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Mineral laws flaw exposed

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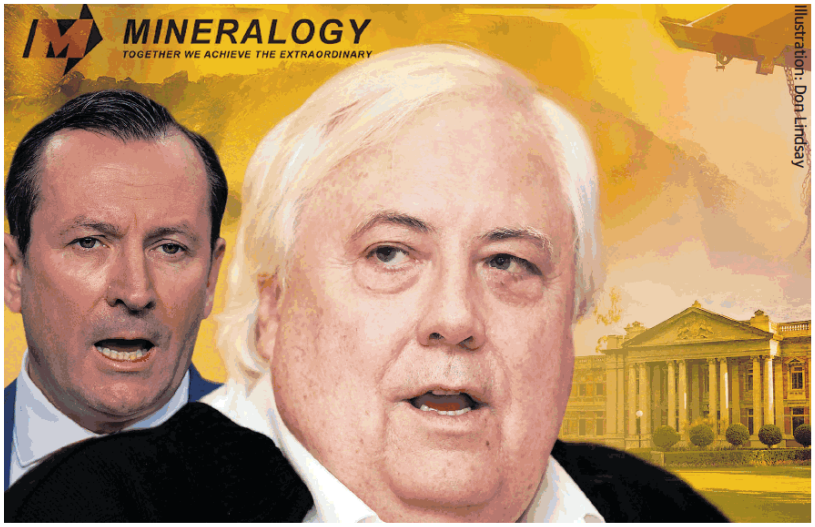

Illustration: Don Lindsay

Four weeks ago, this column visited the McGowan Government's plans to destroy a small WA company which engaged in the odious but legal practice of wheel clamping.

It hardly caused a ripple. The argument that the Government was trampling on a local business and the rights of its clients to protect their private property didn't quite capture the public imagination.

The Premier had dubbed wheel-clamping un-Australian — and that was enough. He intended to legislate to outlaw what had for more than 20 years been legal.

So was it really a very big leap for an emboldened Government to use the Parliament to take away the legal rights of a company it had given a State Agreement Act to develop iron ore tenements in the Pilbara?

After all, Clive Palmer is even more odious than wheel-clamping. And that's apparently enough.

But, as anyone who listens to commercial radio or opened a newspaper in the past few weeks knows, Palmer is a bit different to a wheel-clamping business. He can afford to keep throwing millions of dollars into the fight until something gives.

There has been a big focus by the Government's critics on Palmer's legal rights. And the rule of law is important.

The previously planned November hearing of the arbitration, which has so far favoured Palmer, was designed to decide those rights.

It now seems likely the matter will end up in the High Court, along with the legality of the WA Parliament's unprecedented legislation to block Palmer's claim.

But black-letter law is not the only way of looking at this dispute. Bear with me.

First, put aside the prospect of Palmer being awarded $30 billion and bringing WA to its knees.

> We clearly need a better form of protection for the mineral interests of West Australians.

That figure is being used to frighten people into submission.

Palmer may have managed to conjure up that sum for "lost value" in a statement of claim, but it bears no relationship to any real loss he may have incurred.

More on that later.

No one in the know seems to believe it. The truth is that Palmer was the first to be given an Agreement Act to develop low-grade magnetite ore that no one else wanted when he bought the Fortescue tenements for a song.

Two weeks ago, I raised the comments made by former premier Colin Barnett, when in Opposition in 2002, questioning state development minister Clive Brown about the Gallop Labor government's agreement with Mineralogy and its six listed partners.

"Mineralogy is the corporate entity that owns the mining leases upon which the Fortescue magnetite deposits are located," Barnett said.

"I suggest to the minister that the other companies are nothing more than shelf companies. If so, I seek substantiation about whether it is appropriate for the State of Western Australia to enter into an agreement, which is ratified by Parliament, with shelf companies."

That agreement effectively made Palmer a paper billionaire. But not a paper tiger.

In February last year, I visited the Perth headquarters of Palmer's United Australia Party — a small space upstairs in a less than auspicious business block in Leederville — and instead found the WA home of Mineralogy.

It was closed mid-morning on a business day with just a bit of paper stuck on the glass proclaiming it to be Mineralogy's WA base.

The cramped two-room suite with boxes strewn across the floor didn't look anything like the bustling offices of real iron ore miners.

And there's the rub. It's not.

A judgment handed down in 2017 by Justice Kenneth Martin in the WA Supreme Court to settle an action between Mineralogy and its partner in the Sino iron ore mine, CITIC, described how Palmer sold off 100 per cent of the project to the Chinese company in 2006 for $415 million plus lucrative ongoing royalty payments.

Why are these rights bestowed under a State Agreement Act on a specific proponent later fully transferable to other unassociated parties?

Palmer didn't get to own the valuable minerals through the legislation. They remain the property of the citizens of WA. Palmer just got the right to exploit them on the basis that we get a royalty for every tonne mined.

"The agreement, when ratified, provides for Mineralogy by itself or in conjunction with one or more of the co-proponent companies to develop projects incorporating the mining and concentration of iron ore and the processing of that iron ore into high-grade steel pellets, direct reduced iron and/or steel," Brown told the Legislative Assembly in 2002.

One of Mineralogy's six wholly owned subsidiary "shelf companies" that Barnett questioned, Korean Steel, was the corporate vehicle Palmer sold to CITIC to transfer his agreed rights for the Sino project to them.

Another one, International Minerals, holds the rights to the adjoining South Balmoral leases that Palmer claims the WA Government stopped him selling to a different Chinese company, causing him the purported $30 billion loss. But where's the real loss if he'd invested virtually nothing to develop the tenement? Palmer used shelf companies of his own creation to transfer the valuable rights granted by the WA Parliament to the Chinese.

Interestingly, Government sources say the Balmoral South orebody, which adjoins the Sino project, has a high asbestos content which would make any mining very problematic. Was it always Palmer's intention to flog off the rights bestowed by the WA Parliament rather than develop the resources as he initially agreed? And isn't that the nub of the problem here?

The Balmoral South arbitration by former High Court judge Michael McHugh has proceeded on the basis that the State of WA cannot reject a proposal — no matter how deficient — from a company which has been granted a State Agreement Act. It can only seek to put conditions on it.

The debate sparked by Barnett back in 2002 was all about Palmer's ability to do what he was promising. But Palmer was never required by the Parliament to live up to his end of the bargain. We clearly need a better form of protection for the mineral interests of West Australians now that State Agreement Acts have been shown to be seriously lacking.

Rise of work from home may bring fall of old sick days

GARY MARTIN

The alarm clock sounds ten times louder than normal, your head is pounding like a train on the tracks, you feel hot yet cold at the same time and, as you try to drag yourself out of bed, dizziness derails you to the point that you slump back under the covers.

All this can mean only one thing — you are sick and will have to stay home from work.

During these COVID-19 times, the default response to any illness is to stay home.

Gone are the days when we would go into the office and spread our germs and happily incur the wrath of colleagues.

In today's world, when we call in sick we no longer have to sell our illness to the boss with graphic details of symptoms, by mimicking a hacking cough or through saying something along the lines of "I've had such a bad bout of projectile vomiting during the night that I managed absolutely no sleep".

But there is a catch larger than a limousine on steroids that can leave many of us marinating in misery.

With the increased acceptance of working from home, is it possible that the traditional sick day — during which we rest by curling up on the couch and binge on a Netflix series all day — is on its deathbed?

The answer is a resounding yes.

If you are not well enough to come into the office yet not completely laid up, there will be an increasing expectation from your boss that you can WFH despite feeling poorly.

It is no secret that many workplaces overtly spruik the need for work-life balance at the same time as covertly encouraging an "always on" mentality.

Their secret agenda is that sick days are for wimps.

In these workplaces, employees find it exceptionally difficult to down tools or ask for time off when they are under the weather.

Instead, they are often encouraged by deceptively benevolent bosses to WFH.

We sniffle but soldier on from our couches because we are stressed that work will otherwise pile up.

Maybe the pressure from bosses and colleagues is enough to force us out of our sick bed.

Some bosses have a knack for making us feel uncomfortable when we phone in unwell. As a concession, we appease them by saying we will WFH — sick.

However, this does not allow our bodies and minds to recover as we battle illness at the same time as our workloads.

Unsurprisingly, it sets us up to fail at both.

While bosses are often relieved when an employee takes a "WFH unwell option", the short-term appeal will be short-lived.

Without appropriate rest our recovery time will be stretched and inevitably delay our healthy return to the office.

In the meantime, the quality and quantity of our work output will suffer.

Ultimately, WFH while unwell becomes an individual's choice based on the illness experienced or injury encountered.

That choice should not be influenced by an employer's relentless expectation that work must go on regardless of an individual's physical or mental health.

At the same time, bosses must step up and explain to employees that sick days are important and that they are expected to take time off when unwell.

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