

Question on notice no. 58

Portfolio question number: BE23-059

2023-24 Budget estimates

Legal and Constitutional Affairs Committee, Attorney-General's Portfolio

Senator David Shoebridge: asked the Attorney-General's Department on 24 May 2023—

Senator SHOEBRIDGE: To be totally clear: I cannot conceive of what possible mischief can be given to the Commonwealth by you simply repeating here what Zeph has already told you in the notice of intention. That's what I'm asking you to do: what's found in the notice of intention that Zeph has given? I'm not asking you to endorse it, or adopt it or suggest that it's valid, but to tell the Australian people what the nature of the claim is that may end up being another multibillion-dollar claim against the Commonwealth under one of these investor-state dispute provisions.

Mr Clarke: I think I've answered that, Senator.

Senator SHOEBRIDGE: Well, I'm going to press for an answer.

Mr Clarke: I'll take it on notice, Senator.

Senator SHOEBRIDGE: Are you—

CHAIR: He has taken it on notice.

Senator SHOEBRIDGE: Well, you obviously have an understanding about what it is now. You have an obligation, if you've been briefed in accordance with the guidelines that were given to you, to advise us of what you know. If, for some reason, you want to suggest that there's a public interest immunity—

CHAIR: Why would you ask these questions—

Senator SHOEBRIDGE: in this—and I can see you nodding, is that—

Mr Clarke: Yes. I'll take it on notice for that purpose.

Answer —

Please see the attached answer.

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
BUDGET ESTIMATES 2023-2024

Attorney-General's Department

BE23-059 - Mr Palmer's entity Zeph - contents of notice of intention

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The response to the Senator's question is as follows:

On 21 February 2023, Zeph Investments Pte Ltd (Zeph), a Singapore-registered company ultimately owned by Mr Clive Palmer, provided the department with a notice of intention to commence a second investor-State dispute against Australia.

On 29 May 2023, after this question was taken on notice, Zeph provided the department with a notice of arbitration formally commencing the arbitration that was the subject of the notice of intention.

Zeph alleges that Australia has breached certain obligations owed to it under Chapter 11 of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA). Australia will vigorously defend the claim.

The dispute relates to certain mineral exploration permits held by Mr Palmer's Australian company, Waratah Coal Pty Ltd, in the Galilee Basin of Queensland.

Waratah Coal Pty Ltd is 100% owned by the Australian company Mineralogy Canada Acquisition Corp Pty Ltd. Mineralogy Canada Acquisition Corp Pty Ltd is 100% owned by Mr Palmer's Australian company Mineralogy. Zeph acquired 100% of the shares in Mineralogy in January 2019.

The notice of arbitration indicates that Zeph is claiming damages of approximately AU\$41.3 billion. Zeph's damages claim is unsubstantiated.