HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 28 May 2021 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number:	B54/2020
File Title:	Mineralogy Pty Ltd & Anor v. State of Western Australia
Registry:	Brisbane
Document filed:	Form 27C - Intervener's submissions
Filing party:	Interveners
Date filed:	28 May 2021

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. **B54 of 2020**

BETWEEN:

MINERALOGY PTY LTD (ACN 010 582 680)
First Plaintiff

and

INTERNATIONAL MINERALS PTY LTD (ACN 058 341 638)
Second Plaintiff

and

STATE OF WESTERN AUSTRALIA
Defendant

SUBMISSIONS FOR THE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (INTERVENING)

Filed on behalf of the Attorney-General for the State of Queensland (Intervening)

28 May 2021

Document No: 11715540

PART I: Internet publication

1. These submissions are in a form suitable for publication on the Internet.

PART II: Basis of intervention

2. The Attorney-General for Queensland ('Queensland') intervenes in this proceeding pursuant to s 78A of the *Judiciary Act 1903* (Cth), not in support of any party.

PART III: Reasons why leave to intervene should be granted

3. Not applicable.

PART IV: Submissions

SUMMARY OF ARGUMENT

4. Queensland makes the following submissions:

   a) The plaintiffs' submissions 'roam at large'[1] over the *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002* (WA) (**the Act**). However, the facts set out in the Special Case make it necessary for this Court only to consider the validity of:

      i. certain key provisions of the Act;[2] and

      ii. a limited number of other provisions, but only in their application to particular facts.[3]

   Even if the remaining provisions of the Act were invalid, whether wholly or in certain applications, those provisions either would not apply or would be severable: s 8(4) and (5). It is therefore unnecessary for the Court to consider questions going to the validity of the remainder of the Act.[4]

---

1 *Knight v Victoria* (2017) 261 CLR 306, 324-5 [33] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ), citing *Real Estate Institute (NSW) v Blair* (1946) 73 CLR 213, 227 (Starke J) and *Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1, 69 [156] (Gummow, Crennan and Bell JJ).

2 See [10] below.

3 See [11] below.

4 Cf *Duncan v New South Wales* (2015) 255 CLR 388, 410-11 [52]-[54] (French CJ, Hayne, Kiefel, Bell, Gageler, Keane and Nettle JJ) ('*Duncan v NSW*'); *Zhang v Commissioner of Police* [2021] HCA 16, [22]-[23] (Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ) ('*Zhang*').

b) If the key provisions had been enacted by the Commonwealth Parliament, they would not infringe the restrictions imposed by Ch III. The plaintiffs' submissions concerning the *Kable* principle, and usurpation of judicial power, must therefore be rejected.[5] In any event, State Parliaments may exercise judicial power.

c) Neither the rule of law, nor 'principles deeply-rooted in the common law', restrict State legislative power.

10

d) The plaintiffs' submissions concerning s 6 of the *Australia Act 1986* (Cth) should be rejected. Amongst other reasons, that is because no law required the *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Amendment Act 2020* (WA) (**the Amendment Act**) to be passed in any particular 'manner and form'.

e) There is no inconsistency between ss 10 and 11(1) and (2) of the Act, and s 35 of

20 the *Commercial Arbitration Act 2013* (Qld) (or equivalent legislation in other States). Even if there were, s 118 of the *Constitution* does not resolve inconsistencies between State laws, and would not render any part of the Act invalid.

STATEMENT OF ARGUMENT

Severance and disapplication

30

5. As has been recently reaffirmed, '[i]t is not the practice of the [High] Court to investigate and decide constitutional questions unless there exists a state of facts which makes it necessary to decide such a question in order to do justice in a given case and to determine the rights of the parties.'[6] That 'usual practice' is 'based upon prudential considerations', including avoiding making decisions 'on the basis of an inadequate

40

---

5 *H A Bachrach Pty Ltd v Queensland* (1998) 195 CLR 547, 561-2 [14] (Gleeson CJ, Gaudron, Gummow, Kirby and Hayne JJ) ('*Bachrach*'). This process of reasoning was also adopted to resolve similar questions in *Duncan v Independent Commission Against Corruption* (2015) 256 CLR 83, 95-6 [17]-[18] (French CJ, Kiefel, Bell and Keane JJ) ('*Duncan v ICAC*'). See also *Silbert v Director of Public Prosecutions (WA)* (2004) 217 CLR 181, 186 [10] (Gleeson CJ, McHugh, Gummow, Hayne, Callinan and Heydon JJ); *Baker v The Queen* (2004) 223 CLR 513, 526-7 [22]-[24] (McHugh, Gummow, Hayne and Heydon JJ).

6 *Lambert v Weichelt* (1954) 28 ALJ 282, 283 (Dixon CJ). See also *Knight v Victoria* (2017) 261 CLR 306, 324 [32] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ); *Zhang* [2021] HCA 16, [21] (Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ).

appreciation of [the] practical operation' of the statute in question.[7] As explained in *Knight*, that approach means that it is 'ordinarily inappropriate' for the Court to consider 'whether a legislative provision would have an invalid operation in circumstances which have not arisen and which may never arise if the provision, if invalid in that operation, would be severable and otherwise valid.'[8] Those observations apply with at least equal force where severance concerns separate sections of an Act.

6. Two features of this case make it particularly appropriate, here, to treat severance as 'a threshold question'.[9] First, the Act includes tailored provisions directing disapplication[10] and severance[11] where necessary to avoid invalidity of any kind. Second, in various respects the plaintiffs' submissions allege invalidity in relation to circumstances 'which have not arisen and which may never arise'.[12] As against the facts in the Special Case, determination of the rights of the parties does not require the Court to consider the validity of every provision, in every potential application.[13]

7. Sections 8(4) and (5) mean that questions of disapplication and severance in this case are not complex. Those provisions, and the overlapping nature of various sections within the Act, make it untenable to submit[14] that the Amendment Act is 'a package of interrelated provisions' or that to disapply or sever provisions would leave a residue which 'Parliament never intended to enact'.[15] Nor does the absence of an 'objects' provision 'create[] conceptual difficulties'[16] in considering questions of severance. As

---

7 *Zhang v* [2021] HCA 16, [22] (Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ), citing *Clubb v Edwards* (2019) 267 CLR 171, 192-3 [35]-[36] (Kiefel CJ, Bell and Keane JJ).

8 *Knight v Victoria* (2017) 261 CLR 306, 324 [33] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ).

9 *Tajjour v New South Wales* (2014) 254 CLR 508, 589 [176] (Gageler J); *Clubb v Edwards* (2019) 267 CLR 171, 190-1 [25]-[29] (Kiefel CJ, Bell and Keane JJ), 220 [145] (Gageler J), 253 [242] (Nettle J), 287 [330] (Gordon J), 312 [412] (Edelman J).

10 See s 8(4) of the Act.

11 See s 8(5) of the Act.

12 *Knight v Victoria* (2017) 261 CLR 306, 324 [33] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ). See Plaintiffs' Submissions ('PS') [57] (insofar as it relates to ss 13 and 21), [58], [75] (insofar as it relates to ss 11(3) and (8), 12, 16, 19(3) and 24), [78]-[86], [110]-[116] and [134]-[138].

13 See *Duncan v NSW* (2015) 255 CLR 388, 410-11 [52]-[54], where (with reference to *Lambert v Weichelt* (1954) 28 ALJR 282, 283) the Court declined to consider a question reserved alleging a s 109 inconsistency with the *Copyright Act 1968* (Cth), where there were no facts recorded which would engage the operation of that Act.

14 PS [142].

15 PS [141].

16 PS [19] and fn 7.

Gageler J explained in *Clubb v Edwards*,[17] where a law is intended to operate in an area where Parliament's legislative power is subject to a clear limitation, severance does not turn on an 'intuitive understanding of the underlying purpose of the plan of the framer of the instrument'.[18] A severance clause makes that 'uncertain and undesirable mode of solution' unnecessary.[19] Moreover, whereas in the case of a general severance clause (such as s 15A of the *Acts Interpretation Act 1901* (Cth)), the 'straightforward question' of whether there exists a 'contrary intention' to displace its application will then arise,[20] no 'contrary intention' can displace the application of s 8(4) or (5).

8. In short, the effect of s 8(4) and (5) is to '"deprive [the plaintiffs] of [the] argument" that [the Amending] Act is invalid in its entirety because some of its provisions would be constitutionally invalid.'[21]

9. Against the facts stated in the Special Case, the provisions of the Act may therefore be divided into four categories.

10. *First*, there are those provisions in respect of which the question of validity squarely arises. In this category are ss 8, 9, 10 and 11(1) and (2), 14, 18(1)-(4), 19(1)-(2) and 27.

11. *Second*, there are provisions in respect of which the question of validity arises, but only in respect of the provisions' application to the facts set out in the Special Case. It is unnecessary for the Court to consider whether the provisions might be invalid in other applications. For example, the validity of s 11(4) and (7) arises, but only insofar as those provisions apply to the termination of the arbitration mentioned at [39] of the Special Case. The provisions apply validly to that proceeding.[22] The Court need not consider whether the provisions would be valid in respect of court proceedings.[23] Also in this category are ss 18(5)-(8), 20(1)-(4) and (7), 19(4) and (7), 14, 15, 22 and 23. The

---

17 (2019) 267 CLR 171, 221 [148] (Gageler J).
18 *Australian National Airways Pty Ltd v Commonwealth* (1945) 71 CLR 29, 93 (Dixon J).
19 *Australian National Airways Pty Ltd v Commonwealth* (1945) 71 CLR 29, 93 (Dixon J).
20 *Clubb v Edwards* (2019) 267 CLR 171, 221 [148] (Gageler J).
21 *Clubb v Edwards* (2019) 267 CLR 171, 319 [427] (Edelman J), citing the second reading debate of the Bill inserting s 15A at Australia, House of Representatives, *Parliamentary Debates* (Hansard), 8 August 1930, 5649.
22 See subparagraph (a)(i) of the definition of 'proceedings' in s 7 which includes an 'arbitration'.
23 The plaintiffs plead no court proceedings to which this provision might apply. Cf Defence, 10 [19(d)] (at Special Case Book, 474).

validity of those provisions arises, but only insofar as the provisions apply to the facts set out at [45] to [47] of the Special Case. The Court need not consider if the provisions are invalid in other, hypothetical, applications.

12. *Third*, there are provisions the validity of which only arises if other provisions were to be held invalid. In this category is s 17, which applies 'to a liability of the State … connected with a disputed matter'. Section 17 can only apply if s 11(1), which extinguishes the liability of the State in 'any … way connected with a disputed matter', is ineffective or invalid.

13. *Fourth*, there are provisions in respect of which there are no facts which make it necessary to consider the plaintiffs' claims of invalidity: ss 11(3), (5), (6) and (8), 12, 13, 16, 19(3), (5) and (6), 20(5), (6) and (8), 21, 24, 25, 28, 29, 30 and 31.

14. Queensland's submissions are confined to the validity of the provisions in the first category (**the key provisions**).

Usurpation of judicial power and the Kable principle

15. It is convenient to deal simultaneously with the plaintiffs' submissions as to the *Kable* principle, and 'usurpation of judicial power'. That is because they invite the same answer. If the key provisions had been enacted by the Commonwealth, they would not have offended the principles applicable, under Ch III, to the exercise by federal courts of the judicial power of the Commonwealth. In those circumstances the 'occasion for the application of *Kable* does not arise'.[24] Moreover, one of the principles applicable under Ch III is that the Commonwealth Parliament may not 'usurp [] judicial power … by itself purporting to exercise judicial power in the form of legislation'.[25] Accordingly, testing the key provisions against the principles applicable to the Commonwealth also answers the plaintiffs' submission that the Act is an impermissible exercise of judicial power.[26]

---

[24] *Bachrach* (1998) 195 CLR 547, 561-2 [14] (Gleeson CJ, Gaudron, Gummow, Kirby and Hayne JJ). See also: *Minister for Home Affairs v Benbrika* [2021] HCA 4, [82] (Gageler J), [158] (Gordon J); *Vella v Commissioner of Police (NSW)* (2019) 93 ALJR 1236, 1269-70 [147] (Gageler J).

[25] *Polyukhovich v Commonwealth* (1991) 172 CLR 501, 607 (Deane J).

[26] PS [68].

16. Further, the plaintiffs' submissions as to why this Court should now hold that State Parliaments may not exercise judicial power should be rejected.

The key provisions would be valid if enacted by the Commonwealth Parliament

17. As to *Kable* and the 'usurpation of judicial power', the plaintiffs submit:

a) sections 8(2)-(3), 9, 10 and 11(1)-(2) 'eliminate the ability of courts independently or impartially to adjudicate the dispute' and require courts to reach findings that 'are plainly contrary to the true position';[27]

b) sections 8(3), 9(1) and 11(1)-(2) perform the 'exclusive' or 'inalienable' judicial function of determining 'actions for breach of contract and for civil wrongs', because they 'quell' a contractual dispute and preclude the future determination by a court of past civil liability;[28] and,

c) sections 11(1)-(2) and 19(1)-(2) determine the existence of rights that have accrued and liability that has been incurred.[29]

18. Those submissions should be rejected, for the following reasons.

19. 'It is now well settled that a statute which alters substantive rights does not involve an interference with judicial power contrary to Ch III of the *Constitution* even if those rights are in issue in pending litigation.'[30] Much less could there be there any constitutional difficulty with Commonwealth legislation affecting rights in issue in a pending arbitration.

20. Moreover, whereas Commonwealth legislation which purported to 'set aside the decision of a court exercising federal jurisdiction' would impermissibly interfere with

---

27 PS [56].
28 PS [67], fn 57 and [68].
29 PS [67], fn 58.
30 *Duncan v ICAC* (2015) 256 CLR 83, 98 [26] (French CJ, Kiefel, Bell and Keane JJ). See also *Australian Building Construction Employees' and Builders Labourers' Federation v Commonwealth* (1986) 161 CLR 88, 96 (Gibbs CJ, Mason, Brennan, Deane and Dawson JJ); *Bachrach* (1988) 195 CLR 547, 562-4 [15]-[20] (Gleeson CJ, Gaudron, Gummow, Kirby and Hayne JJ); *R v Humby; Ex parte Rooney* (1973) 129 CLR 231, 250 (Mason J) ('*Humby*'); *Nelungaloo Pty Ltd v Commonwealth* (1947) 75 CLR 495, 503 (Williams J), 579-80 (Dixon J) ('*Nelungaloo*'); *Duncan v NSW* (2015) 255 CLR 388, 407-8 [41] (French CJ, Hayne, Kiefel, Bell, Gageler, Keane and Nettle JJ); *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1, 35 (Brennan, Deane and Dawson JJ, Mason CJ agreeing at 10, Gaudron J agreeing at 53), 73 (McHugh J).

judicial power contrary to Ch III,[31] Ch III does not prevent the legislative setting aside of an arbitral award. An arbitral award 'governs the rights of the parties because "[b]y submitting the claims to arbitration, the parties confer upon the arbitrator an authority conclusively to determine them".'[32] An arbitral award is not an exercise of 'sovereign or governmental power exercisable, on application, independently of the consent of those whose legal rights or legal obligations are determined by its exercise'.[33] Arbitral power sits outside the scope of Ch III.[34]

21. The simple point is that each key provision contains an unexceptionable 'declaration as to power, right or duty', that being a 'hallmark of [] legislative power'.[35] As explained in the defendant's written submissions,[36] ss 8(2)-(3), 9 and 10 are declaratory in the sense that they declare the legal effect of certain matters and things. For example, s 10(4)-(7), like the Commonwealth law upheld in *R v Humby; Ex parte Rooney*, 'takes the outcome of a non-judicial proceeding … and says of it that it shall have particular consequences'.[37] Sections 11(1)-(2), 19(1)-(2) and 27 are similarly 'declaratory', but deal directly with rights and liabilities,[38] respectively as to 'disputed matters',[39] 'protected matters'[40] and clause 7 or 8 of the Agreement.[41] It is of no constitutional significance that the key provisions alter previously existing rights.[42] By doing so, the legislation may alter the outcome of litigation by changing the applicable law: but a

---

31 *Australian Education Union v General Manager of Fair Work Australia* (2012) 246 CLR 117, 143 [53] (French CJ, Crennan and Kiefel JJ) ('*AEU*').
32 *TCL Air Conditioner (Zhongshan) Co Ltd v Judges of the Federal Court of Australia* (2013) 251 CLR 533, 567 [77] (Hayne, Crennan, Kiefel and Bell JJ) ('*TCL*').
33 *TCL* (2013) 251 CLR 533, 553 [28] (French CJ and Gageler J).
34 *TCL* (2013) 251 CLR 533, 555 [31] (French CJ and Gageler J), 566 [75] (Hayne, Crennan, Kiefel and Bell JJ).
35 *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476, 512-3 [102] (Gaudron, McHugh, Gummow, Kirby, and Hayne JJ); *Commonwealth v Grunseit* (1943) 67 CLR 58, 82 (Latham CJ).
36 Defendant's Submissions [76] ('DS')
37 *Humby* (1973) 129 CLR 231, 244 (Stephen J).
38 DS [86].
39 Section 11(1)-(2).
40 Section 19(1)-(2).
41 Section 27.
42 *Nelungaloo* (1947) 75 CLR 495, 503 (Williams J), 579-80 (Dixon J). A declaratory law 'may be historically false but that does not deny [it] legal effect': *Mabo v Queensland* (1988) 166 CLR 186, 211 (Brennan, Toohey and Gaudron JJ).

requirement that courts decide cases in accordance with a law made by Parliament hardly infringes Ch III.[43]

22. Further, the plaintiffs' reliance[44] on *Bachrach* and *Duncan v New South Wales* is misplaced. In *Bachrach*, the Court observed that 'the determination of criminal guilt and the trial of actions for breach of contract and for civil wrongs are inalienable exercises of judicial power'.[45] Plainly, the key provisions neither try, nor determine, any 'action for breach of contract [or] for civil wrongs'. There is no reason why rights sourced in contract (at issue in pending litigation or not) would be immune from alteration by 'legislative declaration or action'.[46] The same is true of rights or liabilities arising in respect of a 'protected matter' (assuming the 'protected matters' did, or could, give rise to any liabilities, which may be doubted).

23. In *Duncan v New South Wales*, the Court said:[47]

> … the Amendment Act exhibits none of the typical features of an exercise of judicial power. It quells no controversy between the parties. It precludes no future determination by a court of past criminal or civil liability. It does not determine the existence of any right that has accrued or any liability that has been incurred. Save for the limited immunity it confers on the State and its current or former employees, it does not otherwise affect any accrued right or existing liability.

24. The Court in *Duncan* did not suggest that a law exhibiting any one or more of these features would necessarily intrude upon an area of exclusively judicial power. In any event, of the 'features' mentioned in the passage, the key provisions have only the last: they affect accrued rights and existing liabilities. As is clear from the passage itself, and other authority,[48] that characteristic alone does not make legislation an impermissible exercise of judicial power.

---

43 Cf *Public Service Association (NSW) v Director of Public Employment* (2012) 250 CLR 343, 365-6 [43]-[46] (French CJ), 368 [58] (Hayne, Crennan, Kiefel and Bell JJ), 372-3 [68]-[70] (Heydon J); *Mabo v Queensland* (1988) 166 CLR 186, 211-2 (Brennan, Toohey and Gaudron JJ), cited in *AEU* (2012) 246 CLR 117, 137 [35] (French CJ, Crennan and Kiefel JJ).

44 PS [66]-[68].

45 *Bachrach* (1998) 195 CLR 547, 562 [15] (Gleeson CJ, Gaudron, Gummow, Kirby and Hayne JJ).

46 Cf *Humby* (1973) 129 CLR 231, 250 (Mason J). Especially that is so where the contract in question is contained in a schedule to a State Act.

47 (2015) 255 CLR 388, 408 [42] (French CJ, Hayne, Kiefel, Bell, Gageler, Keane and Nettle JJ).

48 *Nelungaloo* (1948) 75 CLR 495, 503-4 (Williams J), 579-80 (Dixon J); *Humby* (1973) 129 CLR 231, 250 (Mason J).

25. The key provisions share none of the other 'typical features' of judicial power mentioned in *Duncan*. A law which alters rights and liabilities by declaration does not, in the relevant sense, 'quell a controversy' or 'determine the existence' of any accrued right or existing liability. True it is that in a colloquial sense, the key provisions may provide an answer to what was previously in issue between the parties.[49] But they do so by altering or declaring substantive rights, something clearly within legislative power.[50] The reference in *Duncan* to 'quell[ing] controversies' and 'determin[ing]' rights must be understood against an appreciation of what judicial power *is*: the 'quelling [of] controversies about legal rights and legal obligations through ascertainment of facts, application of law and exercise, where appropriate, of judicial discretion'.[51] The key provisions are not 'an application of the law as determined to the facts as determined'.[52] They are not concerned with the 'ascertainment and enforcement of rights'.[53] Instead, the key provisions simply change, for the future, what the law is and has been.[54]

26. Finally, that the key provisions provide directly for the rights and liabilities of specified or identifiable persons does not require their characterisation as 'judicial'. The legislation in *Duncan v New South Wales* cancelled three specified mining exploration licences.[55] Similarly, the legislation at issue in *Nelungaloo*,[56] *Humby*,[57] and *AEU*[58] provided directly for the rights and duties of an identifiable class of persons. No 'objection to [the] validity'[59] of those laws arose from Ch III. Moreover, the plaintiffs'

---

49 For example, s 9 of the Act renders redundant the 'dispute' referred to in paragraph [25] of the Special Case.
50 See the authorities referred to in footnote 30 above.
51 *Rizeq v Western Australia* (2017) 262 CLR 1, 23 [52] (Bell, Gageler, Keane, Nettle and Gordon JJ); *Burns v Corbett* (2018) 265 CLR 304, 330 [21] (Kiefel CJ, Bell and Keane JJ); *Fencott v Muller* (1983) 152 CLR 570, 608 (Mason, Murphy, Brennan and Deane JJ).
52 *R v Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 361, 374 (Kitto J). See also *Attorney-General (Cth) v Breckler* (1999) 197 CLR 83, 110 [41] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ); *Albarran v Companies Auditors and Liquidators Disciplinary Board* (2007) 231 CLR 350, 360-1 [25]-[29] (Gleeson CJ, Gummow, Hayne, Callinan, Heydon and Crennan JJ).
53 *Duncan v NSW* (2015) 255 CLR 388, 407-8 [41] (French CJ, Hayne, Kiefel, Bell, Gageler, Keane and Nettle JJ).
54 *Prentis v Atlantic Coast Line Co* (1908) 211 US 210, 226, quoted in *R v Davison* (1954) 90 CLR 353, 370 (Dixon CJ and McTiernan J).
55 *Duncan v NSW* (2015) 255 CLR 388, 396 [1] (French CJ, Hayne, Kiefel, Bell, Gageler, Keane and Nettle JJ).
56 *Nelungaloo* (1947) 75 CLR 495. The class being growers subject to the Acquisition Order of 16 November 1939, and the Commonwealth: 579. The Acquisition Order is set out at 497.
57 *Humby* (1973) 129 CLR 231. The class being those subject to a 'purported decree': see 242.
58 *AEU* (2012) 246 CLR 117. The class being associations whose registration would have been invalid because the rules did not contain a 'purging rule': 125.
59 *Nelungaloo* (1947) 75 CLR 495, 579 (Dixon J).

submissions fail to account for the history of the enactment of private legislation, including legislation directly providing for rights 'of a kind which ordinarily come into existence by virtue of a judicial determination'.[60]

State Parliaments may exercise judicial power

27. As in *Duncan v New South Wales*, because the minor premise of the plaintiffs' submissions regarding 'usurpation of judicial power' is false, it may be unnecessary to consider its 'major premise'.[61] If the plaintiffs' major premise is considered, it should be rejected.

28. The plaintiffs appear to accept that '[t]he doctrine of separation of powers developed and applied in *R v Kirby; Ex parte Boilermakers' Society of Australia*[62] … does not apply to the States.'[63] Instead, the plaintiffs submit that s 73(ii) of the *Constitution* and the decision in *Kirk v Industrial Court (NSW)*,[64] are aspects of the 'integrated national judicial system' from which it follows that any 'exercise of judicial power in a State must be amenable to the supervision of the Supreme Court of the State, and … ultimately this Court's final superintendence'.[65] As an exercise of judicial power by the Parliament could not be 'supervised' by the Supreme Court or this Court, it must follow that State Parliaments are prohibited from exercising judicial power.

29. That argument is misconceived and should be rejected, for the following reasons.

30. *First*, the argument is undermined by the plaintiffs' appeal to the 'integrated national court system'. That is a description 'aptly' given to the '*federal* Judicature'.[66] The federal Judicature is established by Ch III to 'exercise adjudicative authority with

---

60 *Humby* (1973) 129 CLR 231, 250 (Mason J). See also 240 (Gibbs J).
61 *Duncan v NSW* (2015) 255 CLR 388, 410 [51] (French CJ, Hayne, Kiefel, Bell, Gageler, Keane and Nettle JJ); cf PS [59]-[60].
62 (1956) 94 CLR 254.
63 *Public Service Association (NSW) v Director of Public Employment* (2012) 250 CLR 343, 368 [57] (Hayne, Crennan, Kiefel and Bell JJ); *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51, 78-80 (Dawson J), 92-94 (Toohey J), 109, 118 (McHugh J) ('*Kable*'); *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531, 573 [69] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ) ('*Kirk*').
64 (2010) 239 CLR 531.
65 PS [60]-[65].
66 *Burns v Corbett* (2018) 265 CLR 304, 330 [20] (Kiefel CJ, Bell and Keane JJ) (emphasis added).

respect to the matters listed in ss 75 and 76 of the *Constitution*',[67] and State courts are part of it '[t]o the extent' they are invested with federal jurisdiction to decide such matters.[68] State judicial power is integrated into Ch III only in the sense that appeals from State Supreme Courts to the High Court are guaranteed, subject to exceptions and regulations, when State judicial power is being exercised.

31. It follows that – leaving aside the subject-matters in ss 75 and 76, in respect of which Ch III makes special provision[69] – the conferral of *State* judicial power on an organ of the executive does not undermine the 'integrated national court system' nor this Court's entrenched appellate jurisdiction in s 73(ii). In this respect, *Kirk* proceeds on an assumption that State judicial power will be exercised by persons and bodies other than courts, and *Burns v Corbett* reinforces the orthodox position that 'under the Constitutions of the States, adjudicative authority may be vested in organs other than those recognised as courts within Ch III of the *Constitution.*'[70]

32. *Second*, nothing in s 73(ii) or *Kirk* requires any different conclusion where a State Parliament exercises judicial power itself, rather than vesting it in an organ of the executive branch. Two interrelated strands of reasoning were critical to the Court's decision in *Kirk*. First was the conclusion (supported by an historical analysis of 'accepted doctrine at the time of federation'[71]), that the supervisory jurisdiction to issue writs of certiorari to inferior courts for jurisdictional error was a 'defining characteristic' of the State Supreme Courts, the existence of which is mandated by Ch III.[72] That reasoning says nothing about the exercise of judicial power by State Parliaments.

---

67 *Burns v Corbett* (2018) 265 CLR 304, 330 [20] (Kiefel CJ, Bell and Keane JJ).

68 *Burn v Corbett* (2018) 265 CLR 304, 328-9 [15], 331 [22] (Kiefel CJ, Bell and Keane JJ).

69 *Burns v Corbett* (2018) 265 CLR 304, 335 [43], 337 [46], 338-9 [49] (Kiefel CJ, Bell and Keane JJ), 346 [68] (Gageler J). Given s 39 of the *Judiciary Act 1903* (Cth), State courts will invariably exercise federal jurisdiction in respect of such matters, not State jurisdiction: *Burns v Corbett* (2018) 265 CLR 304, 326 [3] (Kiefel CJ, Bell and Keane JJ).

70 *Burns v Corbett* (2018) 265 CLR 304, 330-1 [21] (Kiefel CJ, Bell and Keane JJ); see also 345 [67] (Gageler J). See also *Kirk* (2010) 239 CLR 531, 573 [69] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

71 *Kirk* (2010) 239 CLR 531, 580 [96]-[97], 581 [99] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

72 *Kirk* (2010) 239 CLR 531, 580 [96]-[97], 581 [99]-[100] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

33. The second key aspect of the reasoning in *Kirk* was that:[73]

> The supervisory jurisdiction exercised by the State Supreme Courts is exercised according to principles that in the end are set by this Court. To deprive a State Supreme Court of its supervisory jurisdiction enforcing the limits on the exercise of State executive and judicial power by persons and bodies other than that Court would be to create islands of power immune from supervision and restraint.

34. None of that reasoning suggests, let alone requires, the conclusion that State Parliaments may not exercise judicial power. Importantly, it is not the case that 'the Supreme Court is powerless to enforce the limits on exercises of judicial power by the Parliament of Western Australia.'[74] The legal limits imposed on State Parliaments are different from those imposed on courts and tribunals: but legal limits exist. State Parliaments must comply with territorial limits,[75] the limits (express and implied) arising from the *Constitution*, and from entrenched manner and form provisions. Those limits are capable of being enforced by a State Supreme Court, or indeed, this Court. Those legal limits differ from the limits which the law places on courts and tribunals; the courts' jurisdiction to enforce those limits is therefore also different. That is simply a reflection of the different character of a State Parliament and its place within the constitutional framework.

No limits arising from the rule of law or fundamental common law rights

35. It may be accepted that the *Constitution* 'is framed upon the assumption of the rule of law',[76] or, as Dixon J held, is 'an instrument framed in accordance with many traditional conceptions', to some of which it gives effect (such as the separation of judicial power) and others of which (such as the rule of law) are 'simply assumed'.[77]

36. In *Momcilovic v The Queen*, Crennan and Kiefel JJ considered that there remained a 'large question concerning the limits, if any, which the rule [of law] may effect upon the grant of legislative power to State parliaments'.[78] The question is large in part because

---

73 *Kirk* (2010) 239 CLR 531, 581 [99] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).
74 PS [62].
75 *Mobil Oil Australia Pty Ltd v Victoria* (2002) 211 CLR 1, 22-3 [9] (Gleeson CJ).
76 *MZAPC v Minister for Immigration and Border Protection* [2021] HCA 17, [91] (Gordon and Steward JJ) ('*MZAPC*'), citing *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476, 492 [31] (Gleeson CJ).
77 *Australian Communist Party v Commonwealth* (1951) 83 CLR 1, 193 (Dixon J).
78 *Momcilovic v The Queen* (2011) 245 CLR 1, 216 [563] (Crennan and Kiefel JJ).

'[t]he precise meaning of the rule of law may be, and often is, contested',[79] or 'hotly disputed'.[80] Yet it is undisputed that its 'irreducible minimum' requires:[81]

> "that Government should be under law, that the law should apply to and be observed by Government and its agencies, those given power in the community, just as it applies to the ordinary citizen".

37. In accordance with that minimal conception, Dixon J's statement has been said to have:[82]

> … meant no more than that the Parliament could not decide the limits of its constitutional power. It simply expresses the notion encapsulated in the saying 'The stream cannot rise above its source.' Fairly interpreted, it provides no support for the notion that judges are empowered to strike down legislation on the basis that it infringes some unwritten aspect of the rule of law.

38. Similarly, in *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam*, McHugh and Gummow JJ said:[83]

> It may be said that the rule of law reflects values concerned in general terms with abuse of power by the executive and legislative branches of government. But it would be going much further to give those values an immediate normative operation in applying the Constitution.

39. By contrast, the plaintiffs seek to answer the question in *Momcilovic* by positing the 'rule of law' as a direct limit on State legislative power. Without seeking to give coherent content to this new limit, they submit that it requires, at least, 'that citizens have access to impartial courts in which to vindicate their legal entitlements'.[84] If the rule of law is to limit State legislative power, it must be given content, at least so as to determine whether the limitation is 'logically or practically necessary' for the preservation of the constitutional structure.[85]

---

79 *MZAPC* [2021] HCA 17. [91] (Gordon and Steward JJ).
80 *Graham v Minister for Immigration and Border Protection* (2017) 263 CLR 1, 38 [82] (Edelman J).
81 *MZAPC* [2021] HCA 17, [91] (Gordon and Steward JJ), citing Stephen, "The Rule of Law" (2003) 22(2) *Dialogue* 8, 8.
82 *Western Australia v Ward* (2002) 213 CLR 1, 392 n 1091 (Callinan J). Although his Honour was in dissent as to whether the grant of certain leasehold interests in land extinguished native title, his reasoning in respect of the rule of law is not contradicted by the reasoning of the other judges. His Honour was alone in addressing the submissions of the Human Rights and Equal Opportunity Commission regarding the rule of law.
83 *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* (2003) 214 CLR 1, 23 [72] (McHugh and Gummow JJ).
84 PS [71].
85 *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, 135 (Mason CJ); *McGinty v Western Australia* (1996) 186 CLR 140, 169 (Brennan CJ); *APLA Ltd v Legal Services Commissioner (NSW)*

40. That point is reinforced when consideration is given to the specific limits proposed by the plaintiffs. To the extent 'access to impartial courts' is secured by our constitutional arrangements, it is secured by Ch III and its implications.[86] Section 75(v) secures this Court's judicial review jurisdiction and thus 'the enforcement of the rule of law over executive action'.[87] The same may be said of the principle arising from *Kirk*, being the functional equivalent of s 75(v). As such, Ch III 'gives practical effect'[88] to the 'assumption' of the rule of law, and belies any claim that the rule of law independently limits State legislative power.

41. To the extent that the plaintiffs submit that the rule of law would render a law invalid merely because it was retrospective or *ad hominem*,[89] those submissions are irreconcilable with authority.[90]

42. The plaintiffs also invoke 'principles deeply-rooted in the common law', which the Amendment Act is said to violate. In *Union Steamship Co of Australia v King*,[91] the Court left open this possibility that such rights might restrain State legislative power.

43. The plaintiffs' submissions suffer from the same deficiency as that identified in *Durham Holdings v New South Wales*. There, the applicant sought to establish that the right to receive 'just' or 'properly adequate' compensation for the deprivation of property, was a 'deeply rooted right' limiting State legislative power.[92] The Court held that it was not, because no such principle existed. The applicant was therefore advocating for the development of the common law by the recognition of the principle for the first time.[93]

(2005) 224 CLR 322, 453-454 [389] (Hayne J); *McCloy v New South Wales* (2015) 257 CLR 178, 283-284 [318] (Gordon J); *Burns v Corbett* (2018) 265 CLR 304, 355 [94] (Gageler J), 383 [175] (Gordon J).

86 *Gerner v Victoria* (2020) 95 ALJR 107, 114 [22] (Kiefel CJ, Gageler, Keane, Gordon and Edelman JJ).

87 *Church of Scientology v Woodward* (1980) 154 CLR 25, 70 (Brennan J).

88 *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322, 351 [30] (Gleeson CJ and Heydon J); *Thomas v Mowbray* (2007) 233 CLR 307, 342 [61] (Gummow and Crennan JJ); *South Australia v Totani* (2010) 242 CLR 1, 156 [423] (Crennan and Bell JJ).

89 PS [75].

90 *Polyukhovich v Commonwealth* (1991) 172 CLR 501, 536 (Mason CJ), 642-4 (Dawson J), 689 (Toohey J) and 719 (McHugh J); *Baker v The Queen* (2004) 223 CLR 513, 521 [8] (Gleeson CJ), 533 [45] (McHugh, Gummow, Hayne and Heydon JJ); *Minogue v Victoria* (2019) 93 ALJR 1031, 1034 [3], 1038 [25] (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ).

91 (1988) 166 CLR 1, 10 (Mason CJ, Wilson, Brennan, Deane, Dawson, Toohey and Gaudron JJ).

92 *Durham Holdings Pty Ltd v New South Wales* (2001) 205 CLR 399, 409-10 [12] (Gaudron, McHugh, Gummow and Hayne JJ) ('*Durham Holdings*').

93 *Durham Holdings* (2001) 205 CLR 399, 409-10 [12] (Gaudron, McHugh, Gummow and Hayne JJ).

Similarly, here, the principles which the plaintiffs assert are 'deeply-rooted' are unsupported by reference to authority and, in some respects, plainly ahistorical.[94]

44. In any event, it should now be accepted that 'deeply-rooted common law principles' do not, independently of the *Constitution*, limit State legislative power. At base, that is because '[t]he doctrine of parliamentary supremacy is a doctrine as deeply rooted as any in the common law'.[95]

10

Manner and form

45. The plaintiffs contend that Part 3 of the Amendment Act is of no force and effect by reason of 6 of the *Australia Act 1986* (Cth).[96] That argument fails, because nothing in the Act gives the Agreement the force of 'a law made … by the Parliament'.[97] Even if that were not so, however, the submission would fail for the additional reasons that
20 clause 32 does not prescribe a 'manner and form' requirement, and Part 3 contains no law respecting the 'constitution, powers, or procedures' of the Parliament of Western Australia.[98] Queensland's submissions address the first of those two *additional* reasons.

46. It can be accepted that the words 'manner and form' are capable of wide meaning.[99] Nevertheless, fundamental to the concept of a manner and form provision is that it must be 'operative on the legislative process at some point'.[100] Clause 32 has no such effect;
30 as the opening words of sub-clause (1) make clear, it is directed to variation of the agreement by the 'parties to [the] Agreement', *not* legislative variation of the agreement

---

94 The plaintiffs rely on the removal of rights to sue in respect of breaches of contract, and removal of jurisdiction of courts to enforce such contracts: PS [77]. Yet historically, the Crown enjoyed immunity from suit. See, for eg, *Commonwealth v Baume* (1905) 2 CLR 405, 413 (Griffith CJ, Barton J agreeing at 417): '[A] Court of justice has no jurisdiction against a sovereign power which does not subject itself, or is not subjected by Statute, to its jurisdiction.' See also the discussion by Hodgson JA in *RESI Corporation v Sinclair* (2002) 54 NSWLR 387, 403 [38].

95 *Kable* (1996) 189 CLR 51, 76 (Dawson J, Brennan CJ agreeing at 66). See also *South Australia v Totani*
40 (2010) 242 CLR 1, 29 [31] (French CJ).

96 Third further amended statement of claim, [58] (at Special Case Book, 439).

97 In this respect, Queensland adopts the defendant's submissions in B52/2020 at [94]-[96].

98 In this respect, Queensland adopts the defendant's submissions in B52/2020 at [99].

99 *Attorney-General (NSW) v Trethowan* (1931) 44 CLR 394, 419 (Rich J), 432-3 (Dixon J); *Attorney-General (NSW) v Trethowan* [1932] AC 526, 541; *West Lakes Ltd v South Australia* (1980) 25 SASR 389, 397 (King CJ).

100 *Commonwealth Aluminium Corporation Ltd v Attorney-General* [1976] Qd R 231, 237 (Wanstall SPJ), relying on *Attorney-General (NSW) v Trethowan* (1931) 44 CLR 394, 419 (Rich J). See also at 414 (Duffy CJ); *South-Eastern Drainage Board (SA) v Savings Bank of South Australia* (1939) 62 CLR 603, 618 (Latham CJ), 623 (Starke J).

by the Parliament. This is so even though sub-clause (2) requires the Minister to table a variation of the agreement in each House of Parliament and sub-clause (3) allows either House to disallow a variation of the agreement. Again, the Parliament's involvement does not relate to the legislative process, but rather the manner in which the agreement may be varied by the parties (i.e. by making the parties' agreement subject to disallowance by Parliament).

47. So much has been recognised by appellate courts in Queensland and in South Australia.[101] In *Commonwealth Aluminium Corporation Ltd v Attorney-General*, the Full Court of the Supreme Court of Queensland considered s 4 of the *Commonwealth Aluminium Corporation Pty Limited Agreement Act 1957* (Qld). Subject to one difference, s 4 was essentially the same as cl 32, including in that s 4 subjected any variation agreed to by the Executive to disallowance by the Legislative Assembly.[102] '[T]he simple truth', as Wanstall SPJ observed, was that where s 4 'prescribe[d] manner or form it [did] so in respect of *executive action* to effectuate a variation of the agreement', not legislative action.[103]

48. The difference between the provisions is that s 4, unlike cl 32, provided expressly that alteration of the Agreement 'not made and approved' in the manner prescribed by the clause 'shall be void and of no legal effect whatever'.[104] The plaintiffs submit that cl 32 should be construed in the same 'mandatory' way, notwithstanding the absence of any words to that effect.[105] That construction of cl 32 should be rejected. Like the provision in issue in *West Lakes Ltd v South Australia*,[106] cl 32 is a 'provision controlling the amendment of the [contract between the plaintiffs and the Executive] by agreement. It makes no reference, either expressly or impliedly, to the amendment by Parliament of

[101] *West Lakes Ltd v South Australia* (1980) 25 SASR 389; *Commonwealth Aluminium Corporation Ltd v Attorney-General* [1976] Qd R 231.
[102] See page 231: *Commonwealth Aluminium Corporation Ltd v Attorney-General* [1976] Qd R 231.
[103] *Commonwealth Aluminium Corporation Ltd v Attorney-General* [1976] Qd R 231, 237 (Wanstall SPJ), 260 (Dunn J) (emphasis in original). Hoare J dissented on this point, but his Honour's reasoning turned on the terms of s 3 of the *Commonwealth Aluminium Corporation Pty Limited Agreement Act*, which provided that the agreement 'shall have the force of law as though the agreement were an enactment of this Act': at 247-8.
[104] The clauses said to impose a manner and form requirement are reproduced in the headnote at 231.
[105] PS [98]-[102]. Even in the face of the express words, Dunn J held that s 4 was to be 'understood as a legislative command to the Executive and the plaintiff, and not as a restraint upon legislative power self-imposed by the Legislature': at 260. Wanstall SPJ specifically did not decide differently, but proceeded upon an assumption to the contrary: at 237-8.
[106] (1980) 25 SASR 389. The relevant clauses are set out from 401-4.

the [Agreement] Act itself'. Clause 32 does not demonstrate any intention 'to take the drastic step of attempting to limit the legislature's freedom to legislate for the peace, order and good government of the State'.[107]

49. Even if the plaintiffs' construction were accepted, however, cl 32 would not be a 'manner and form' provision. As Wanstall SPJ explained in *Commonwealth Aluminium Corporation*, a law which 'forbids' the exercise of legislative power, cannot be categorised as a law imposing a 'manner and form' condition on the *exercise* of legislative power.[108] For that reason, s 6 of the *Australia Act* cannot give effect to a law purporting to 'bind [Parliament] not to legislate in particular ways'.[109]

Section 118 – full faith and credit

50. The plaintiffs submit that the Amendment Act does not give full faith and credit to s 35 of the Commercial Arbitration Acts of other States ('CAAs'), because s 35 of each CAA 'recognise[s]' the First and Second Awards 'as binding' throughout Australia.[110] The plaintiffs therefore rely on that aspect of s 118 which requires that full faith and credit be given to the 'laws', rather than the 'judicial proceedings', of another State.

51. Acceptance of the plaintiffs' submissions would have the result that the making of an arbitral award, given binding effect by the CAA of a State, would render the subject-matter of the award beyond the reach of the legislative power of that State. The submissions should be rejected, for the following reasons.

52. Section 35 of each CAA provides that '[a]n arbitral award, irrespective of the State or Territory in which it was made, is to be recognised in this State as binding and, on application in writing to the Court, is to be enforced subject to the provisions of this section and section 36.'

53. As explained in *TCL Air Conditioner (Zhongshan) Co Ltd v Judges of the Federal Court of Australia*,[111] the final and conclusive nature of an arbitral award reflects 'the

---

[107] *West Lakes Limited v South Australia* (1980) 25 SASR 389, 398 (King CJ). See also 413-4, 416 (Zellins J),
[108] *Commonwealth Aluminium Corporation Ltd v Attorney-General* [1976] Qd R 231, 237-9 (Wanstall SPJ).
[109] PS [109].
[110] PS [129]-[132].
[111] (2013) 251 CLR 533.

consequences of the parties having agreed to submit a dispute of the relevant kind to arbitration'. One consequence is that 'the parties' rights and liabilities under an agreement which gives rise to an arbitration can be, and are, discharged and replaced by the new obligations that are created by an arbitral award'.[112] Critically, however, 'an arbitrator's award is not binding of its own force. Rather, its effect, if any, depends on the law which operates with respect to it'. [113]

10

54. The law 'which operate[d] with respect to' the First and Second Awards, and which, prior to enactment of the Amendment Act, made them binding, was the *Commercial Arbitration Act 2012* (WA) ('CAA (WA)'). That Act requires the arbitral tribunal to decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute (s 28(1)), and make an award in writing (s 31(1)), after which it is taken to be made at the place stated in the award (s 31(4)).

20

55. Once made, the award is recognised as binding on the parties under Western Australian law (s 35). 'Recognised … as binding' means binding between the parties, for purposes including 'reliance on the award in legal proceedings in ways that do not involve enforcement, such as founding a plea of former recovery or as giving rise to a res judicata or issue estoppel'.[114]

56. The effect of s 35 of, say, the *Commercial Arbitration Act 2013* (Qld) is to 'recognise' that the arbitral award, given effect by the law of Western Australia, is also binding between the parties for the purposes of Queensland law. So, for example, a party to the award could plead issue estoppel in proceedings in a Queensland court concerning a matter determined by the award.

30

57. However, having been given effect by Western Australian statute, Western Australian statute may also alter or revoke that effect (including retrospectively). The CAA (WA) itself provides for ways in which this might be done. For example, an award may be set

40

---

[112] *TCL* (2013) 251 CLR 533, 575 [108] (Hayne, Crennan, Kiefel and Bell JJ).

[113] *TCL* (2013) 251 CLR 533, 575 [108] (Hayne, Crennan, Kiefel and Bell JJ), citing *Construction, Forestry, Mining and Energy Union v Australian Industrial Relations Commission (CFMEU)* (2001) 203 CLR 645, 658 [31] (Gleeson CJ, Gaudron, McHugh, Gummow, Kirby, Hayne and Callinan JJ).

aside by the Supreme Court of Western Australia on appeal (ss 34 and 34A). Where this is done, the award is denied legal effect and would no longer be 'recognised … as binding' as between the parties under s 35 of the CAA (WA).

58. Nor would there be any award to be 'recognised … as binding' between the parties under Queensland law. It could not be said that ss 34 and 34A of the CAA (WA), or the decision of the Supreme Court of Western Australia, thereby do not 'give full faith and credit' to s 35 of the *Commercial Arbitration Act 2013* (Qld). They simply set aside the arbitral award made in Western Australia such that there is no longer any award to be recognised as binding between the parties in Queensland.

59. The Amendment Act is conceptually no different. Sections 10(4) and (6) of the Act provide that the First and Second Awards are of no effect and taken never to have had any effect. Therefore, there neither is, nor ever was, an arbitral award under the CAA (WA) upon which s 35 of the *Commercial Arbitration Act 2013* (Qld) could operate and 'recognise … as binding' between the parties.

60. For those reasons, there is no inconsistency between any State laws, and the plaintiffs' submissions as to s 118 do not arise. In any event, the suggestion that s 118 is apt to resolve inconsistencies between State laws should be rejected.[115]

PART V: Time estimate

1. It is estimated that 15 minutes will be required for presentation of oral argument.

Dated 28 May 2021

. . . . . .
Erin Longbottom QC
Telephone: 07 3012 8221
Facsimile: 07 3175 4666
elongbottom@qldbar.asn.au

. . . . . .
Felicity Nagorcka
Counsel for the Attorney-General for Queensland
Telephone: 07 3031 5616
Facsimile: 07 3031 5605
felicity.nagorcka@crownlaw.qld.gov.au

[115] See *John Pfeiffer Pty Ltd v Rogerson* (2000) 203 CLR 503, 533 [63] (Gleeson CJ, Gaudron, McHugh, Gummow and Hayne JJ), 555-8 [137]-[143] (Kirby J). See also *Sweedman v Transport Accident Commission* (2006) 226 CLR 362, 407 [49] (Gleeson CJ, Gummow, Kirby and Hayne JJ).

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. **B54 of 2020**

BETWEEN: **MINERALOGY PTY LTD (ACN 010 582 680)**
First Plaintiff

and

INTERNATIONAL MINERALS PTY LTD (ACN 058 341 638)
Second Plaintiff

and

STATE OF WESTERN AUSTRALIA
Defendant

ANNEXURE TO SUBMISSIONS OF THE
ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND

	Description	**Relevant date in force**	**Provision**
1.	*Commonwealth Constitution*	Current	Ch III, ss 73, 75, 76 and 118
Statutes			
2.	*Acts Interpretation Act 1901* (Cth)	Current (version as in force from 20.12.2018)	s 15A
3.	*Australia Act 1986* (Cth)	Current (version as in force from 04.12.1985)	s 6
4.	*Commercial Arbitration Act 2012* (WA)	Current (version as in force from 07.08.13)	ss 28, 31, 33, 34, 34A, 35
5.	*Commercial Arbitration Act 2013* (Qld)	Current (version as in force from 25.05.20)	s 35
6.	*Commonwealth Aluminium Corporation Pty Limited Agreement Act 1957* (Qld)	As enacted 12.12.1957	s 3, 4
7.	*Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002* (WA)	Current (version as in force from 13.08.20)	
8.	*Iron Ore Processing (Mineralogy Pty Ltd) Agreement Amendment Act 2020* (WA)	As enacted 13.08.2020	
9.	*Judiciary Act 1903* (Cth)	Current (version as in force from 25.08.2018)	s 39