IRON ORE PROCESSING (MINERALOGY PTY. LTD.) AGREEMENT AMENDMENT BILL 2020

Second Reading

Resumed from an earlier stage of the sitting.

MRS L.M. HARVEY (Scarborough — Leader of the Opposition) [2.56 pm]: I rise to continue my remarks about this amending legislation. I put on the record once again that the position of the Liberal Party room was a consensus position to not oppose this legislation. I would like to get on the record that we do not support the actions of Clive Palmer, which is why we are not opposing this legislation.

During question time, I asked the Premier whether he would support a short sharp committee inquiry. It is ridiculous to say that the suggestion of a committee inquiry or that contentious legislation go to a committee to potentially strengthen it is in any way, shape or form showing that the legislation is not supported. That is ridiculous. The amending legislation in front of us is backdated to have effect from 11 August. It was read in just after 5.00 pm yesterday so that Mr Palmer and his lawyers could not get wind of it and could not lodge a writ in court. It needed to be read in yesterday after that opportunity had lapsed. The legislation is backdated to be effective from yesterday, 11 August 2020, at around about 5.00 pm. Should the upper house choose to send it to a committee to potentially strengthen it and ward off a potential High Court challenge, it could be done and dusted by 15 September. It could be debated in the Legislative Council and be dealt with by 17 September. The appeal will be heard in November 2020. If the legislation is done and dusted and dealt with by 17 September, there is no reason for the government to not agree to a committee inquiry. That is up to the government and our colleagues in the Legislative Council. In considering incredibly contentious legislation, which is what we are now considering, as the Premier and the Attorney General have said, it may well be in the best interests of the state to avoid a $30 billion damages claim.

Mr P. Papalia: It just might!

Mrs L.M. HARVEY: The government is saying that this is the right avenue —

Mr J.R. Quigley: You're supporting it.

Mrs L.M. HARVEY: Yes, we are not opposing this legislation. We are taking the government on trust and in good faith that this is the right course of action. However, a committee inquiry could well tighten up any potential issues in the legislation and strengthen it to ensure that the taxpayers of Western Australia are indeed best protected by this legislative instrument. It would not push out the consideration of the legislation in the Legislative Council. It could well be dealt with by September. The appeal date is set for November. The idea that having a committee of Parliament consider legislation is in any way, shape or form showing a lack of support for the legislation is complete nonsense. That is our job. It is our job in this place to consider legislation and make sure that it does not have unintended consequences. Indeed, if the Parliament that passed the original state agreement with Mr Palmer's shelf companies had spent a little more time considering what it was doing in 2002, we may not have found ourselves in the position that we are in today in 2020—having to amend the legislation and remove the arbitration rights within the contract, which are similar to the rights and arbitration process within all state agreements. We have to remove them because the job was not done properly in 2002.

Now, in 2020, we are in exactly the same position because we have not been given time to consider this legislation. It was read in at five o'clock yesterday afternoon and we are considering it now, less than 24 hours later. It will be passed by the end of the sitting this evening. The government wants it to spend a day in the Legislative Council tomorrow. It is precisely that rushed agenda that allows flawed legislation to go through, with unintended consequences. That is what happened in 2002 when the legislation was not considered properly. Now the government is asking us to get through this legislation to amend a state agreement, which has never been contemplated before, in the shortest time possible. I hope there are no unintended consequences, because in agreeing to pass this legislation and taking the government on trust and in good faith, we do not want to be responsible for unintended consequences.

To get back to the freedom of information exemptions, we will ask the Attorney General during the consideration in detail stage whether the exemption to access documents under the Freedom of Information Act is confined only to the proponents of the state agreement or whether the Freedom of Information Act exemption will exempt every other entity from seeking documents through the freedom of information process. For example, will the Freedom of Information Act exemption exempt every media outlet? Will it exempt the opposition? Will it exempt some of the other parties in the Legislative Council from lodging a freedom of information request for information about this state agreement and the government's handling of the state agreement, the appeal and its relationship with Mr Palmer? Will it exempt every other entity from having access to the freedom of information process or just the proponents of the state agreement? It seems to me that this is shutting down the opportunity for people to understand exactly what happened between 2014 and 2018 that has led to members of Parliament finding ourselves with this extraordinary legislation in front of us.

I want to put on the record, before I sit down once again, that it is ridiculous to say that the Liberal Party is in any way, shape or form supportive of Clive Palmer and this action. It is quite simply not the case. I have ruled out doing a preference deal with Clive Palmer. Indeed, I have not been supportive of the High Court challenge either. It is an absolute nonsense to construe from my question about whether a committee of the Legislative Council could potentially do a short, sharp inquiry that I am somehow best friends with Clive Palmer. It is not the case. I just wanted to put on the record that that is simply not the case. I do not approve of these actions and I would be absolutely mortified if Clive Palmer, notwithstanding this legislation, was successful in suing my grandchildren for $12 000 each as a result of his litigation. I would be mortified. The opposition will not stand in the way of this amending legislation because the government has told us that it is the solution to the problem. I hope it is the solution to the problem.

As we have said, we do not oppose this legislation. We will certainly interrogate it expeditiously. We do not want to rush legislation through this place and again find ourselves in these circumstances in another 18 years. The 2002 state agreement was flawed and that is why we are where we are. We do not want this amending legislation to also be flawed and to find further unintended consequences down the track. That is why the opposition will do its job in interrogating this legislation. We will ask questions so that we can understand the ramifications of taking away the arbitration rights that were enshrined in the state agreement in 2002. We do not support Clive Palmer. We do not support this court action. We are working collaboratively with the government to ensure that there is a good outcome for the people of Western Australia.

I thank you, Madam Deputy Speaker, for indulging my comments.

MS M.J. DAVIES (Central Wheatbelt — Leader of the Nationals WA) [3.07 pm]: I welcome the opportunity to offer the position of the Nationals WA on this extraordinary piece of legislation. I do not think I have used that word or "unprecedented" as many times as I have in the last six months! Today, less than 24 hours after we were advised by the Premier of this action, we find ourselves debating the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020, which will have significant ramifications for the state's finances and our relationship with state agreement holders into the future. It is a very significant situation to find ourselves in.

From the outset, I state that the Nationals have had no opportunity to test with our own legal counsel the facts presented by the Attorney General yesterday or the State Solicitor and his cohort of colleagues last night. There simply has not been time. For the benefit of posterity and the record in this house, we should be clear that the first that we were made aware of the government's intention to pursue this matter was an urgent call to the chamber at 4.50 pm yesterday, followed by a conversation with the Premier behind the Chair in the chamber, which was interrupted by the Attorney General commencing his second reading speech. There was very limited opportunity for us to scrutinise the legislation. We were then offered a briefing by the State Solicitor and his associates, including external counsel who have been involved in the creation of this bill. That took place at seven o'clock last night.

Our party room also met at 11.30 this morning to consider the matter. I do not want to belabour the point, but all members take pride in the role that they have been elected to do and the work that members do in the chamber is important. It is far from a perfect environment and we do not always get the opportunity to scrutinise or debate matters in a fulsome way. It has been particularly difficult for all members during the COVID-19 period, and we are now dealing with this bill, in addition to the other legislation that was provided to us at very short notice prior to coming back after the winter recess.

I note that in my colleagues' contributions to the COVID-19-related legislation yesterday they made the observation that the Premier and the government have received many accolades for their handling of the pandemic and the state of emergency that we now operate under. I, too, commend those who have worked tirelessly to ensure that our state remains safe from the ravages wrought by this disease across the nation and the world. But I would also like to point out that we, in opposition, have played our role. We have worked collegiately with government and we have accepted bills and amendments to legislation as we walk onto the chamber floor to debate them. We have accepted that we need to allow the government to make decisions, and we have been supportive in this place to enable that to happen. I do not think that can be disputed.

I am not sure that the same courtesy has always been returned. Yesterday in question time we earned the Premier's ire when we sought to raise the important issue of the workforce shortages that are impacting upon regional Western Australia. Those concerns were dismissed out of hand, and it is disheartening to think that, despite our best efforts to enable the government to pursue its legislative agenda, some of these matters are not being taken seriously, or at least are being dealt with flippantly.

I understand that this legislation is not COVID-19 related; it is something quite different, and has been in the pipeline for a little longer, but we find ourselves once again being asked to take a leap of faith. With no time to interrogate the bill, to seek our own legal advice, or to test the strategy that the government has chosen to pursue, we cannot be confident that this is the best course of action. We are being asked to take a leap of faith. We will do our best to comfort ourselves that this is, in fact, the case today, as we work through the bill, but it is not an ideal situation.

For the sake of posterity—because these things are looked back upon—we should note the circumstances under which we are debating this legislation and the way in which the opposition has been brought to contribute and participate in this debate.

From the outset I state that I find the claim that has been made by Mr Palmer to be extraordinary. I share the horror and concern that has been expressed by my constituents and by the community at large that anyone would seek this quantum of money from the state. I think it would be fair to characterise the behaviour of Mr Palmer in this matter, and others that we are aware of, as extraordinary. The government has therefore put forward the argument that because of the extraordinary nature of Mr Palmer's claim and behaviour, the remedy to this problem can also be justifiably extraordinary. I want to be very clear about what that means and what we are being asked to do as part of this legislation. I am sure the Attorney General will clarify what is normal, what has been done before, and what is, as we have said before, unprecedented.

I think it is important to put that on the record. If we sift through the legalese and the layers of complexity, it means—and this is a very short summary—firstly, that we are removing the ability of Mr Palmer, Mineralogy and International Minerals to seek to pursue any claims through the court system, which is essentially a fundamental right of every Australian citizen. Secondly, we are amending a state agreement act, which is the enabling legislation for the state agreement contracts struck between the government and the proponent. We—the government and this Parliament—are doing this unilaterally. The Attorney General may say, with conviction—and he did yesterday—that the bill does not give rise to sovereign risk and that the bill does not create risk for other current state agreement parties or future investors; but saying that that is so does not make it so. This will send a shockwave through and raise concerns within the industry and business, and quite rightly so.

This government in particular has made a point of avoiding conflict with the mining sector or contemplating any changes or reviews of state agreement, except in the case of Mr Palmer, so this is unusual. It raises the question: if the government of the day does not agree with an outcome or an action, might it also be subject to a change to an act of Parliament to which it is a party? I speak with some experience on this matter; the Nationals WA bore the full brunt of a campaign against our proposal before the last election to amend legacy state agreements. We saw and remember very clearly the concerns that were raised by industry about any notion or proposal to change a state agreement without any consultation with the proponent with whom it was struck.

The third matter in the legislation that could cause concern and raise eyebrows is that we are creating a general regulation-making power and giving the Governor the ability to make orders to deal with various circumstances, including any matters that may not be adequately or appropriately dealt with by the bill. We are essentially allowing the government to write and enact its own rules without the requirement of revisiting Parliament, in layman's terms. That, to me, raises some serious concerns, because that will hand a blank cheque to the government of the day. Although this is a serious matter on which it is likely that many lawyers will be working, and there may well be unforeseen circumstances that have not been tested—we have heard that Clayton Utz has consulted with the State Solicitor's Office—this legislation is, nonetheless, something that this Parliament would not ordinarily ever contemplate or consider.

I also understand that the government has contemplated our free trade agreements and whether we or the commonwealth government may be in breach of them. That, again, is of serious concern. This is not just a Western Australian issue; it could potentially become a national and international issue. I think these are all things that the government has at least turned its mind to, and it is important to raise the question of how important this is in the context of the broader business environment.

We are removing the right for any documentation relating to the matter to be sought under freedom of information, specifically in relation to this particular state agreement and case, and we are focusing on this state agreement with Clive Palmer, Mineralogy and International Minerals alone. The Attorney General might like to clarify this, because I presume other solutions were contemplated that might have encompassed other state agreements that could fall foul of the same action that Mr Palmer and his businesses are bringing against the state. The Attorney General could also clarify why this particular course of action has been taken, and whether it will provide us with the best opportunity to ensure we are not up for a $30 billion bill for generations to come.

I turn to the reason for the original action being initiated. It is my understanding, after last night's briefing, that it rest on the fact that in May 2014 the former High Court judge Mr Michael McHugh, AC, QC, found in favour of Mineralogy and International Minerals, who had submitted a proposal to the government of the day to amend the state agreement and had had their proposal rejected. The Attorney General noted in his second reading speech that the reason for Mr McHugh's finding was that, although the proposal was defective, it was nonetheless a proposal that should have been considered by the minister in accordance with the terms of the state agreement. The Premier today reiterated that he also believes that the Premier and minister responsible at the time, Hon Colin Barnett, was right in the action that he took and that he was acting on the State Solicitor's advice.

It is worth taking some time to discuss the convention for amending state agreements, because there is a convention. Yesterday the Attorney General went to great lengths to explain the process that is undertaken for any of our state agreements to be altered. In the simplest terms, it is expected that if a state agreement is to be varied, the government or the proponent is to submit a draft to the other party for consideration, and the two parties are to work together to reach a mutual agreement on the variation.

This is a convention and process that anticipates good manners. Mr Palmer is anything but conventional, and I will leave it to the public to decide whether he has good manners! He is highly litigious. He has publicly stated that he regularly pursues matters to court and enjoys it. The process in dispute—the proposal to amend the state agreement—is not prescribed in legislation or regulation, as I understand it. It comes about as a result of a convention, and Mr Palmer is testing the state agreement and the contract to the letter of the law. He believes he has cause to seek damages from the state. The government obviously believes there is a real chance that his case will be successful; otherwise, we would not be considering such extraordinary legislation. Thus, we find ourselves here today.

We in this Parliament have a duty to protect the Western Australian public and their hard-earned tax dollars. We have a responsibility to ensure that our state is not bankrupt and subject to higher taxes and charges for generations to come. We also have a duty to ensure that the state government does not find itself in this situation again, no matter who is sitting on the treasury bench. It might be argued that Mr Palmer is unique and that no-one else would choose to do business as he does. My understanding from comments made by industry and by the Chamber of Minerals and Energy is that they understand why the government is taking this course of action, but we cannot assume that no-one else would pursue an action like Mr Palmer. That is relying on good faith. With a $30 billion bill hanging over our heads and the heads of Western Australian taxpayers, there are clearly not enough belts and braces in our legislation and state agreement acts to prevent this from happening again.

The Nationals WA has long argued for a review of all state agreements. Although our focus has historically been on the legacy state agreements, which have been very well canvassed in this place and in the public forum both prior to and since the last election, with the advent of this development there is a strong case to broaden the scope to review them all. The government has chosen to focus its remedy for the issue we are debating today on just the Mineralogy agreement but there are 50-odd live state agreements and I think about 70 exist in the history of Western Australia. They all have different structures and clauses. The adviser with expertise in this area who provided us with a briefing last night made the point that there are inconsistencies and changes were made to the way the agreements were struck over time. We would expect that, considering that they have been struck since the 1960s and practices in management, contractual law and Parliament have changed in that time.

Our concern has always been that these agreements lack transparency. They are ultimately struck behind closed doors. As members of Parliament, we have no opportunity to scrutinise the detail. The Parliament has no right to be updated on these documents that govern the management and exploitation of the resources that belong to all Western Australians. We are essentially in the dark. We are in the dark until we are called upon to support extraordinary legislation that will remove the right of an Australian citizen to seek remedy through a court. Regardless of what we think of Mr Palmer, that is exactly what we are talking about today. I want it to be very clear that this sits very uncomfortably, because regardless of the theatre, passion and people's views around Mr Palmer, we are talking about an Australian citizen being denied access to the courts. There is a reason we are doing it: an unusually enormous amount of money that could potentially bankrupt the state, so I think the response is appropriate considering what we are being asked to do. But we are straying into an area that is quite unusual in preventing an Australian citizen from seeking remedy through the courts.

I do not want the state government to be served with a $30 billion bill. I do not want every Western Australian to be burdened with a $30 billion bill. That is what this state government tells us will happen if we do not support this legislation post-haste. It is an extraordinary and unprecedented approach and I am deeply uncomfortable with some of the things that we are being asked to do in such a short period. However, the government has access to resources and advice, and has had the time to consider this. As we have with the COVID-19 pandemic legislation, we will give the government the benefit of the doubt and provide the support it seeks to progress this bill. In doing so, we urge the government to consider the concerns we raise about the remaining state agreements and the potential for this to happen again. A review of state agreements by a bipartisan parliamentary committee to ensure we have the belts and braces required to protect the people of Western Australia is surely a prudent and sensible approach. Our resources sector is the engine room of the state's economy. The minerals these companies extract belong to the people of Western Australia and there should be more transparency in the legislation that governs these agreements.

In closing, I urge Mr Palmer to reconsider his approach. The world is facing the most uncertain times and we are all working to keep our communities safe. It is incumbent on leaders of government, industry, business and community to work together to pull us through. Who knows what the Australian economy will look like in six months, 12 months or five years? Will this action and government's response make it a better and more prosperous place?

[Member's time extended.]

Ms M.J. DAVIES: I say to Mr Palmer and everyone involved that we all make choices and have options. Without wanting to sound like rainbows and fairies, at this point our world needs less conflict, not more. The Nationals would very much like to see all our leaders, whether they be from business, industry or government, work together for a common cause. The Nationals WA therefore supports this legislation, bearing in mind the concerns we have raised and the unprecedented nature of some of the clauses. As the Leader of the Opposition pointed out, no opposition would prevent a government from protecting its constituents from doubling the debt in this state. We will not stand in the government's way. We trust that government members have chosen the correct and appropriate course of action. The Nationals WA supports the course of action that the government has taken, with the reservations that we have raised. We look forward to interrogating the bill in this place and again in the Legislative Council, noting that serious concerns about some of the clauses will be raised in the Legislative Council.

We have unreservedly supported the Western Australian government's hard border policy. I know that was reiterated by my parliamentary colleagues yesterday. We wrote to and communicated with our federal colleagues at the earliest possibility that we did not support the action being taken by Mr Palmer or the federal government's intervention on the case. We understand the concerns of the Western Australian community. I have travelled almost the length and breadth of the state in the last six weeks as the leader of the party. I got consistent feedback from every person I spoke to in Western Australia that they want the hard border to stay. It comes with some pain and we understand that. Very important industries have raised their concerns with us about the hard border, particularly in the north of the state, but it has broad support across the state. Members of the Nationals have been very up-front about our support for that position and have made that known to our federal colleagues.

We look forward to the Attorney General's response to some of the concerns and issues we have raised, including being very clear and transparent about which issues have been endorsed before in this place and which of them are new, and how they might play out in a broader sense as we try to make sure we respond appropriately and do not open the door for further court actions with an industry that is so very important for all Western Australians and Australia.

MR W.R. MARMION (Nedlands — Deputy Leader of the Opposition) [3.27 pm]: I thank the advisers for giving us a briefing yesterday. The Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 is an unprecedented piece of legislation. I think I said something similar to that about previous COVID-19 legislation. This is not COVID-19 legislation, but as non-COVID-19 legislation, it is certainly unprecedented. We have had to rush it through and we have had to take in good faith the information we have been provided by the advisers, which I do. We have also had to take in good faith the information provided by the government as we rush the bill through, which I will discuss in a minute. We are in a quandary. On one hand, the Premier said we are the weakest opposition ever. He absolutely slammed us, saying we are weak. Yet, here we are supporting this legislation all the way through. We are in a dilemma. If we come out and make abrasive comments about some of the technicalities of this legislation, then are we weak because we are critical of the legislation, or do we support it, which is also considered weak? We are in a lose–lose situation. Whatever we do, the Premier calls us a really weak opposition; yet, when it comes to the crunch and he wants us to support legislation, we get a fantastic briefing and all the advice.

Some of the words used in the second reading speech could have been put a little bit differently with the commentary around the former Premier. The Premier said today that he supported what Premier Barnett did, but the word "support" does not appear in the second reading speech. The wording has been cherrypicked. Unfortunately, I have to say that the second reading speech has a little bit of politics in it, and that is terrible. Some might say it has a lot of politics; I am being very generous in saying that it has a little bit of politics and I will let everyone decide what that means. I can say that I am in Parliament to look after Western Australians, and I do not expect second reading speeches to be political. That is to start off.

The dilemma that we have now is that arbitration is underway. Because the arbitration is underway the government has information about defending its position. We in opposition want to know what all the information is, but we cannot have that information. I understand that. I absolutely understand that we cannot have all the information; otherwise, if this bill does not go through and we have received all the information, the government's position in the arbitration will have been disclosed to the other side. That is the dilemma we have. How do we support a bill if we do not have all the information and do not have time to consult? In my position as the shadow Minister for Mines and Petroleum I managed to get hold of the chief executive of the Chamber of Minerals and Energy. It was very nice of him to ring me up at about 7.30 at night. He had been in a meeting so I do not think he was aware of it until 6.30 last night. I appreciate that he rang me at about 7.30. His advice to me was that the Chamber of Minerals and Energy, which is the preeminent body looking after mining, oil and gas, supports the government with this legislation. It gave me some encouragement that the industry itself supported it. I will not divulge who he had spoken to, but he had spoken to some major mining companies and they had advised him that they did not have a problem with this unique piece of legislation. As far as I am aware, never before has a state agreement been amended without one party agreeing to it. I think it is fair to say that. I was the Minister for State Development for a very brief period.

One of the reasons I am in Western Australia is that my father worked for a company called Laporte. One of the very early state agreement acts in Western Australia was the Laporte Industrial Factory Agreement Act 1961. Believe it or not, but during my engineering course at University of Western Australia I did a project that went right through that act and I presented a paper on the Laporte Industrial Factory Agreement Act in 1976 at UWA so I understand how they work. They were a lot thinner in those days than they are today. The reason for state agreement acts is to give some certainty to companies that some uncertainties will be fixed. Indeed, as I recall, the Laporte Industrial Factory Agreement Act guaranteed accommodation, so houses were built, and the electricity and water prices were set. The interesting thing about that act, which is not related to this, of course, is that the effluent from the development was looked after by the Public Works Department and was a bit of a problem. The problem with the Laporte process was that the effluent was processed in the sandhills of Binningup. The idea was that it would leach into the ocean and be neutralised, but that did not work.

That aside, I do not have any background on how the state agreement act for Mineralogy was put together so I have to take the second reading speech on good faith. I have got hold of the act, but I have not had time to read it. I have to take it on good faith that on page 56, under the heading "Arbitration", it states that if there is a dispute, it will be solved through arbitration. I have read it a number of times to see whether there is a loophole. I am only an engineer, and I cannot find one. The one thing that is interesting about this clause in the contract, which then became the state agreement, is that it states that the arbitration will be settled under the provisions of the Commercial Arbitration Act 1985. I think that is significant, but I do not know because I am not a lawyer in that area. My understanding from the second reading speech is that the Commercial Arbitration Act 1985 was amended and is now called the Commercial Arbitration Act 2012. From what I have read, there are no appeal or review mechanisms in the 2012 act. When the contract was put together, it was possibly envisaged that arbitration would be available and that there were provisions for appealing and reviewing decisions. One could argue that if there is a deficiency in the current contract, it may not have been there at that time. I am not sure whether that is relevant or not, but the Attorney General might like to comment on that.

Another reason this is urgent is the quantum—$30 billion is enormous! We talked about the Bell Group dispute for decades and it was over one billion dollars. Here we have $30 billion; it is almost unheard of. Indeed, it is about a project that does not exist. I went to the CITIC Pacific site on two or three occasions during construction. It is interesting that the state agreement act is with Mineralogy. However, the way I understand it is that it has licensed off part of the site that has iron ore to CITIC Pacific to mine. Obviously, we are not privy to the agreement between CITIC Pacific and Mineralogy. One could argue that perhaps we should be—but I do not know that we are—if a state agreement act has been put together when there are other contractual arrangements.

I have met with members of the board of CITIC Pacific in China on two occasions and, unfortunately, it is fair to say that they were not happy campers. When I first heard about the CITIC Pacific project when I became a member of Parliament, someone said that it was a secondary project—a $2 billion project by CITIC Pacific. When I went onsite I could tell straightaway that it was not a $2 billion project. It was way more than a $2 billion project. I think it ended up being closer to $12 billion. CITIC Pacific, a Chinese company, has put $12 billion of infrastructure on a piece of land it has licensed to mine the iron ore from and Clive Palmer and Mineralogy own the lease under the state agreement act. A problem that CITIC Pacific has had is that it wanted to expand its area for its tailings because it did not have enough land. Indeed, if it was able to negotiate more land, either from the state or Mineralogy, if it were to give up some of its land, it would have to get environmental approvals. However, the environmental approvals have to be put through by Mineralogy. CITIC Pacific is one party removed from being able to do anything. Mineralogy has not been a friend to CITIC Pacific despite the fact that CITIC Pacific's operation provides Mineralogy with a stream of millions and millions of dollars. It is very disappointing. As a Western Australian, I find it unethical. Mineralogy is making a lot of money out of a fantastic dream agreement and, in my view, has not supported CITIC Pacific, which is delivering it all that money. That is a bit of the background, but it is relevant. I have never met Clive Palmer, but by his actions he does not set himself up to be a person of what I would call high morals. That is not a very good start. I will get on to the bill in a little bit. Another thing about the CITIC Pacific project is that when CITIC Pacific invested what I think was about $2 billion into the project, it found that the material was a lot harder than the magnetite was in China, so the processing plant that it put together needed to be re-engineered. In fact, we can assume that it would have cost a fair bit of money—we will not find out how much—to produce the magnetite at the CITIC Pacific site. It is a vertically integrated process. There are already smelters in China. Magnetite is a very good quality iron ore for use in smelters. It has probably worked out quite well because the price of iron ore is very high at the moment. However, it is highly unlikely after what has happened with the CITIC Pacific project, which is in dispute today, that the Chinese would consider it to be viable to invest in another magnetite project. That is the background.

Against that background, the state government faces a dilemma on what I call a technicality. If this dilemma came under the Mining Act, we probably would not be in this situation. Nevertheless, we are in this situation. Former High Court judge Mr Michael McHugh, QC, declared that the Balmoral South iron ore project was a defective

proposal. That says it all. It was a defective proposal and Premier Barnett had every ground on which to not approve it. However, despite that, former High Court Judge McHugh said that it was, nonetheless, a proposal that had to be considered by the minister in accordance with the agreement. I understand that the minister had to go through the process of saying, "I don't approve" or "I approve it under these conditions", which eventually I believe happened. But that is all water under the bridge now. The problem now is that we cannot see the arbitration documentation to find out what quantum is being presented. But if it is $30 billion, as a Western Australian, I do not like that. Does anyone want to pay $30 billion to Clive Palmer? I certainly do not. I did not become a member of Parliament to throw away $30 billion. I also did not come to Parliament to mess up a state agreement act. However, the circumstances are that someone is trying to screw $30 billion from the taxpayers of Western Australia. I think we have every right to say that we do not like that conduct. For that reason and in good faith, despite the fact we do not have all the information, we will not oppose this bill. It is my understanding that that is what will happen in the other house.

However, some aspects of the bill that have been mentioned by the Leader of the Opposition and the Leader of the Nationals WA might come under a bit more scrutiny. It will be interesting to get some feedback on two clauses in particular. The bill covers two aspects. One is the dispute at the moment and any actions around covering up the dispute, or however they describe that. There is an issue about freedom of information. I understand from the briefing that the reason the FOI provisions are in the bill is so that Clive Palmer, Mineralogy and all the parties cannot use FOI to continue further disputes and to frustrate the government and Western Australians by further action. That is the reason for the FOI provisions in the bill. As the opposition, we are concerned about that. The Premier's view is that we are the weakest opposition in the history of Western Australia, but the Premier is making the opposition weaker by not allowing it to use FOI to check the agreement and all the things that led up to it between 2014 and 2020. Are there issues under FOI?

[Member's time extended.]

Mr W.R. MARMION: The government may have reason now, because of the arbitration, to not give the opposition some information, but that should not be muted forever. We are a strong opposition. We are not a weak opposition; far from it. We want to use FOI when we can to find out what is going on. It is the role of the opposition to hold the government to account. It will be interesting to see whether the FOI provisions could be adjusted within a time frame, so that maybe in six months' time, if the opposition wants FOI documents in relation to this issue, it can get them. That is some food for thought.

The bill is divided into two sections. I believe this is the fourteenth draft, so we cannot say it has been a rushed project. I am not a lawyer, but it looks as though it does a pretty good job to cover off every possibility it can to make sure that we will not have to pay damages for any dispute. I understand it covers this dispute, any further disputes and any further proposals that might come forward. It definitely cuts out two proposals that have been put forward, but it will cover any future proposals. The primary aim of the bill does not change the actual contract. It adds extra clauses to the state agreement to make sure that if there is a dispute, damages cannot be awarded. I am not a lawyer, but there are lawyers in the house who may comment on that when they contribute to the second reading debate. The bill will not amend the contract, but it will change the intent of the contract, which has been implied, regarding damages. We are told that this has never happened before. Never in the history of Western Australia has a company with a state agreement—Mineralogy—used its state agreement, created a dispute, not negotiated with the state and gone straight to arbitration with a claim for damages. The primary aim of the bill, which has 30 clauses and is reasonably thick, is to make sure that the state cannot be held to account. I think that is a wise thing to do.

The other part of the process that has been done well is that the State Solicitor's Office—the Attorney General was possibly involved—had Clayton Utz spend a couple of weeks picking holes in the legislation to see how strong it was. In the briefing we were not told whether any clauses were changed, but we were told that the legislation is as watertight as Clayton Utz could get it, considering the international obligations for the Commonwealth of Australia and the Constitution of Australia, and the fact that commonwealth acts override state acts. We were told that Clayton Utz did the best it could.

In summary, as our leader said, the Liberal Party will not oppose the bill. We have listened in good faith to the Attorney General and the Premier. They have told us that this legislation is absolutely necessary and is the best option for Western Australia to mitigate an enormous damages claim. I cannot believe that someone could come up with a damages claim of $30 billion for a project that never existed. It was only ever a plan for a project, and that is it. In good faith, the opposition will not oppose the legislation. We look forward to hearing the Attorney General's comments on why the FOI provisions in particular are necessary and why this is the best option going forward. With those few words, I will sit down.

MR P.A. KATSAMBANIS (Hillarys) [3.49 pm]: I take my responsibilities and duties as a member of Parliament extraordinarily seriously. One of my primary duties is to look after the best interests of my constituents, the residents of the district of Hillarys and all residents of Western Australia. Yesterday, the government came into this place and introduced for the first time a bill that it claims will protect the public of Western Australia from

a potential arbitration claim of up to $30 billion. Our government claims that the passage of this legislation is the best way of protecting the public of Western Australia from that potential $30 billion liability. Essentially, the government has further asked the Parliament, and by extension the people of Western Australia, to take it on trust and on faith that this claim is on foot, that it is a potentially serious claim that may actually be realised and this is the best way of proceeding to mitigate the state's risk.

I am prepared to take the government at its word on the basis that I have had fewer than 24 hours to scrutinise a piece of legislation that the government tells us that it wants through this house, through the other chamber and at the Governor's house for signing by the end of the day tomorrow, 48 hours after it was introduced. That does not allow me or members of the opposition or members of the Western Australian public a lot of time to scrutinise the government's claims. We are further hamstrung by the fact that the government may be party to the arbitration proceedings, but those proceedings are private. Therefore, we do not know exactly what the claims or counterclaims are. We do not know what the defences are. We know what the government has chosen to tell us, which is that there is an arbitration on foot in relation to Balmoral South iron ore project between the parties to a state agreement. It is essentially a contract with the state government and Mineralogy Proprietary Limited and various other companies that has been given further weight by an act of this Parliament that was passed in 2002 when the Gallop Labor government was in power.

The government has said that an arbitration is on foot; there is a claim of potentially up to $30 billion; and we are concerned that if that claim is successful, the taxpayers of Western Australia will be up for this enormous sum, so alarm bells have to ring for everybody. This is what we are being asked to protect against.

Mr J.R. Quigley: Are you going to?

Mr P.A. KATSAMBANIS: The Attorney General has already been told that, but I will repeat that the opposition has indicated that we will not stand in the way of this legislation.

Mr J.R. Quigley: Are you going to support it?

Mr P.A. KATSAMBANIS: We will not stand in the way of this legislation and if the Attorney General lets me finish, I will articulate that.

The mechanism the government is using is unprecedented. The provisions in this bill have rarely if ever been used in any Westminster Parliament. A series of provisions removes legal entitlements that have come to be accepted as part of the customary law of our state, of our nation and of western democracies. We are asked to approve a bill that will remove the operation of a rule of law insofar as it relates to the Balmoral South iron ore project proposed by Mineralogy Pty Ltd, which is a company that is primarily controlled by an individual called Clive Palmer, whom I have never met. I do not know the man, but, as I said publicly today and it has been reported in the media, from my observations of his actions, especially in the last little while, I do not think Mr Palmer wakes up in the morning thinking about the best interests of the Western Australian public as his primary concern or objective.

We are being asked to approve such provisions that in many ways can be described as draconian and have been described as draconian by commentators since this bill was introduced yesterday. It is draconian to pass a provision such as clause 9 that abolishes "any contractual or other legal effect under the agreement or otherwise" with respect to the Balmoral South proposals, of which there are two on foot.

Clause 10(1) states —

> Any relevant arbitration that is in progress, or otherwise not completed, immediately before commencement is terminated.

There are a lot of proceedings. Further, clause 11(4) terminates all sorts of proceedings. It states —

> Any proceedings brought, made or begun against the State, to the extent that they are of the type described in subsection (3), are terminated if either or both of the following apply —

The language being used here is unbelievable. Clause 12(2) states —

> The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to, or in relation to, any conduct of the State that is, or is connected with, a disputed matter.

I do not think that anyone elected to this place would have ever thought that they would be contemplating this sort of provision in a piece of legislation in the Parliament of Western Australia. It is extraordinary and unprecedented. Is it within the purview of the Parliament of Western Australia to pass this law? Yes, it is. I see the Attorney General nodding. The Parliament is sovereign—it can do it—but it overturns the rules of natural justice and procedural fairness, which have come to be accepted as part of the law of our land, so we do not do this lightly at all.

In an ideal world, I personally would like the opportunity to scrutinise this bill. Recent examples of the state government of Western Australia introducing legislation to deal with the Bell resources provisions —

Mr J.R. Quigley: Which you voted for! You voted for those provisions.

Mr P.A. KATSAMBANIS: I do not think it was put to the vote and the Attorney General can go back and read my speech in the debate. The Attorney General made some very strong commentary. If he would like, I will quote it back to him, but I do not think he would like it. He put his colours on the mast back then and has changed his tack now. We should all do that because of the seriousness and gravity of the problem that we are addressing.

Mr J.R. Quigley: It was different.

Mr P.A. KATSAMBANIS: It is always different. Do you know what the big difference is? I will tell you what the big difference is: you were sitting on this side then and you are sitting on that side now, and that is the big difference. Don't you come in here and go all high and mighty on us —

Mr J.R. Quigley: It's unconstitutional!

Mr P.A. KATSAMBANIS: We will see whether these are your reasons. I wish you success. When we were debating the Bell legislation, I was a member in the other place. I said, "I wish that legislation success", but I expressed strong concern that it would not succeed in the High Court, and it is the same here. In the media today, the Premier said that he cannot guarantee that this legislation is bulletproof, but it is a great attempt. That is what we are told, and we are told to take that at face value. I say to the Premier that I am prepared to take this legislation at face value, because we do not have the opportunity to properly scrutinise it, but there are risks involved in what we are doing, and they are serious risks. I will articulate them, do not worry. If the Leader of the House wants to speak on this bill, he can come and take the stand and speak on it. There are risks with this bill, and I will continue with those after the appropriate consideration of other business.

Debate interrupted, pursuant to standing orders.

[Continued on page 4811.]