

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

Contents

1.	Short title	2
2.	Commencement	2
3.	Act amended	2
4.	Part 1 heading inserted	2
	Part 1 — Preliminary	
5.	Part 2 heading inserted	2
	Part 2 — Ratification	
6.	Section 3 amended	2
7.	Part 3 inserted	3
	Part 3 — Provisions relating to Balmoral South Iron Ore Project and certain other matters	
	Division 1 — Preliminary provisions	
7.	Terms used	3
8.	Other preliminary provisions	17
	Division 2 — Main provisions	
	Subdivision 1 — Disputed matters	
9.	Proposals for Balmoral South Iron Ore Project	18
10.	Relevant arbitrations and awards	19
11.	State to have no liability connected with disputed matters	20
12.	No appeal or review in respect of disputed matters	23
13.	Documents	25
14.	Indemnity by Mineralogy, International Minerals, Mr Palmer and relevant transferees	27
15.	Further indemnity	32
16.	Matters relating to Commonwealth	34
17.	Further provisions about liability of State	37

Contents

Subdivision 2 — Protected matters		
18.	Protected matters not to have certain effects and related provisions	38
19.	State to have no liability connected with protected matters	41
20.	No appeal or review or criminal liability in respect of protected matters	43
21.	Documents	45
22.	Indemnity by Mineralogy, International Minerals, Mr Palmer and relevant transferees	48
23.	Further indemnity	53
24.	Matters relating to Commonwealth	55
25.	Further provisions about liability of State	57
Subdivision 3 — Interaction between provisions of Subdivisions 1 and 2		
26.	Interaction	58
Division 3 — Other provisions		
Subdivision 1 — Further provisions about liability and indemnity		
27.	Consideration of proposals	59
28.	Indemnity for State authorities and State agents	60
Subdivision 2 — Subsidiary legislation		
29.	Regulations	62
30.	Orders	62
31.	Supplementary provision	64
8.	Schedule 1 amended	64
9.	Schedule 2 amended	64

Western Australia

LEGISLATIVE ASSEMBLY

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

A Bill for

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

The Parliament of Western Australia enacts as follows:

1 **7. Part 3 inserted**

2 After section 6 insert:
3

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

6 **Division 1 — Preliminary provisions**

7 **7. Terms used**

8 (1) In this Part —

9 ***adjudicator*** means any of the following —

- 10 (a) a court;
11 (b) a tribunal;
12 (c) an arbitrator;

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

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

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

23 ***arbitration agreement*** means —

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

s. 7

- 1 **arrangement** includes (without limitation) the
2 following —
- 3 (a) the Agreement;
- 4 (b) a relevant arbitration arrangement or relevant
5 mediation arrangement;
- 6 (c) any other contract, deed, agreement or other
7 instrument;
- 8 (d) an understanding;
- 9 (e) a part of an arrangement (including a part of an
10 agreement or other thing referred to in any of
11 paragraphs (a) to (d));
- 12 **Balmoral South Iron Ore Project** means the project
13 known as the “Balmoral South Iron Ore Project” as
14 proposed or described from time to time;
- 15 **civil wrong** includes (without limitation) the
16 following —
- 17 (a) a tort;
- 18 (b) a breach of trust;
- 19 (c) a breach of confidence;
- 20 (d) a breach of a duty in equity;
- 21 (e) a breach of a written law;
- 22 (f) maladministration, misconduct or any other
23 conduct that, under an Act or law, could be the
24 subject of an adverse report, adverse finding,
25 penalty or other sanction of a disciplinary,
26 regulatory or other civil type;
- 27 **commencement** means the coming into operation of
28 section 7 of the amending Act;
- 29 **conduct** includes (without limitation) the following —
- 30 (a) a decision or purported decision;
- 31 (b) an omission, or purported omission, to make a
32 decision;

- 1 (c) any other act or omission or purported act or
2 omission;
- 3 (d) without limiting paragraphs (a) to (c) —
- 4 (i) behaviour;
- 5 (ii) the consideration of a matter or thing, or
6 an omission to consider a matter or
7 thing;
- 8 (iii) the taking into account of, or an
9 omission to take into account, the
10 interests of a particular person;
- 11 (iv) the knowing, or the believing or
12 suspecting (rightly or wrongly), of
13 something;
- 14 (v) the commission of a civil wrong;
- 15 (vi) a breach of an arrangement;
- 16 ***connected with*** —
- 17 (a) means directly or indirectly, and wholly or
18 partly —
- 19 (i) in anticipation of; or
- 20 (ii) preparatory to; or
- 21 (iii) relating to; or
- 22 (iv) caused by; or
- 23 (v) arising out of; or
- 24 (vi) resulting from; or
- 25 (vii) in consequence of; or
- 26 (viii) contributed to by; or
- 27 (ix) connected with in any other way;
- 28 and
- 29 (b) has the extended meaning given in
30 subsection (3);

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

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

14 **first Balmoral South proposal** means —

- 15 (a) the Project Proponents' proposals titled
16 "Balmoral South Iron Ore Project; Project
17 Proposal for the Western Australian
18 Government" submitted, or purportedly
19 submitted, under clause 6 of the Agreement on
20 or around 8 August 2012; and
- 21 (b) the addendum to those proposals titled
22 "Balmoral South Iron Ore Project; Project
23 Proposal addendum for the Western Australian
24 Government" submitted, or purportedly
25 submitted, under clause 6 of the Agreement on
26 or around 22 August 2012;

27 **indemnify** includes (without limitation) hold harmless;

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

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

s. 7

- 1 **legal costs** means costs or expenses connected with
2 bringing, making or beginning, or defending or
3 responding to, or otherwise participating in,
4 proceedings or purported proceedings;
- 5 **liability**, except in the definition of **non-WA liability** in
6 this subsection —
- 7 (a) means a liability, obligation or duty (whether
8 actual, contingent, prospective or otherwise and
9 whether incurred alone or jointly or jointly and
10 severally or otherwise) arising —
- 11 (i) in contract or tort; or
12 (ii) under the law of restitution; or
13 (iii) in equity; or
14 (iv) under a written law; or
15 (v) under an order, award, ruling, finding or
16 declaration made by an adjudicator; or
17 (vi) under a direction or other requirement
18 (however described) made by a body or
19 person appointed under a written law or
20 under an arrangement; or
21 (vii) on any other basis;
- 22 and
- 23 (b) includes (without limiting paragraph (a)) a
24 liability, obligation or duty of the type
25 described in paragraph (a) (whether liquidated
26 or unliquidated) to pay any of the following —
- 27 (i) damages;
28 (ii) compensation;
29 (iii) a debt;
30 (iv) an amount by way of restitution;
31 (v) interest;
32 (vi) legal costs;

- 1 (vii) any other type of amount;
2 and
3 (c) includes (without limiting paragraphs (a)
4 and (b)) a non-WA liability;
- 5 **loss** —
- 6 (a) means any loss, harm, damage, cost or expense
7 (whether economic, non-economic or otherwise
8 and whether actual, contingent, prospective or
9 otherwise); and
- 10 (b) includes (without limiting paragraph (a)) the
11 following —
- 12 (i) loss, harm or damage to reputation;
13 (ii) wasted cost or expense;
14 (iii) loss of value of rights or other assets
15 (including loss of value to nil);
16 (iv) loss of royalties or other income or
17 profit;
18 (v) loss of funding or revenue;
19 (vi) loss of opportunity;
- 20 **Mineralogy** means Mineralogy Pty Ltd
21 (ACN 010 582 680);
- 22 **Mr Palmer** —
- 23 (a) means the individual who, on 10 August 2020,
24 is named Clive Frederick Palmer and is a
25 director of Mineralogy; and
- 26 (b) includes any executor, administrator or trustee
27 of the estate of the individual referred to in
28 paragraph (a);
- 29 **non-WA liability** —
- 30 (a) means a liability, obligation or duty (whether
31 actual, contingent, prospective or otherwise and

s. 7

- 1 whether incurred alone or jointly or jointly and
2 severally or otherwise) arising on any basis —
- 3 (i) under the law of the Commonwealth,
4 another State or a Territory; or
- 5 (ii) under the law of a country or territory,
6 or of a part of a country or territory,
7 outside Australia; or
- 8 (iii) under international law (including an
9 international treaty or other agreement
10 or instrument); or
- 11 (iv) otherwise outside Western Australia;
- 12 and
- 13 (b) includes (without limiting paragraph (a)) a
14 liability, obligation or duty of the type
15 described in paragraph (a) that corresponds to,
16 or is substantially the same as, or is similar to, a
17 liability, obligation or duty of a type described
18 in the definition of *liability* in this subsection;
- 19 ***non-WA proceedings*** means anything that corresponds
20 to, or is substantially the same as, or is similar to, any
21 proceedings as defined in this subsection and that takes
22 place or occurs —
- 23 (a) under the law of the Commonwealth, another
24 State or a Territory; or
- 25 (b) under the law of a country or territory, or of a
26 part of a country or territory, outside Australia;
27 or
- 28 (c) under international law (including an
29 international treaty or other agreement or
30 instrument); or
- 31 (d) outside Western Australia on any other basis;
- 32 ***Part 3 subsidiary legislation*** means regulations under
33 section 29 or an order under section 30;

- 1 ***pre-agreement State conduct*** means any conduct of the
2 State, or of a State agent —
- 3 (a) occurring or arising before the making of the
4 agreement, a copy of which is set out in
5 Schedule 1, and connected with the making of
6 that agreement; or
- 7 (b) occurring or arising before the making of the
8 agreement, a copy of which is set out in
9 Schedule 2, and connected with the making of
10 that agreement;
- 11 ***proceedings*** —
- 12 (a) means any of the following —
- 13 (i) an action, suit, complaint, arbitration or
14 other proceedings brought or made
15 before or to an adjudicator or before or
16 to any other body or person appointed
17 under a written law or under an
18 arrangement;
- 19 (ii) an application, claim, counterclaim or
20 demand (however described) brought or
21 made before or to an adjudicator or
22 before or to any other body or person
23 appointed under a written law or under
24 an arrangement;
- 25 (iii) to the extent not covered by
26 subparagraphs (i) and (ii), a
27 disciplinary, regulatory or other civil
28 investigation, inquiry or proceedings
29 under an Act or law;
- 30 (iv) a complaint or allegation (however
31 described) that leads to, or is capable of
32 leading to, an investigation, inquiry or
33 proceedings referred to in
34 subparagraph (iii);

s. 7

- 1 and
- 2 (b) includes (without limiting paragraph (a))
- 3 proceedings (as defined in paragraph (a))
- 4 connected with any of the following —
- 5 (i) establishing, quantifying or enforcing a
- 6 liability;
- 7 (ii) seeking a remedy by way of injunction,
- 8 declaration, prohibition, mandamus or
- 9 certiorari or seeking a remedy having
- 10 the same effect as any of those remedies
- 11 or otherwise seeking judicial review of
- 12 any conduct;
- 13 (iii) seeking discovery, provision,
- 14 production, inspection or disclosure of a
- 15 document or other thing;
- 16 (iv) seeking recognition or enforcement of
- 17 an arbitral award;
- 18 (v) seeking any other type of remedy, relief,
- 19 order, direction, award, ruling or finding
- 20 (whether interim or permanent and
- 21 whether procedural or substantive);
- 22 and
- 23 (c) includes (without limiting paragraphs (a)
- 24 and (b)) non-WA proceedings; and
- 25 (d) includes (without limiting paragraphs (a) to (c))
- 26 proceedings (as defined in paragraphs (a) to (c))
- 27 brought, made or begun as part of, or otherwise
- 28 in the course of, other proceedings (as so
- 29 defined);
- 30 ***Project Proponents*** means Mineralogy and
- 31 International Minerals;

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

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

s. 7

- 1 (k) any of the following connected with a protected
2 matter referred to in any of paragraphs (a)
3 to (j) —
4 (i) any explanation, advice, consultation,
5 discussion, communication,
6 announcement, disclosure or statement;
7 (ii) any omission to explain, advise, consult,
8 discuss or communicate or to make an
9 announcement, disclosure or statement;
10 (iii) any other conduct;
11 (l) any matter or thing connected with a protected
12 matter referred to in any of paragraphs (a)
13 to (k);

14 **relevant arbitration** means an arbitration —

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

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

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

28 **second Balmoral South proposal** means the Project
29 Proponents' proposals titled "Balmoral South Iron Ore
30 Project; Project Proposal for the Western Australian
31 Government" submitted, or purportedly submitted,
32 under clause 6 of the Agreement on or around
33 21 June 2013;

1 **State** includes (without limitation) the following —

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

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

9 **State authority** means any of the following —

- 10 (a) the Governor;
11 (b) a Minister of the Crown in right of the State;
12 (c) a department of the Public Service;
13 (d) an agency, authority, instrumentality or other
14 body (whether or not a body corporate)
15 established or continued for a public purpose —
16 (i) under a written law; or
17 (ii) otherwise by the State;
18 (e) to the extent not covered by paragraph (d), a
19 government trading enterprise as defined in the
20 *Infrastructure Western Australia Act 2019*
21 section 3;
22 (f) a person holding, or exercising the powers of,
23 an office established or continued for a public
24 purpose —
25 (i) under a written law; or
26 (ii) otherwise by the State;
27 (g) a ministerial officer, or any other employee, as
28 those terms are defined in the *Public Sector*
29 *Management Act 1994* section 3(1);
30 (h) a member, officer or employee of a State
31 authority referred to in any of paragraphs (d) to
32 (f);

s. 7

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

- 1 (v) seeking any other type of remedy, relief,
2 order, direction, award, ruling or finding
3 (whether interim or permanent and
4 whether procedural or substantive) that
5 would be against, or unfavourable to,
6 the State or otherwise require the State
7 to do, or not to do, anything;
- 8 (b) a disciplinary, regulatory or other civil
9 investigation, inquiry or proceedings under an
10 Act or law being brought, made or begun in
11 relation to any conduct of the State.
- 12 (5) In applying subsection (4) for the purposes of
13 section 11 or 19, references in that subsection to the
14 State are to be read in accordance with section 11(9) or
15 19(8) (as the case requires).
- 16 (6) To avoid doubt, references in this Part to conduct of the
17 State, or of a State agent, include conduct of a State
18 authority or State agent (as the case requires) even
19 though —
- 20 (a) the State authority or State agent subsequently
21 ceases to exist; or
- 22 (b) the person who is the State authority or State
23 agent subsequently ceases to be a State
24 authority or State agent.

25 **8. Other preliminary provisions**

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

s. 7

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

Division 2 — Main provisions

Subdivision 1 — Disputed matters

9. Proposals for Balmoral South Iron Ore Project

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

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

9 **10. Relevant arbitrations and awards**

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

s. 7

- 1 jurisdiction to make, authorise or otherwise allow the
2 making of that arbitral award.
- 3 (6) The arbitral award made in a relevant arbitration and
4 dated 11 October 2019 is of no effect and is taken
5 never to have had any effect.
- 6 (7) The arbitration agreement applicable to that relevant
7 arbitration, and under which that arbitral award is
8 made, is not valid, and is taken never to have been
9 valid, to the extent that, apart from this subsection, the
10 arbitration agreement would underpin, confer
11 jurisdiction to make, authorise or otherwise allow the
12 making of that arbitral award.
- 13 **11. State to have no liability connected with disputed**
14 **matters**
- 15 (1) On and after commencement, the State has, and can
16 have, no liability to any person that is or would be —
- 17 (a) in respect of any loss, or other matter or thing,
18 that is the subject of a claim, order, finding or
19 declaration made against the State in a relevant
20 arbitration; or
- 21 (b) in respect of any other loss, or other matter or
22 thing, that is, or is connected with, a disputed
23 matter (whether the loss, or other matter or
24 thing, occurs or arises before, on or after
25 commencement); or
- 26 (c) in any other way connected with a disputed
27 matter.
- 28 (2) Any liability of the type described in subsection (1)
29 that the State has to any person before commencement
30 is extinguished.

- 1 (3) On and after commencement, no proceedings can be
2 brought, made or begun against the State to the extent
3 that the proceedings are or would be —
- 4 (a) for the purpose of establishing, quantifying or
5 enforcing a liability of the type described in
6 subsection (1); or
- 7 (b) otherwise —
- 8 (i) in respect of any loss, or other matter or
9 thing, that is the subject of a claim,
10 order, finding or declaration made
11 against the State in a relevant
12 arbitration; or
- 13 (ii) in respect of any other loss, or other
14 matter or thing, that is, or is connected
15 with, a disputed matter (whether the
16 loss, or other matter or thing, occurs or
17 arises before, on or after
18 commencement); or
- 19 (iii) in any other way connected with a
20 disputed matter.
- 21 (4) Any proceedings brought, made or begun against the
22 State, to the extent that they are of the type described in
23 subsection (3), are terminated if either or both of the
24 following apply —
- 25 (a) the proceedings are brought, made or begun
26 before commencement but are not completed
27 before commencement;
- 28 (b) the proceedings are brought, made or begun
29 before the end of the day on which the
30 amending Act receives the Royal Assent but are
31 not completed before the end of that day.
- 32 (5) Subsection (6) applies to any proceedings, to the extent
33 that they are of the type described in subsection (3), if
34 the proceedings are —

s. 7

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

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

8 **12. No appeal or review in respect of disputed matters**

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

s. 7

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

-
- 1 (b) a person who is a former State agent, if the
2 proceedings in question are, or would be,
3 connected with —
4 (i) the person’s conduct while and as a
5 State agent; or
6 (ii) otherwise the person’s role while and as
7 a State agent.

8 **13. Documents**

- 9 (1) The *Freedom of Information Act 1992* Parts 2 and 4 do
10 not apply to a document connected with a disputed
11 matter.
- 12 (2) An application under the *Freedom of Information*
13 *Act 1992* section 11 for access to a document
14 connected with a disputed matter is extinguished if
15 either or both of the following apply —
16 (a) the application is made before commencement
17 but no notice under section 13(1)(b) of that Act
18 is given before commencement;
19 (b) the application is made at or after introduction
20 time.
- 21 (3) Without limiting section 8(1), subsections (1) and (2)
22 have effect despite any provision of the *Freedom of*
23 *Information Act 1992*.
- 24 (4) On and after commencement, no proceedings can be
25 brought, made or begun to the extent that the
26 proceedings are connected with seeking, by or from the
27 State, discovery, provision, production, inspection or
28 disclosure of any document or other thing connected
29 with a disputed matter.

s. 7

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

- 1 (i) the person's conduct while and as a
2 State authority; or
3 (ii) otherwise the person's role while and as
4 a State authority;
5 (b) a State agent;
6 (c) a person who is a former State agent, if the
7 proceedings in question are, or would be,
8 connected with —
9 (i) the person's conduct while and as a
10 State agent; or
11 (ii) otherwise the person's role while and as
12 a State agent.

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

- 15 (1) In this section —
16 *loss* includes (without limiting the definition of that
17 term in section 7(1)) a loss of, or reduction in, revenue
18 or funding that would otherwise have been received by
19 the State from the Commonwealth;
20 *non-WA right* —
21 (a) means a right, entitlement or interest (whether
22 legal or beneficial or otherwise and whether
23 actual, contingent, prospective or otherwise and
24 whether held alone or jointly or jointly and
25 severally or otherwise) arising on any basis —
26 (i) under the law of the Commonwealth,
27 another State or a Territory; or
28 (ii) under the law of a country or territory,
29 or of a part of a country or territory,
30 outside Australia; or
31 (iii) under international law (including an
32 international treaty or other agreement
33 or instrument); or

s. 7

- 1 (iv) otherwise outside Western Australia;
2 and
3 (b) includes (without limiting paragraph (a)) a
4 right, entitlement or interest of the type
5 described in paragraph (a) that corresponds to,
6 or is substantially the same as, or is similar to, a
7 right, entitlement or interest of a type described
8 in paragraph (b) of the definition of **right** in this
9 subsection;
- 10 **protected proceedings** means proceedings brought,
11 made or begun, or purportedly brought, made or begun,
12 and connected with a disputed matter;
- 13 **relevant person** — see subsection (2);
- 14 **relevant transferee** — see subsection (3);
- 15 **right**, except in the definition of **non-WA right** in this
16 subsection —
- 17 (a) means a right, entitlement or interest (whether
18 legal or beneficial or otherwise and whether
19 actual, contingent, prospective or otherwise and
20 whether held alone or jointly or jointly and
21 severally or otherwise) arising on any basis;
22 and
- 23 (b) includes (without limiting paragraph (a)) a
24 right, entitlement or interest of the type
25 described in paragraph (a) arising —
- 26 (i) in contract or tort; or
27 (ii) under the law of restitution; or
28 (iii) under a trust or otherwise in equity; or
29 (iv) under a written law; or
30 (v) under an order, award, ruling, finding or
31 declaration made by an adjudicator; or

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

5 and

6 (c) includes (without limiting paragraphs (a)
7 and (b)) a non-WA right; and

8 (d) includes a part or share of a right, entitlement
9 or interest of a type described in paragraphs (a)
10 to (c);

11 **State** includes the following —

12 (a) a person who is a former State authority, if the
13 proceedings, liability or loss in question are, or
14 would be, connected with —

15 (i) the person's conduct while and as a
16 State authority; or

17 (ii) otherwise the person's role while and as
18 a State authority;

19 (b) a State agent;

20 (c) a person who is a former State agent, if the
21 proceedings, liability or loss in question are, or
22 would be, connected with —

23 (i) the person's conduct while and as a
24 State agent; or

25 (ii) otherwise the person's role while and as
26 a State agent;

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

30 (2) For the purposes of this section, each of the following
31 persons is a **relevant person** —

32 (a) Mineralogy;

s. 7

- 1 (b) International Minerals;
2 (c) Mr Palmer;
3 (d) every relevant transferee;
4 (e) every former relevant transferee.
- 5 (3) For the purposes of this section, a person (*person A*) is
6 a *relevant transferee* if —
- 7 (a) person A has a right in, or in respect of —
8 (i) any protected proceedings or the subject
9 matter of any protected proceedings; or
10 (ii) any liability of the State connected with
11 a disputed matter or the subject matter
12 of such a liability;
- 13 and
- 14 (b) that right was (before, on or after
15 commencement) —
- 16 (i) transferred to person A from a relevant
17 person; or
18 (ii) created in favour of person A out of a
19 right held by a relevant person.
- 20 (4) Every relevant person must indemnify, and must keep
21 indemnified, the State against the following —
- 22 (a) any protected proceedings;
23 (b) any loss, or liability to any person, connected
24 with a disputed matter;
25 (c) without limiting paragraphs (a) and (b) —
26 (i) any legal costs of the State connected
27 with any protected proceedings;
28 (ii) any liability of the State to pay any legal
29 costs of any person connected with any
30 protected proceedings;

- 1 (iii) any loss connected with a stated
2 intention of, or a threat by, any person
3 to bring, make or begin protected
4 proceedings.
- 5 (5) The liability of the relevant persons to indemnify the
6 State under subsection (4) is joint and several.
- 7 (6) However, the joint and several liability of a relevant
8 person, other than Mineralogy, International Minerals
9 or Mr Palmer, is limited to indemnifying the State
10 against —
- 11 (a) any protected proceedings in which or in the
12 subject matter of which, or in respect of which
13 or of the subject matter of which, the relevant
14 person has, or had, a right that the relevant
15 person acquired as described in
16 subsection (3)(b); or
- 17 (b) any liability of the State connected with a
18 disputed matter in which or in the subject
19 matter of which, or in respect of which or of the
20 subject matter of which, the relevant person
21 has, or had, a right that the relevant person
22 acquired as described in subsection (3)(b).
- 23 (7) The State may (without limitation) enforce the
24 indemnity under subsection (4) —
- 25 (a) even if the State has not made any payment, or
26 done anything else, to meet, perform or address
27 the proceedings, liability or loss in question;
28 and
- 29 (b) by setting off the liability of the relevant
30 persons under the indemnity against any
31 liability that the State has to 1 or more of them.

s. 7

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

18 **15. Further indemnity**

- 19 (1) In this section —
- 20 *protected proceedings* has the meaning given in
21 section 14(1);
- 22 *relevant person* —
- 23 (a) in relation to any protected proceedings, means
24 any person who has, or has had, a right in, or in
25 respect of, the protected proceedings or their
26 subject matter; and
- 27 (b) in relation to a liability of the State connected
28 with a disputed matter, means any person who
29 has, or has had, a right in, or in respect of, the
30 liability or its subject matter;
- 31 *right* has the meaning given in section 14(1);
- 32 *State* has the meaning given in section 14(1).

- 1 (2) Every relevant person in relation to any protected
2 proceedings must indemnify, and must keep
3 indemnified, the State against —
- 4 (a) the protected proceedings; and
5 (b) without limiting paragraph (a) —
- 6 (i) any legal costs of the State connected
7 with the protected proceedings; and
8 (ii) any liability of the State to pay any legal
9 costs of any person connected with the
10 protected proceedings.
- 11 (3) Every relevant person in relation to a liability of the
12 State connected with a disputed matter must indemnify,
13 and must keep indemnified, the State against the
14 liability.
- 15 (4) If there is more than 1 relevant person, the liability of
16 the relevant persons to indemnify the State under
17 subsection (2) or (3) is joint and several.
- 18 (5) The State may (without limitation) enforce the
19 indemnity under subsection (2) or (3) —
- 20 (a) even if the State has not made any payment, or
21 done anything else, to meet, perform or address
22 the proceedings or liability in question; and
23 (b) by setting off the liability of the relevant
24 persons under the indemnity against any
25 liability that the State has to 1 or more of them.
- 26 (6) The protected proceedings covered by the indemnity
27 under subsection (2) include (without limitation) the
28 following —
- 29 (a) protected proceedings that are brought, made or
30 brought, or purportedly brought, made or begun,
31 before commencement;

s. 7

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

14 **16. Matters relating to Commonwealth**

- 15 (1) In this section —
- 16 **Commonwealth** includes (without limitation) the
17 following —
- 18 (a) the Crown in right of the Commonwealth;
19 (b) the Government of the Commonwealth;
20 (c) a Commonwealth authority;
21 (d) a Commonwealth agent;
22 (e) a person who is a former Commonwealth
23 authority or Commonwealth agent if the
24 proceedings, liability or loss in question is
25 connected with —
- 26 (i) the person's conduct while and as a
27 Commonwealth authority or
28 Commonwealth agent; or
29 (ii) otherwise the person's role as a
30 Commonwealth authority or
31 Commonwealth agent;

- 1 **Commonwealth agent** means an agent, representative,
2 advisor or contractor of the Commonwealth (but, to
3 avoid doubt, does not include a party to the Agreement
4 or Mr Palmer);
- 5 **Commonwealth authority** means any of the
6 following —
- 7 (a) the Governor-General of the Commonwealth;
 - 8 (b) a Minister of the Crown in right of the
9 Commonwealth;
 - 10 (c) a department of the Government of the
11 Commonwealth;
 - 12 (d) an agency, authority, instrumentality or other
13 body (whether or not a body corporate)
14 established or continued for a public purpose —
 - 15 (i) under a law of the Commonwealth; or
 - 16 (ii) otherwise by the Commonwealth;
 - 17 (e) a person holding, or exercising the powers of,
18 an office established or continued for a public
19 purpose —
 - 20 (i) under a law of the Commonwealth; or
 - 21 (ii) otherwise by the Commonwealth;
 - 22 (f) a staffer, member, officer or employee of a
23 Commonwealth authority referred to in
24 paragraphs (a) to (e);
 - 25 (g) a person who is appointed to any office or other
26 position under a law of the Commonwealth, or
27 otherwise by the Commonwealth, for a public
28 purpose and who is not covered by
29 paragraphs (a) to (f);
- 30 **indemnity** means an indemnity under section 14(4) or
31 15(2) or (3).

s. 7

- 1 (2) Subsection (3) applies if —
- 2 (a) proceedings are brought, made or begun against
- 3 the Commonwealth or the Commonwealth
- 4 incurs a liability to any person or a loss; and
- 5 (b) the proceedings, liability or loss are connected
- 6 with a disputed matter.
- 7 (3) Without limiting the scope of any indemnity —
- 8 (a) each indemnity applies as if the proceedings
- 9 were brought, made or begun against the State
- 10 or the liability or loss were incurred by the
- 11 State; and
- 12 (b) the State may enforce each indemnity
- 13 accordingly.
- 14 (4) To avoid doubt —
- 15 (a) nothing in subsection (3) makes the State liable
- 16 to indemnify the Commonwealth against the
- 17 proceedings, liability or loss nor otherwise
- 18 affects any liability of the State to the
- 19 Commonwealth; and
- 20 (b) subsection (3) applies even if the State has no
- 21 liability to indemnify the Commonwealth
- 22 against the proceedings, liability or loss.
- 23 (5) The State may assign to the Commonwealth —
- 24 (a) the State’s right to receive a particular amount
- 25 owed to the State under an indemnity (whether
- 26 by virtue of this section or otherwise); or
- 27 (b) any other right the State has under or connected
- 28 with an indemnity (whether by virtue of this
- 29 section or otherwise).

1 **17. Further provisions about liability of State**

- 2 (1) This section applies to a liability of the State (whether
3 arising before, on or after commencement) connected
4 with a disputed matter.
- 5 (2) No amount can be charged to, or paid out of, the
6 Consolidated Account to meet the liability.
- 7 (3) No amount can be borrowed by or on behalf of the
8 Crown in right of the State to meet the liability.
- 9 (4) No asset, right or entitlement of the State can be taken
10 or used by any person to enforce the liability.
- 11 (5) No execution or other process in the nature of
12 execution can be issued out of any court against the
13 State in relation to the liability.
- 14 (6) In subsections (1), (4) and (5), references to the State
15 include the following —
- 16 (a) a person who is a former State authority, if the
17 liability is connected with —
- 18 (i) the person's conduct while and as a
19 State authority; or
- 20 (ii) otherwise the person's role as a State
21 authority;
- 22 (b) a State agent;
- 23 (c) a person who is a former State agent, if the
24 liability is connected with —
- 25 (i) the person's conduct while and as a
26 State agent; or
- 27 (ii) otherwise the person's role as a State
28 agent.

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Subdivision 2 — Protected matters

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

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

- 1 (2) If a protected matter has an effect described in
2 subsection (1)(a) to (i) at a time (the *relevant time*)
3 before commencement —
- 4 (a) subsection (1) applies as if that subsection were
5 in force at the relevant time; and
- 6 (b) accordingly, the protected matter is taken never
7 to have had the effect.
- 8 (3) In subsections (1) and (2), references to a protected
9 matter include the following —
- 10 (a) a protected matter combined with another
11 matter or thing;
- 12 (b) a matter or thing connected with a protected
13 matter.
- 14 (4) In subsection (1), references to the State include the
15 following —
- 16 (a) a person who is a former State authority, if the
17 effect of the protected matter would be
18 connected with —
- 19 (i) the person's conduct while and as a
20 State authority; or
- 21 (ii) otherwise the person's role while and as
22 a State authority;
- 23 (b) a State agent;
- 24 (c) a person who is a former State agent, if the
25 effect of the protected matter would be
26 connected with —
- 27 (i) the person's conduct while and as a
28 State agent; or
- 29 (ii) otherwise the person's role while and as
30 a State agent.

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- 1 (5) No document or other thing, and no oral testimony,
2 connected with a protected matter is admissible in
3 evidence, or can otherwise be relied upon or used, in
4 any proceedings in a way that is against, or against the
5 interests of, any of the following —
6 (a) the State;
7 (b) a person who is a former State authority, if the
8 proceedings are connected with —
9 (i) the person’s conduct while and as a
10 State authority; or
11 (ii) otherwise the person’s role while and as
12 a State authority;
13 (c) a State agent;
14 (d) a person who is a former State agent, if the
15 proceedings are connected with —
16 (i) the person’s conduct while and as a
17 State agent; or
18 (ii) otherwise the person’s role while and as
19 a State agent.
- 20 (6) No document or other thing connected with a protected
21 matter can be required to be discovered, provided,
22 produced, made available for inspection or disclosed in
23 any proceedings or otherwise under a written law.
- 24 (7) No person is compellable, or can be required, in any
25 proceedings or otherwise under a written law, to do any
26 of the following (whether orally, in writing or in any
27 other way) —
28 (a) discover, provide, produce, make available for
29 inspection or disclose a document or other thing
30 connected with a protected matter;
31 (b) answer a question connected with a protected
32 matter;

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

8 **19. State to have no liability connected with protected**
9 **matters**

- 10 (1) On and after commencement, the State has, and can
11 have, no liability to any person that is or would be —
- 12 (a) in respect of any loss, or other matter or thing,
13 that is, or is connected with, a protected matter
14 (whether the loss, or other matter or thing,
15 occurs or arises before, on or after
16 commencement); or
- 17 (b) in any other way connected with a protected
18 matter.
- 19 (2) Any liability of the type described in subsection (1)
20 that the State has to any person before commencement
21 is extinguished.
- 22 (3) On and after commencement, no proceedings can be
23 brought, made or begun against the State to the extent
24 that the proceedings are or would be —
- 25 (a) for the purpose of establishing, quantifying or
26 enforcing a liability of the type described in
27 subsection (1); or
- 28 (b) otherwise —
- 29 (i) in respect of any loss, or other matter or
30 thing, that is, or is connected with, a
31 protected matter (whether the loss, or

-
- 1 (8) In this section, references to the State include the
2 following —
- 3 (a) a person who is a former State authority, if the
4 liability or proceedings in question are, or
5 would be, connected with —
- 6 (i) the person’s conduct while and as a
7 State authority; or
- 8 (ii) otherwise the person’s role while and as
9 a State authority;
- 10 (b) a State agent;
- 11 (c) a person who is a former State agent, if the
12 liability or proceedings in question are, or
13 would be, connected with —
- 14 (i) the person’s conduct while and as a
15 State agent; or
- 16 (ii) otherwise the person’s role while and as
17 a State agent.

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

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

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

- 1 (7) A person cannot seek payment from the State for any
2 legal costs connected with any proceedings to which
3 subsection (4) or (6) applies, and the State has no
4 liability, and is taken never to have had any liability,
5 for any of a person's legal costs connected with the
6 proceedings.
- 7 (8) Any conduct of the State that occurs or arises before,
8 on or after commencement, and that is, or is connected
9 with, a protected matter does not constitute an offence
10 and is taken never to have constituted an offence.
- 11 (9) In this section, references to the State include a State
12 agent.
- 13 (10) In subsections (6) and (7), references to the State also
14 include the following —
- 15 (a) a person who is a former State authority, if the
16 proceedings in question are, or would be,
17 connected with —
- 18 (i) the person's conduct while and as a
19 State authority; or
- 20 (ii) otherwise the person's role while and as
21 a State authority;
- 22 (b) a person who is a former State agent, if the
23 proceedings in question are, or would be,
24 connected with —
- 25 (i) the person's conduct while and as a
26 State agent; or
- 27 (ii) otherwise the person's role while and as
28 a State agent.

29 **21. Documents**

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

s. 7

- 1 (2) An application under the *Freedom of Information*
2 *Act 1992* section 11 for access to a document
3 connected with a protected matter is extinguished if
4 either or both of the following apply —
- 5 (a) the application is made before commencement
6 but no notice under section 13(1)(b) of that Act
7 is given before commencement;
- 8 (b) the application is made at or after introduction
9 time.
- 10 (3) Without limiting section 8(1), subsections (1) and (2)
11 have effect despite any provision of the *Freedom of*
12 *Information Act 1992*.
- 13 (4) On and after commencement, no proceedings can be
14 brought, made or begun to the extent that the
15 proceedings are connected with seeking, by or from the
16 State, discovery, provision, production, inspection or
17 disclosure of any document or other thing connected
18 with a protected matter.
- 19 (5) Any proceedings, to the extent that they are of the type
20 described in subsection (4), are terminated if either or
21 both of the following apply —
- 22 (a) the proceedings are brought, made or begun
23 before commencement but are not completed
24 before commencement;
- 25 (b) the proceedings are brought, made or begun
26 before the end of the day on which the
27 amending Act receives the Royal Assent but are
28 not completed before the end of that day.
- 29 (6) Subsection (7) applies to any proceedings, to the extent
30 that they are of the type described in subsection (4), if
31 the proceedings are —
- 32 (a) brought, made or begun at or after introduction
33 time; and

- 1 (b) completed before the end of the day on which
2 the amending Act receives the Royal Assent.
- 3 (7) Any remedy, relief, order, direction, award or ruling
4 resulting from, or any other outcome of, the
5 proceedings is extinguished to the extent that it is
6 against, or unfavourable to, the State or otherwise
7 requires the State to do, or not to do, anything.
- 8 (8) A person cannot seek payment from the State for any
9 legal costs connected with any proceedings to which
10 subsection (5) or (7) applies, and the State has no
11 liability, and is taken never to have had any liability,
12 for any of a person's legal costs connected with the
13 proceedings.
- 14 (9) In this section, references to the State include the
15 following —
- 16 (a) a person who is a former State authority, if the
17 proceedings in question are, or would be,
18 connected with —
- 19 (i) the person's conduct while and as a
20 State authority; or
- 21 (ii) otherwise the person's role as a State
22 authority;
- 23 (b) a State agent;
- 24 (c) a person who is a former State agent, if the
25 proceedings in question are, or would be,
26 connected with —
- 27 (i) the person's conduct while and as a
28 State agent; or
- 29 (ii) otherwise the person's role as a State
30 agent.

s. 7

- 1 **22. Indemnity by Mineralogy, International Minerals,**
2 **Mr Palmer and relevant transferees**
- 3 (1) In this section —
- 4 **loss** includes (without limiting the definition of that
5 term in section 7(1)) a loss of, or reduction in, revenue
6 or funding that would otherwise have been received by
7 the State from the Commonwealth;
- 8 **non-WA right** —
- 9 (a) means a right, entitlement or interest (whether
10 legal or beneficial or otherwise and whether
11 actual, contingent, prospective or otherwise and
12 whether held alone or jointly or jointly and
13 severally or otherwise) arising on any basis —
- 14 (i) under the law of the Commonwealth,
15 another State or a Territory; or
- 16 (ii) under the law of a country or territory,
17 or of a part of a country or territory,
18 outside Australia; or
- 19 (iii) under international law (including an
20 international treaty or other agreement
21 or instrument); or
- 22 (iv) otherwise outside Western Australia;
- 23 and
- 24 (b) includes (without limiting paragraph (a)) a
25 right, entitlement or interest of the type
26 described in paragraph (a) that corresponds to,
27 or is substantially the same as, or is similar to, a
28 right, entitlement or interest of a type described
29 in paragraph (b) of the definition of **right** in this
30 subsection;
- 31 **protected proceedings** means proceedings brought,
32 made or begun, or purportedly brought, made or begun,
33 and connected with a protected matter;

- 1 **relevant person** — see subsection (2);
2 **relevant transferee** — see subsection (3);
3 **right**, except in the definition of **non-WA right** in this
4 subsection —
5 (a) means a right, entitlement or interest (whether
6 legal or beneficial or otherwise and whether
7 actual, contingent, prospective or otherwise and
8 whether held alone or jointly or jointly and
9 severally or otherwise) arising on any basis;
10 and
11 (b) includes (without limiting paragraph (a)) a
12 right, entitlement or interest of the type
13 described in paragraph (a) arising —
14 (i) in contract or tort; or
15 (ii) under the law of restitution; or
16 (iii) under a trust or otherwise in equity; or
17 (iv) under a written law; or
18 (v) under an order, award, ruling, finding or
19 declaration made by an adjudicator; or
20 (vi) under a direction or other requirement
21 (however described) made by a body or
22 person appointed under a written law or
23 under an arrangement;
24 and
25 (c) includes (without limiting paragraphs (a)
26 and (b)) a non-WA right; and
27 (d) includes a part or share of a right, entitlement
28 or interest of a type described in paragraphs (a)
29 to (c);
30 **State** includes the following —
31 (a) a person who is a former State authority, if the
32 proceedings, liability or loss in question are, or
33 would be, connected with —

s. 7

- 1 (i) the person's conduct while and as a
2 State authority; or
3 (ii) otherwise the person's role while and as
4 a State authority;
5 (b) a State agent;
6 (c) a person who is a former State agent, if the
7 proceedings, liability or loss in question are, or
8 would be, connected with —
9 (i) the person's conduct while and as a
10 State agent; or
11 (ii) otherwise the person's role while and as
12 a State agent;
- 13 **transfer**, in relation to a right, means assign, transmit,
14 vest or otherwise transfer the right, whether by
15 instrument, by operation of law or in any other way.
- 16 (2) For the purposes of this section, each of the following
17 persons is a **relevant person** —
18 (a) Mineralogy;
19 (b) International Minerals;
20 (c) Mr Palmer;
21 (d) every relevant transferee;
22 (e) every former relevant transferee.
- 23 (3) For the purposes of this section, a person (**person A**) is
24 a **relevant transferee** if —
25 (a) person A has a right in, or in respect of —
26 (i) any protected proceedings or the subject
27 matter of any protected proceedings; or
28 (ii) any liability of the State connected with
29 a protected matter or the subject matter
30 of such a liability;
31 and

- 1 (b) that right was (before, on or after
2 commencement) —
- 3 (i) transferred to person A from a relevant
4 person; or
- 5 (ii) created in favour of person A out of a
6 right held by a relevant person.
- 7 (4) Every relevant person must indemnify, and must keep
8 indemnified, the State against the following —
- 9 (a) any protected proceedings;
- 10 (b) any loss, or liability to any person, connected
11 with a protected matter;
- 12 (c) without limiting paragraphs (a) and (b) —
- 13 (i) any legal costs of the State connected
14 with any protected proceedings;
- 15 (ii) any liability of the State to pay any legal
16 costs of any person connected with any
17 protected proceedings;
- 18 (iii) any loss connected with a stated
19 intention of, or a threat by, any person
20 to bring, make or begin protected
21 proceedings.
- 22 (5) The liability of the relevant persons to indemnify the
23 State under subsection (4) is joint and several.
- 24 (6) However, the joint and several liability of a relevant
25 person, other than Mineralogy, International Minerals
26 or Mr Palmer, is limited to indemnifying the State
27 against —
- 28 (a) any protected proceedings in which or in the
29 subject matter of which, or in respect of which
30 or of the subject matter of which, the relevant
31 person has, or had, a right that the relevant
32 person acquired as described in
33 subsection (3)(b); or

s. 7

- 1 (b) any liability of the State connected with a
2 protected matter in which or in the subject
3 matter of which, or in respect of which or of the
4 subject matter of which, the relevant person
5 has, or had, a right that the relevant person
6 acquired as described in subsection (3)(b).
- 7 (7) The State may (without limitation) enforce the
8 indemnity under subsection (4) —
- 9 (a) even if the State has not made any payment, or
10 done anything else, to meet, perform or address
11 the proceedings, liability or loss in question;
12 and
- 13 (b) by setting off the liability of the relevant
14 persons under the indemnity against any
15 liability that the State has to 1 or more of them.
- 16 (8) The matters or things covered by the indemnity under
17 subsection (4) include (without limitation) the
18 following —
- 19 (a) protected proceedings that are brought, made or
20 begun, or purportedly brought, made or begun,
21 before commencement;
- 22 (b) liabilities or losses that arise or occur before
23 commencement;
- 24 (c) protected proceedings that are brought, made or
25 begun, or purportedly brought, made or begun,
26 by 1 or more relevant persons themselves;
- 27 (d) liabilities to 1 or more relevant persons
28 themselves.
- 29 (9) In relation to a liability of the type referred to in
30 subsection (8)(d), the State may enforce the indemnity
31 under subsection (4) by not paying, or otherwise
32 meeting or performing, the liability.

-
- 1 **23. Further indemnity**
- 2 (1) In this section —
- 3 *protected proceedings* has the meaning given in
- 4 section 22(1);
- 5 *relevant person* —
- 6 (a) in relation to any protected proceedings, means
- 7 any person who has, or has had, a right in, or in
- 8 respect of, the protected proceedings or their
- 9 subject matter; and
- 10 (b) in relation to a liability of the State connected
- 11 with a protected matter, means any person who
- 12 has, or has had, a right in, or in respect of, the
- 13 liability or its subject matter;
- 14 *right* has the meaning given in section 22(1);
- 15 *State* has the meaning given in section 22(1).
- 16 (2) Every relevant person in relation to any protected
- 17 proceedings must indemnify, and must keep
- 18 indemnified, the State against —
- 19 (a) the protected proceedings; and
- 20 (b) without limiting paragraph (a) —
- 21 (i) any legal costs of the State connected
- 22 with the protected proceedings; and
- 23 (ii) any liability of the State to pay any legal
- 24 costs of any person connected with the
- 25 protected proceedings.
- 26 (3) Every relevant person in relation to a liability of the
- 27 State connected with a protected matter must
- 28 indemnify, and must keep indemnified, the State
- 29 against the liability.

s. 7

- 1 (4) If there is more than 1 relevant person, the liability of
2 the relevant persons to indemnify the State under
3 subsection (2) or (3) is joint and several.
- 4 (5) The State may (without limitation) enforce the
5 indemnity under subsection (2) or (3) —
- 6 (a) even if the State has not made any payment, or
7 done anything else, to meet, perform or address
8 the proceedings or liability in question; and
- 9 (b) by setting off the liability of the relevant
10 persons under the indemnity against any
11 liability that the State has to 1 or more of them.
- 12 (6) The protected proceedings covered by the indemnity
13 under subsection (2) include (without limitation) the
14 following —
- 15 (a) protected proceedings that are brought, made or
16 begun, or purportedly brought, made or begun,
17 before commencement;
- 18 (b) protected proceedings that are brought, made or
19 begun, or purportedly brought, made or begun,
20 by 1 or more relevant persons themselves.
- 21 (7) The liabilities covered by the indemnity under
22 subsection (3) include (without limitation) the
23 following —
- 24 (a) liabilities that arise before commencement;
- 25 (b) liabilities to 1 or more relevant persons
26 themselves.
- 27 (8) In relation to a liability of the type referred to in
28 subsection (7)(b), the State may enforce the indemnity
29 under subsection (3) by not paying, or otherwise
30 meeting or performing, the liability.

1 **24. Matters relating to Commonwealth**

2 (1) In this section —

3 **Commonwealth** includes (without limitation) the
4 following —

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

- 13 (i) the person's conduct while and as a
14 Commonwealth authority or
15 Commonwealth agent; or
- 16 (ii) otherwise the person's role as a
17 Commonwealth authority or
18 Commonwealth agent;

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

23 **Commonwealth authority** means any of the
24 following —

- 25 (a) the Governor-General of the Commonwealth;
- 26 (b) a Minister of the Crown in right of the
27 Commonwealth;
- 28 (c) a department of the Government of the
29 Commonwealth;

s. 7

- 1 (d) an agency, authority, instrumentality or other
2 body (whether or not a body corporate)
3 established or continued for a public purpose —
4 (i) under a law of the Commonwealth; or
5 (ii) otherwise by the Commonwealth;
- 6 (e) a person holding, or exercising the powers of,
7 an office established or continued for a public
8 purpose —
9 (i) under a law of the Commonwealth; or
10 (ii) otherwise by the Commonwealth;
- 11 (f) a staffer, member, officer or employee of a
12 Commonwealth authority referred to in
13 paragraphs (a) to (e);
- 14 (g) a person who is appointed to any office or other
15 position under a law of the Commonwealth, or
16 otherwise by the Commonwealth, for a public
17 purpose and who is not covered by
18 paragraphs (a) to (f);
- 19 ***indemnity*** means an indemnity under section 22(4) or
20 23(2) or (3).
- 21 (2) Subsection (3) applies if —
22 (a) proceedings are brought, made or begun against
23 the Commonwealth or the Commonwealth
24 incurs a liability to any person or a loss; and
25 (b) the proceedings, liability or loss are connected
26 with a protected matter.
- 27 (3) Without limiting the scope of any indemnity —
28 (a) each indemnity applies as if the proceedings
29 were brought, made or begun against the State
30 or the liability or loss were incurred by the
31 State; and

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

19 **25. Further provisions about liability of State**

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

s. 7

- 1 (6) In subsections (1), (4) and (5), references to the State
2 include the following —
- 3 (a) a person who is a former State authority, if the
4 liability is connected with —
- 5 (i) the person’s conduct while and as a
6 State authority; or
- 7 (ii) otherwise the person’s role as a State
8 authority;
- 9 (b) a State agent;
- 10 (c) a person who is a former State agent, if the
11 liability is connected with —
- 12 (i) the person’s conduct while and as a
13 State agent; or
- 14 (ii) otherwise the person’s role as a State
15 agent.

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

18 **26. Interaction**

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

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

19 **Division 3 — Other provisions**

20 **Subdivision 1 — Further provisions about liability and**
21 **indemnity**

22 **27. Consideration of proposals**

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

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

s. 7

- 1 (b) an omission of the Minister to consider any
2 proposals, or purported proposals, under
3 clause 7 or 8 of the Agreement;
- 4 (c) any other conduct of the State, or of a State
5 agent, under, or in relation to, clause 7 or 8 of
6 the Agreement.
- 7 **28. Indemnity for State authorities and State agents**
- 8 (1) This section applies to a person (the *respondent*) who
9 is —
- 10 (a) a State authority; or
11 (b) a former State authority, if the proceedings are
12 connected with —
- 13 (i) the person’s conduct while and as a
14 State authority; or
15 (ii) otherwise the person’s role while and as
16 a State authority;
- 17 or
- 18 (c) a State agent; or
19 (d) a former State agent, if the proceedings are
20 connected with —
- 21 (i) the person’s conduct while and as a
22 State agent; or
23 (ii) otherwise the person’s role while and as
24 a State agent.
- 25 (2) If proceedings connected with a disputed matter are
26 brought, made or begun, or purportedly brought, made
27 or begun, against the respondent, the State must, if
28 requested by the respondent —
- 29 (a) indemnify the respondent against the
30 proceedings; and

- 1 (b) without limiting paragraph (a), pay the
2 respondent's legal costs connected with the
3 proceedings.
- 4 (3) If the respondent makes a request under subsection (2),
5 the respondent must —
- 6 (a) allow the State to conduct the respondent's
7 defence or response to the proceedings; and
- 8 (b) comply with any directions given by the State,
9 and otherwise cooperate with the State, in that
10 regard.
- 11 (4) The State must indemnify the respondent against any
12 loss connected with a stated intention of, or a threat by,
13 any person to bring, make or begin proceedings
14 connected with a disputed matter against the
15 respondent.
- 16 (5) If proceedings connected with a protected matter are
17 brought, made or begun, or purportedly brought, made
18 or begun, against the respondent, the State must, if
19 requested by the respondent —
- 20 (a) indemnify the respondent against the
21 proceedings; and
- 22 (b) without limiting paragraph (a), pay the
23 respondent's legal costs connected with the
24 proceedings.
- 25 (6) If the respondent makes a request under subsection (5),
26 the respondent must —
- 27 (a) allow the State to conduct the respondent's
28 defence or response to the proceedings; and
- 29 (b) comply with any directions given by the State,
30 and otherwise cooperate with the State, in that
31 regard.

s. 7

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

16 **Subdivision 2 — Subsidiary legislation**

17 **29. Regulations**

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

21 **30. Orders**

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

- 1 (c) this Part applies to a matter or thing to which it
2 is not appropriate for this Part to apply;
- 3 (d) it is appropriate to make provision for
4 improving the effectiveness of an indemnity
5 under section 14(4), 15(2) or (3), 22(4) or 23(2)
6 or (3), including (without limitation) provision
7 for or in connection with the following —
- 8 (i) the creation of security interests, rights
9 or restrictions in respect of land, or any
10 other type of property, in which, or in
11 respect of which, 1 or more of the
12 persons who are liable under the
13 indemnity have, or have had, any
14 interests or rights;
- 15 (ii) the enforcement of the indemnity
16 against persons to whom 1 or more of
17 the persons who are liable under the
18 indemnity have assigned or otherwise
19 transferred interests or rights in, or in
20 respect of, land or any other type of
21 property;
- 22 (e) it is appropriate for this Part to be otherwise
23 improved —
- 24 (i) by removing from this Part an
25 inconsistency with a law of the
26 Commonwealth; or
- 27 (ii) in any other way.
- 28 (2) The Governor may, on the Minister's recommendation,
29 by order do either or both of the following —
- 30 (a) amend this Part to address the circumstances;
- 31 (b) make any other provision necessary or
32 convenient to address the circumstances.

s. 8

- 1 (3) The matters or things in respect of which an order can
2 be made under this section include matters or things
3 occurring or arising before commencement.
- 4 (4) An order under this section is subsidiary legislation for
5 the purposes of the *Interpretation Act 1984*.

6 **31. Supplementary provision**

- 7 Part 3 subsidiary legislation may —
- 8 (a) be expressed to have effect despite the
9 Agreement, Part 2, this Part or any other Act or
10 law; and
- 11 (b) provide that a specified provision of the
12 Agreement, this Part or a written law does not
13 apply, or applies with specified modifications,
14 to or in relation to any matter or thing; and
- 15 (c) be expressed to take effect before the day on
16 which the legislation is published in the
17 *Gazette*, but not earlier than commencement.
- 18

19 **8. Schedule 1 amended**

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

21

22 [s. 3 and 7]

23

24 **9. Schedule 2 amended**

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

26

27 [s. 3 and 7]

28

29

