

IN THE MATTER OF AN ARBITRATION UNDER THE *COMMERCIAL ARBITRATION ACT 2012* (WA)

B E T W E E N :

**MINERALOGY PTY LTD**  
(ACN 101 582 680)  
and

**INTERNATIONAL MINERALS PTY LTD**  
(ACN 058 341 638)

Applicants ✓

and

**THE STATE OF WESTERN AUSTRALIA**

Respondent

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**APPLICANTS' AMENDED STATEMENT OF ISSUES, FACTS AND  
CONTENTIONS**

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Arbitrator: The Hon. Michael McHugh AC QC

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Represented by:

Clive Frederick Palmer  
Level 17  
240 Queen Street  
BRISBANE QLD 4000

Telephone: (07) 3832 2044

Email: [pilbara@yahoo.com](mailto:pilbara@yahoo.com)

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**A. POINTS AT ISSUE**

1. The points at issue between the parties to this arbitration are as follows (with capitalised terms having the meanings given later in this document):

(a) What is the quantum of damages payable by the State to the Applicants, in respect of the refusal by the Minister to accept the BSIOP Proposal as a

Conclusion in relation to issue in paragraph [1](a) above

183. The damages to which the Applicants are entitled pursuant to the First Damages Claim should be quantified in the following manner:

(a) The damages to which IM is entitled pursuant to the First Damages Claim should be quantified in the manner described in paragraphs [120] to [122] and [125] to [126] above.

(b) The damages to which Mineralogy is entitled pursuant to the First Damages Claim should be quantified in the manner described in paragraphs [144] and [151] above.

Conclusions in relation to issue in paragraphs [1](b) and [1](c) above

184. By reason of the matters referred to above, IM is entitled to an award of damages in respect of the Second Damages Claim.

185. The damages to which IM is entitled in respect of the Second Damages Claim are those damages described in paragraph [174] above.

Conclusions in relation to issue in paragraph [1](d) above

186. By reason of the matters referred to above, if it is found that the conditions purported to be imposed by the Minister's letter dated 22 July 2014 were not so unreasonable as to constitute a breach of the State Agreement, decision conveyed by the Minister's letter dated 22 July 2014 was not a reasonable decision for the purposes of clause 7 of the State Agreement and the Arbitrator should issue a declaration to that effect.

**D. RELIEF SOUGHT BY THE APPLICANTS**

187. By reason of the matters set out above, the Applicants seek the following relief:

Damages

*Damages for First Damages Claim – IM Claim*

- (a) An order that, on or before the date which is 30 days after the date on which this Award is made, the State shall pay damages of USD 7,768,000,000 to IM in relation to the State's breach of the State Agreement referred to in sub-paragraph [2](a)(1) above.
- (b) An order that, on or before the date which is 30 days after the date on which this Award is made, the State shall pay further damages of AUD 37,247,756 to IM in relation to the State's breach of the State Agreement referred to in sub-paragraph [2](a)(1) above.

*Damages for First Damages Claim – Mineralogy Claim*

- (c) An order that, on or before the date which is 30 days after the date on which this Award is made, the State shall pay damages of USD 8,190,000,000 to Mineralogy in relation to the State's breach of the State Agreement referred to in sub-paragraph [2](a)(2) above.
- (d) An order that, on or before the date which is 30 days after the date on which this Award is made, the State shall pay further damages of USD 233,700,000 to Mineralogy in relation to the State's breach of the State Agreement referred to in sub-paragraph [2](a)(2) above.

*Damages for Second Damages Claim*

- (e) To the extent necessary, having regard to any other orders which have been made, a further order that, on or before the date which is 30 days after the date on which this Award is made, the State shall pay damages to IM, in relation to the State's breach of the State Agreement referred to in paragraph [1](b) above, in such amount as is found to be the quantum of those losses referred to in paragraphs [172] and [173] above which were suffered or incurred in the period since 22 July 2014.

Interest up to making of Award

*Interest on First Damages Claim – IM Claim*

- (f) An order that the State shall pay interest to IM on the amount of USD 7,768,000,000 referred to in paragraph [187](a) above at the rate of 6% per annum from 9 October 2012 until the date of the award.

- (g) An order that the State shall pay interest to IM on the amount of AUD 37,247,756 referred to in paragraph [187](b) above at the rate of 6% per annum from 9 October 2012 until the date of the award.

*Interest on First Damages Claim – Mineralogy Claim*

- (h) An order that the State shall pay interest to Mineralogy on the amount of USD 233,700,000 referred to in paragraph [187](d) above at the rate of 6% per annum from 9 October 2012 until the date of the award.

*Interest on Second Damages Claim*

- (i) An order that the State shall pay interest to IM on any amount referred to in paragraph [187](e) above at the rate of 6% per annum from 22 July 2014 to the date of the award made in this arbitration.

Interest on debt under Award

*Interest on First Damages Claim – IM Claim*

- (j) An order that, if the amount of USD 7,768,000,000 referred to in paragraph [187](a) above, and any interest awarded on that amount, is not paid in full by the due date referred to in that paragraph, the State shall pay interest to IM on such part of the amount of USD 7,768,000,000 and such interest accrued on that amount as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.
- (k) An order that, if the amount of AUD 37,247,756 referred to in paragraph [187](b) above, and any interest awarded on that amount, is not paid in full by the due date referred to in that paragraph, the State shall pay interest to Mineralogy on such part of the amount of AUD 37,247,756 and such interest accrued on that amount as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.

*Interest on First Damages Claim – Mineralogy Claim*

- (l) An order that, if the amount of USD 8,190,000,000 referred to in paragraph [187](c) above is not paid in full by the due date referred to in that paragraph, the State shall pay interest to Mineralogy on such part of the amount of USD 8,190,000,000 as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.
- (m) An order that, if the amount of USD 233,700,000 referred to in paragraph [187](d) above, and any interest awarded on that amount, is not paid in full by the due date referred to in that paragraph, the State shall pay interest to Mineralogy on such part of the amount of USD 233,700,000 and such interest accrued on that amount as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.

*Interest on Second Damages Claim*

- (n) An order that, if the amount referred to in paragraph [187](e) above, and any interest awarded on that amount, is not paid in full by the due date referred to in that paragraph, the State shall pay interest to IM on such part of the amount referred to in that paragraph and such interest accrued on that amount as by then remains unpaid, at the rate of 6% per annum, compounding daily (i.e., at a daily compounding interest rate of 0.0164384%), with such interest to be payable from the day immediately following that due date on so much of the money as remains unpaid.

Alternative declaration


- (o) In the alternative to the relief claimed in paragraph [187](e) above, a declaration that the conditions purportedly imposed by the Minister by

letter dated 22 July 2014 were not reasonable for the purposes of clause 7 of the State Agreement.

Costs of this Arbitration

(p) An order that the Applicants' costs of this Arbitration, and the costs and expenses of the Arbitrator, shall be paid by the State.

Date: 28 May 2020



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Clive F Palmer  
**Representative**  
**Mineralogy Pty Ltd**  
**International Minerals Pty Ltd**