300 billion (excluding interest and

⁸ This includes the professional fees of a Swiss law firm, Lalive, engaged to provide advice on certain Swiss law issues raised by the Claimant in its written submissions. See Clarke Statement, para. 32.

costs).⁹ As the Respondent noted at the Jurisdictional and Admissibility Hearing in The Hague in September 2024 (**Hearing**), the sheer magnitude of the damages claimed makes this case of great significance to Australia and has required the Respondent to divert significant resources towards defending the claim – and even a AUD \$300 billion claim with a weak jurisdictional and admissibility foundation must be taken seriously.¹⁰

14. **Second**, the Claimant has consistently filed unnecessarily long, repetitive and exaggerated submissions in this Proceeding, including: (a) the original Notice of Arbitration dated 28 March 2023 (**Original NOA**), together with 29 boxes of exhibits, equating to ~50,000 pages/ 469 fact exhibits and 93 legal authorities, seven witness statements and expert reports; (b) the Defence to the Statement on Preliminary Objections dated 14 March 2024 (**SODPO**) - 303 pages, together with 80 fact exhibits, 72 legal authorities, and three witness statements and expert reports; (c) the Objections to the Respondent's Redfern Schedule (392 pages), and Schedule A to these Objections (179 pages) dated 29 April 2024; and (d) the Rejoinder to the Statement of Preliminary Objections dated 14 August 2024 (**RejPO**) - 321 pages, together with 25 fact exhibits, 41 legal authorities, and five witness statements and expert reports. The Respondent was required to review and respond to all these submissions.
15. **Third**, the Claimant has constantly "changed its story", raising and then abandoning various factual and legal contentions, and providing inconsistent and unspecified accounts on numerous issues central to jurisdiction and admissibility, including: (a) the alleged rationales for, and the urgency or otherwise of, the Mineralogy Group Restructure, such as the alleged "taxation rationale";¹¹ (b) the alleged reasons for the incorporation of Mineralogy International Ltd (**MIL**) on 14 December 2018 in New Zealand, such as the alleged "lithium rationale";¹² and (c) the purported rationale, nature and extent of the Claimant's alleged business operations in Singapore.¹³ The Respondent was required to review and respond to all of the Claimant's evolving narratives, often with input from independent experts, in order to identify, articulate and pursue its preliminary objections.
16. **Fourth**, the Claimant has regularly adopted unreasonable and unsustainable positions on various procedural issues throughout this Proceeding, and often performed numerous *volte-faces* **after** putting the Respondent to the expense of opposing the Claimant's positions. For example (in broad chronological order):
 - a. The Claimant improperly retained Mr Christian Porter, the former Attorney-General of Australia (the "First Law Officer" of Australia)¹⁴ from 2017 to 2021, originally as part of the Claimant's counsel team, and then provided a witness statement from

⁹ See above footnote 3.

¹⁰ Hearing on Jurisdiction and Admissibility Transcript (**Hearing Transcript**), Day 1, p. 7, lines 13-24 (Respondent's Opening Statement).

¹¹ Hearing Transcript, Day 1, p. 103, line 20 to p. 108, line 4 (Respondent's Opening Statement). Contrast First Witness Statement of Mr Clive Frederick Palmer dated 22 March 2023 (Annexure 2C to Amended NoA), paras. 128, 130 with the Claimant's Rejoinder on the Respondent's Reply on Preliminary Objections dated 14 August 2024 (**RejPO**), paras. 513, 713.

¹² Hearing Transcript, Day 1, p. 108, line 3 to p. 109, line 3 (Respondent's Opening Statement); Hearing Transcript, Day 2, p. 109, lines 8-16, p. 114, lines 4-11 (Cross-Examination of Mr. Palmer); Claimant's RejPO, paras. 478-487 and sources cited therein.

¹³ Hearing Transcript, Day 1, p. 69, line 17 to p. 73, line 3 (Respondent's Opening Statement); Hearing Transcript, Day 3, p. 56, line 10 to p. 57 line 1, p. 72, lines 3 to 25 (Respondent's Closing Statement); Hearing Transcript Day 3, p. 152, line 2 to p.155, line 5 (Claimant's Closing Statement).

¹⁴ See PO2, para. 51.

Mr Porter in support of the IM Application.¹⁵ This created risks of disclosure of confidential and privileged information, as recognised by the Tribunal in PO2.¹⁶ The Claimant initially refused to disengage Mr Porter as part of its counsel team, but eventually agreed to do so.¹⁷ Resolving this issue required multiple rounds of unnecessary correspondence between and among the Parties, the Tribunal, and Mr Porter, and the Tribunal noted that the Respondent's "cautious approach" was "justifie[d]".¹⁸

- b. The Claimant filed the Amended NOA purportedly pursuant to PO1, refused to provide a redline indicating the changes to the Original NOA, and then belatedly provided a redline confirming substantive changes to the Original NOA only *after* the Respondent raised the issue with the Tribunal.¹⁹ Resolving this issue required multiple rounds of unnecessary correspondence between and among the Parties and the Tribunal.
- c. The Claimant unsuccessfully applied for interim measures, and unsuccessfully applied for expedited determination of the IM Application, which required multiple rounds of written submissions from the Parties, together with an online hearing before the Tribunal.²⁰ As the Tribunal will recall, it ultimately denied the IM Application in PO2, and reserved its position on associated costs.²¹ As requested by the Tribunal in PO6, the Respondent's costs associated with the IM Application amounted to AUD \$518,028.93. To confirm, these costs are included in the Respondent's total Claimed Costs set out above in paragraph 2.
- d. The Claimant repeatedly proposed broad and unfounded designations of Protected Information (PI) in the Parties' written submissions and the Tribunal's procedural orders, purportedly pursuant to Procedural Order No. 3 (Transparency/Confidentiality) dated 19 January 2024, as updated on 14 February 2024 (PO3), only to withdraw almost all these designations *after* putting the Respondent to the expense of demonstrating that almost all the relevant information was already in the public domain and thus not protected from disclosure pursuant to PO3 (for example, the names of the Claimant's representatives in this Proceeding, and Mr Palmer's role in

¹⁵ See PO2, para. 47(i) (Mr Porter "was previously part of the Claimant's counsel team and now acts as a witness"); Witness Statement of Charles Christian Porter dated 21 July 2023 (relied on for IM Application).

¹⁶ See generally PO2, paras. 47(i), 49-53.

¹⁷ See Letter from the Claimant to President of Tribunal dated 15 June 2023 ("We ... wish to advise that The Honourable Christian Porter is no longer a Party Assisting Zeph ..."); Letter from Claimant to PCA dated 15 June 2023 ("We ... wish to advise that The Honourable Christian Porter is no longer a Party Assisting Zeph Investments Pte Ltd. You may remove his details from any future correspondence.").

¹⁸ See PO2, paras. 49-51 and sources cited therein, para. 52(ii) ("The potential detriment to the Respondent, should the Claimant access the confidential and privileged information at issue [in relation to Mr. Porter], justifies the Respondent's cautious approach.").

¹⁹ See, e.g., Letters from Respondent to Tribunal dated 13 and 31 October 2023; Letters from Claimant to Tribunal dated 26, 30 and 31 October 2023; Email from Tribunal to Parties dated 1 November 2023 ("It is the practice in international arbitration and in line with the UNCITRAL Rules, PO1, and due process more generally, that submissions are not amended once filed, exceptions only being made for possible clerical mistakes that can be corrected afterwards if necessary. Substantive amendments, on the other hand, are not allowed as a matter of principle, except in special circumstances and with leave of the Tribunal.").

²⁰ See generally PO2, paras. 1-5 and sources cited therein.

²¹ See PO2, para. 68 (denying IM Application except for request relating to confidentiality, which was deferred until establishment of transparency regime; Claimant did not raise any further issues regarding confidentiality in context of interim measures, after PO2 and PO3 were issued).

relation to the Claimant and the Mineralogy Group).²² Resolving this issue required multiple rounds of unnecessary correspondence between and among the Parties and the Tribunal.

- e. The Claimant repeatedly, and unsuccessfully, asked the Tribunal to set the timetable for the merits phase of the Proceeding in parallel with the jurisdiction/ admissibility phase, and to conduct a site visit, before the Tribunal issued the PO Ruling, which was obviously not cost- or time-efficient.²³ Resolving this issue required multiple rounds of unnecessary correspondence between and among the Parties and the Tribunal.
- f. The Claimant took the extraordinary decision, one month before the Hearing, to withdraw the fact and expert witness statements/reports of Mr Alberto Migliucci, Mr Nui Harris, Mr Domenic Martino and Mr Graham Sorensen (together, **Withdrawn Witnesses**) – *after* the Respondent confirmed its intention to call all these witnesses for cross-examination at the Hearing.²⁴ Before the Claimant withdrew these statements, the Respondent had: (i) finalised its written submissions and tendered extensive responsive fact and independent expert witness evidence responding to the assertions made by the Withdrawn Witnesses; (ii) collected and submitted fact exhibits for potential use in cross-examination of the Withdrawn Witnesses at the Hearing; and (iii) begun preparing cross-examination outlines for the Withdrawn Witnesses.²⁵ The Tribunal will recall that at the pre-hearing conference, the

²² See, e.g., Letters from Claimant to Tribunal dated 16 February 2024 (Claimant's Proposed PI in Amended NOA, TOA and SOPO), 15 April 2024 (Claimant's Proposed PI in SODPO), 24 June 2024 (Claimant's proposed PI in PO4 (Document Production), 19 August 2024 (Claimant's proposed PI in ROPO), 12 September 2024 (Claimant's proposed PI in RejPO); Letters from Respondent to Tribunal dated 18 March 2024, 15 May 2024, 24 July 2024, 18 September 2024, 14 October 2024 (contesting Claimant's designations of PI); compared with the final agreed redactions to Amended NOA, Terms Of Appointment, SOPO, SODPO, ROPO, and RejPO attached to Parties' Joint Letters of 22 May 2024 and 8 August 2024 (PO4), 17 October 2024 (ROPO) and 1 November 2024 (RejPO) (showing that Claimant's extensive PI designations were *not* included in the final agreed redactions).

²³ See, e.g., SODPO, para 683(e); Letters from Claimant to Tribunal dated 6 July 2023, 28 March 2024, 10 July 2024; Claimant's Submissions on Site Visit dated 10 July 2023, 3 August 2023; Letters from Respondent to Tribunal dated 26 June 2023, 21 March 2024, 26 July 2024, Respondent's Submissions on Site Visit dated 10 August 2023, paras. 40-45; Email from Tribunal to Parties dated 26 March 2024 (denying Claimant's request: "The Claimant has provided no compelling reason for the Tribunal to change course in the middle of the preliminary phase and revise the Procedural Calendar."); Letter from Tribunal to Parties dated 2 August 2024 (denying Claimant's application: "the Claimant has not demonstrated any other relevant and material change in circumstances since the Tribunal's March 2024 Directions to justify such reconsideration... The Tribunal's decision on the costs of the Application is also reserved.").

²⁴ See, e.g., Letter from Claimant to Tribunal dated 21 August 2024; PO5, paras. 1, 3, 6. See also Hearing Transcript, Day 1, p. 16, line 6 to p. 17, line 17 (Respondent's Opening Statement) (addressing significant consequences of this strategic decision for purposes of jurisdiction and admissibility).

²⁵ See, e.g., Letter from Respondent to Tribunal dated 19 August 2024; SOPO, paras. 335(e)-(g), 337, 340-342; ROPO, paras. 189, 191, 206 and accompanying footnotes; Lys Report, paras. 45, 531-533, 548, 550-552, 556, 570, 591, 598-602; Supplementary Lys Report, paras. 170, 233-235, 287; Rogers Report, paras. G.4.1.1-G.8.1.3; Rogers Supplementary Report, paras. G.2.2.1-G.2.3.1.3, H.1.3.1-H.1.3.2, H.2.4.1, H.3.1.1-H.3.4.1; Cooper Report, paras. 15, 22, 50, 54.

Respondent reserved its right to seek all costs associated with the Withdrawn Witnesses.²⁶ The Respondent now seeks to recover all these costs.²⁷

17. **Fifth**, the Respondent and the WA Government have written-off a number of costs incurred in connection with this Proceeding (**Written-Off Costs**), to ensure the overall reasonableness of the Claimed Costs, and consistent with the conservative approach taken to the Claimed Costs. As explained in the Clarke and Seery Statements, these Written-Off Costs amount to more than AUD \$900,000, which includes, for example, the significant time invested by employees of the Respondent's Department of Foreign Affairs and Trade and Department of Treasury providing input on and/or responding to the Claimant's document production requests, and in relation to the Proceeding more broadly.²⁸
18. **Sixth**, and finally, the Respondent and the WA Government have adopted a conservative approach to the categorisation and quantification of Claimed Costs, and to the management of costs throughout this Proceeding, to ensure that they are reasonable in all the circumstances, as explained in detail in the Clarke and Seery Statements.²⁹ As Mr Clarke confirms:

*As part of my role as General Counsel at OIL, I am responsible for ensuring that the Respondent conducts this Proceeding as cost-effectively as reasonably practicable. Based on my 24 years' experience as a legal practitioner, including participating in and managing complex domestic and international disputes, I am satisfied that the Respondent has taken the necessary steps throughout the Proceeding to ensure cost-efficiency while also vigorously pursuing its preliminary objections.*³⁰

19. For these reasons, the Respondent submits that the Claimed Costs are reasonable and that the Tribunal should allocate and award the Claimed Costs to the Respondent in full, in the PO Ruling.

²⁶ Pre-Hearing Conference Transcript, 23 August 2024, p. 43, lines 6-13 ("...reserve our rights in relation to the fact of the withdrawal of the witness evidence just so far as concerns costs...").

²⁷ See also PO1, para. 6.8 ("Each Party shall be responsible for the practical arrangements, costs, and **availability** of the witnesses and experts it offers. The Tribunal will decide upon the appropriate allocation of such costs in the final award.") (emphasis added).

²⁸ See generally Clarke Statement, paras. 51-52; Seery Statement, para. 38.

²⁹ See generally Clarke Statement, para. 5.a; Seery Statement, para. 3.

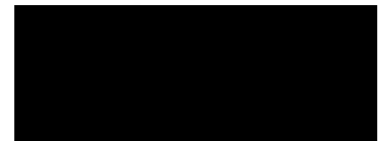
³⁰ Clarke Statement, para. 3.

IV. INTEREST ON CLAIMED COSTS

20. If the Tribunal awards Respondent all or part of the Claimed Costs, the Respondent respectfully asks the Tribunal also to award post-PO-Ruling interest on the Claimed Costs.³¹
21. The Respondent seeks interest calculated on a compound basis, at quarterly intervals, commencing from 30 days after the date of the PO Ruling (to allow time for payment by the Claimant) until the date of payment in full. The Respondent submits that the appropriate rate of interest is the Australian “cash rate” as set by the Reserve Bank of Australia, which is 4.35% as of 31 January 2025.³²

V. RESPONDENT’S UPDATED REQUEST FOR RELIEF

22. For these reasons, and for the reasons set out in the Respondent’s earlier written submissions,³³ the Respondent respectfully asks the Tribunal to:
- a. declare that the claims submitted by Zeph are outside the Tribunal’s jurisdiction and/or inadmissible;
 - b. dismiss Zeph’s claims in their entirety; and
 - c. order that Zeph bear the costs of the Proceeding, including Australia’s costs of legal representation and assistance, pursuant to Article 42 of the UNCITRAL Rules, in the total amount of **AUD \$13,672,574.65**, plus interest on these costs, with interest calculated on a compound basis, at quarterly intervals, at the rate of 4.35%, to commence from 30 days after the date of the PO Ruling until the date of payment in full.



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³¹ See, e.g., *Antonio del Valle Ruiz & Ors. v Kingdom of Spain* (PCA Case No. 2019-17, Final Award of 13 March 2023), paras. 797 (“The Tribunal considers that, in order to account for the time value of money, the Claimants should pay interest on the costs awarded. Recent investment treaty tribunals have also awarded interest on costs.”), 798 (“...the Tribunal considers that the interest on costs awarded shall be computed at a reasonable rate used in the financial markets, for which it uses the 3-month EURIBOR, compounded annually, and being specified that interest shall start to run 30 days after the issuance of this award.”), **Exh. RLA-28**; *Magyar Farming Company Ltd & Ors. v Hungary* (ICSID Case No. ARB/17/27, Award of 13 November 2019), paras. 440, 441 (interest on claimant’s costs “at the rate of 6-month EURIBOR +2% compounded semi-annually, from the date of this Award”), **Exh. RLA-171**, available at <https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C6587/DS13092_En.pdf> (accessed 4 February 2025). For completeness, the Respondent confirms that it adopts the conservative approach of not seeking *pre*-PO-Ruling interest on the Claimed Costs (from the date the relevant cost was incurred through to the date of the PO Ruling), although such interest would technically be appropriate to reflect the time value of money.

³² See RBA website, <<https://www.rba.gov.au/cash-rate-target-overview.html>> (accessed 4 February 2025; effective rate as of 11 December 2024, next update due on 18 February 2025) (“The cash rate is the interest rate that [Australian] banks pay to borrow funds from other banks in the money market overnight. It influences all other [Australian] interest rates, including mortgage and deposit rates.”).

³³ See SOPO, para. 354; ROPO, para. 270 (Requests for relief).

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