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

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [11.29 am]: I move —

That the bill be now read a second time.

The Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 seeks to deal with damages claims arising or potentially arising from proposals that were submitted by Mr Clive Palmer, Mineralogy Pty Ltd and International Minerals Pty Ltd pursuant to the terms of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act 2002. Those proposals were submitted in August 2012 and June 2013 and relate to a project called the Balmoral South iron ore project. The August 2012 proposal was at first rejected, and then later significantly conditioned, by former Premier, Hon Colin Barnett. Those decisions have led to Mr Palmer, Mineralogy and International Minerals now claiming billions of dollars in damages in an arbitration against the state.

There is a history to these damages claims, of which members of Parliament need to be aware. The Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act came into operation on 25 September 2002 following royal assent on 24 September 2002, after having been considered by both houses of Parliament in June 2002. Attached to the act, by way of a schedule, was a state agreement entered into between what were Mineralogy-related parties and the state. On 14 November 2008, the parties to the state agreement varied the state agreement by the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill—a bill that passed both houses of Parliament in December 2008, and, after receiving royal assent, came into operation on 11 December 2008. The state agreement provided a process by which Mineralogy would, alone or with one of six co-proponents, one of which is International Minerals, develop projects for the mining, concentration and processing of iron ore in the Pilbara region.

The state agreement was in a form that was reasonably standard at that time, in particular as concerns the framework for the submitting of project proposals and their ministerial consideration for approval. As far as project proposals are concerned, the state agreement provided that Mineralogy and any co-proponent would submit proposals for particular types of projects to the Minister for State Development. Such proposals were, and are, required to be detailed, and address a large number of specific matters relating to the establishment and operation of the project. Once the minister receives such a proposal, the minister is, and was in this case, required to either approve the proposal, defer consideration of the proposal, or require as a condition precedent to giving approval to the proposal that the project proponents make reasonable alterations or comply with reasonable conditions.

This type of clause exists in most other state agreements, and in the ordinary course of conducting business with the state, a state agreement proponent comes to the state and discusses its proposal in draft form, including making appropriate changes in consultation with the state, before it is formally submitted for ministerial consideration and approval. There is good reason for this: the state and the state agreement proponent or proponents need to be aligned on the detail of the proposal, bearing in mind that the state is agreeing, by the very nature of a state agreement, to the efficient and effective development of the state's natural resources; that any such developments are maximised for long-term certainty and investment security to the mutual economic advantage of both project proponents and the state; and to ensure that the interactions between the project proponents and the community will achieve a level of development that will benefit all Western Australians. Indeed, these are some of the primary objectives that underpin the state's decision to enter into a state agreement with a project proponent.

Notwithstanding the standard practice of consultation undertaken between every other state agreement proponent and the state in relation to project proposals, Mr Palmer, Mineralogy and International Minerals chose not to adopt a consultative or cooperative approach. Instead, Mr Palmer and the Mineralogy parties submitted a proposal for approval in August 2012 with little engagement with, or prior warning to, the state. That proposal was for a project called the Balmoral South iron ore project—or BSIOP—which had an estimated life span of 28 years. It was a proposal to construct and operate infrastructure to produce and export 24 million tonnes per annum of iron ore concentrate. Under the proposal, it was proposed that the project would be developed in two phases. Phase 1 contemplated, under a licence granted to International Minerals by Mineralogy, the mining of one billion tonnes of iron ore from Mineralogy-owned tenements; and, under phase 2, that there would be a right to mine a further one billion tonnes. The BSIOP proposal aimed to commence in September 2012, with the first shipment in 2016. Mr Palmer, Mineralogy and International Minerals intended to sell the BSIOP to Chinese government–owned corporations, and, in fact, had even secured a letter of intent from the Industrial and Commercial Bank of China, one of China's largest banks, expressing willingness and interest in financing the project.

On 4 September 2012, just weeks after it had been submitted, the BSIOP proposal was rejected as invalid by Hon Colin Barnett. It was rejected because the proposal proposed to undertake works that were already approved to be undertaken pursuant to another project, which is under the same state agreement, and because the proposal failed to provide sufficient detail, clarity and firm commitments. The Department of State Development promptly wrote to Mineralogy and International Minerals identifying key issues to be addressed and recommended that a further version of the proposals be provided in draft form for further review. Mr Palmer was not happy with that ministerial decision, but he did not discuss the matter with the state, nor did he seek to amend his proposal to deal with what the then minister and his department considered to be the deficiencies. Instead, Mr Palmer, Mineralogy and International Minerals disputed that Hon Colin Barnett had the ability to reject the proposal. He did that by referring the matter to arbitration under the terms of the state agreement.

In 2013, while that arbitration was still on foot, Mineralogy and International Minerals submitted a further BSIOP. On 22 August 2013, Hon Colin Barnett, as minister, wrote to Mineralogy and stated that this proposal had not met the state agreement's proposal preconditions and that the Department of State Development would write to identify the items that needed to be addressed. Soon after, the Department of State Development wrote to Mineralogy identifying the items that needed to be addressed. Mineralogy did not address these items or otherwise seek to progress this proposal.

That arbitration concerning Hon Colin Barnett's rejection of the August 2012 BSIOP proposal was heard by former High Court Judge Mr Michael McHugh, AC, QC, who handed down an award on 20 May 2014. Mr McHugh found in favour of Mineralogy and International Minerals, declaring that although the BSIOP was a defective proposal, it was nonetheless a proposal that had to be considered by the minister in accordance with the terms of the state agreement; that is, the minister had no ability to simply treat the proposal as invalid. In another arbitration, which is now underway, and which I will come back to—it is dealt with by this bill—Mr Palmer, Mineralogy and International Minerals have said that this rejection of the BSIOP proposal by Hon Colin Barnett was a breach of the state agreement for which they are entitled to damages, and they call it the "first damages breach". This is a matter I will return to at a later point.

As a consequence of Mr McHugh's award, the August 2012 BSIOP proposal was considered further by Hon Colin Barnett, who was still the responsible minister. On 22 July 2014, he advised Mineralogy and International Minerals that the proposal would need to be altered and comply with 46 conditions. Those conditions ranged from requiring Mineralogy and International Minerals to state that they would comply with various regulatory requirements, confirm they had access to adequate estimated ore reserves to sustain the proposed project, and provide further technical plans and details. Again, Mr Palmer was not happy with that decision and now argues in the current arbitration that Hon Colin Barnett as minister, and therefore the state, further breached the obligations of the state agreement by imposing 46 conditions to giving his approval, and that this further breach also gives rise to a claim for damages. Mr Palmer, Mineralogy and International Minerals have termed this the "second damages breach". Importantly, Mr Palmer, Mineralogy and International Minerals did nothing in relation to the August 2012 BSIOP proposal for a number of years after 2014, and so in August 2017, they were notified that the state was treating the proposal as having lapsed.

Mr Palmer, Mineralogy and International Minerals now seek to claim damages against the state for the decisions of the former minister. In relation to the first damages claim, which is the claim arising from Hon Colin Barnett's September 2012 rejection of the August 2012 proposal, Mr Palmer, Mineralogy and International Minerals seek damages in the vicinity of $US7.768 billion, or $A10.78 billion. All these figures I am providing are based on the exchange rate as at Monday, 10 August 2020.

Mr Palmer, Mineralogy and International Minerals are claiming further damages on top of that in the amount of $US8.19 billion, or $A11.37 billion, being the loss associated with being unable to sell any project required under the state agreement. Mr Palmer, Mineralogy and International Minerals claim a further $A37.25 million for the wasted expenditure they say was incurred because of the then minister's decision. Mr Palmer, Mineralogy and International Minerals also claim that they have lost the ability to claim royalties in the sum of $US233.7 million, or $A326.18 million. Interest from October 2012 is then claimed in the amount of $US3.77 billion, or $A5.24 billion. In total, therefore, for the first damages claim, Mr Palmer, Mineralogy and International Minerals are claiming a total amount of $US19.99 billion, which, again based on the exchange rate as at 10 August 2020, amounts to $A27.75 billion. In addition, Mr Palmer, Mineralogy and International Minerals seek further damages for the second damages claim, which is the claim arising from the then minister's imposition in July 2014 of 46 conditions to approving the August 2012 proposal. The level of damages for the second damages claim is not yet quantified by Mr Palmer, Mineralogy and International Minerals; however, they seek interest from July 2014 on any amount awarded.

In addition to claiming damages for the first and second damages claim, Mr Palmer, Mineralogy and International Minerals also seek costs. The claim for costs is not yet quantified. Besides seeking damages and interest and costs

arising from the first and second damages claims, Mr Palmer, Mineralogy and International Minerals seek a declaration that the 46 conditions imposed on the BSIOP proposal by Hon Colin Barnett on 22 July 2014 were not reasonable pursuant to the terms of the state agreement.

In summary, therefore, the claims that are being made against the state for breaches of the state agreement by the then minister amount to nearly $A30 billion, an amount that does not include any amount for the second damages claim. To put that in context, the total net debt of the state of Western Australia is in the order of $A35 billion to $A40 billion, and the budget of the state of Western Australia is approximately $A30 billion. To put it another way, if the cost of Mr Palmer's claim was shared equally amongst all Western Australians, it would cost every man, woman and child in Western Australia more than $12 000; that is, each of the 2.5 million people living in Western Australia would pay Mr Palmer more than $12 000. Mr Palmer wants Western Australia to pay him $30 billion at a time when the state is in a state of emergency dealing with a global pandemic—a pandemic that Mr Palmer has stated is a media "beat-up"—and at a time when the people of Western Australia are most in need of our public money.

It is not in the interests of Western Australians to be exposed to a risk of having to pay Mr Palmer billions of dollars. The men, women and children of Western Australia need members to protect them from claims of this nature and concentrate on economic recovery. In this regard, two weeks ago the McGowan government announced the $5.5 billion WA Recovery Plan to drive economic and social recovery across the state and create a pipeline of jobs for Western Australians. Obviously, if the claimants were to succeed in their damages claim at a level anywhere close to the amount sought, this would have dire financial consequences for the state of Western Australia and Western Australians. Even if Mineralogy and International Minerals succeeded in a fraction of their damages claim, this would have serious financial consequences for the state of Western Australia and Western Australians. For example, the McGowan government's $5.5 billion WA Recovery Plan represents only 20 per cent of Mr Palmer's claim.

Successive governments, both Labor and Liberal, have been involved in the creation and administration of this state agreement, and both Labor and Liberal governments have found themselves dealing with Mr Palmer's various claims against the state. We now need to work together on that matter for the benefit of the people of Western Australia.

The damages claimed by Mr Palmer, Mineralogy and International Minerals arise because of the decisions made by Hon Colin Barnett when he was Premier. Although the McGowan government is not critical of those decisions, it has inherited the consequences of them. Having done so, the McGowan government, through the State Solicitor's Office, is vigorously defending the claim by Mr Palmer, Mineralogy and International Minerals. The vigorous nature of the defence can be seen in a number of steps which have been taken by the state in an attempt to defeat the claims. Firstly, in September 2019, the state argued that Mr McHugh's 2014 award was final, and that as no award for damages was made at that time, there was no ability for Mr Palmer, Mineralogy and International Minerals to pursue a separate claim against the state. Secondly, there was an inordinate and inexcusable delay on the part of Mineralogy and International Minerals in pursuing their claim for damages, because they had taken no steps to pursue the matter since Mr McHugh handed down his award in May 2014.

These arguments before the arbitrator, Mr McHugh, were unsuccessful, and he ordered that there had not been inexcusable delay and that Mineralogy and International Minerals were not foreclosed from recovering damages from the state as a consequence of Hon Colin Barnett's decision to treat the BSIOP proposal as invalid.

This state then sought leave to appeal the decision by Mr McHugh to the Supreme Court of Western Australia in one relevant respect—namely, that Mr McHugh had erred in deciding that his 2014 award had not finally determined any damages arising from the minister's failure to consider the BSIOP proposal because he thought it an invalid proposal. Mineralogy and International Minerals applied to have the state's appeal summarily dismissed on the basis that the state was unable to utilise the appeal and review regime of the now repealed Commercial Arbitration Act 1985 and was limited to the more limited review regime under the consequential Commercial Arbitration Act 2012. This application was heard by Hon Kenneth Martin, who handed down his decision on 28 February 2020. In his judgement, Mr Justice Martin agreed with Mineralogy and International Minerals' contention that the Commercial Arbitration Act 2012 applied and dismissed the state's appeal. As I have said, Mr Palmer, Mineralogy and International Minerals are now pressing ahead with their damages claims before Mr McHugh, as arbitrator, in the amount of nearly $A30 billion.

On 26 June 2020, Mr McHugh ordered that there be a hearing of the matter for 15 days commencing 30 November 2020 to enable him to consider his decision over the Christmas and New Year period, with a view to providing an award in the new year. Although very sound and respectable defences are available to the claim of Mr Palmer, Mineralogy and International Minerals, the state has been unsuccessful in the past in dealing with Mineralogy's claims relating to the August 2012 proposals, so a successful defence of the claim is not guaranteed. In addition, because the matter is being dealt with by arbitration, there are very limited opportunities to appeal

any adverse decision. Notwithstanding the defences available to the state, the McGowan government is not prepared to risk the financial consequences to the state of an adverse arbitral award, and one in which the state of Western Australia and taxpayers could be exposed to billions of dollars. To do so would be fiscally irresponsible. Indeed, it would be fiscally irresponsible for us to risk a successful arbitral damages award in favour of Mr Palmer, Mineralogy and International Minerals. Consequentially, the McGowan government is taking the necessary steps to protect the state and the people of Western Australia from the actions of Mr Palmer, Mineralogy and International Minerals.

The bill is essentially divided into two aspects, one dealing with disputed matters and the other with protected matters.

Beginning with the disputed matters aspect of the bill, clause 9 provides that the August 2012 and June 2013 BSIOP proposals will have no further contractual or other legal effect to the extent that they in fact have such effect. If Mineralogy and International Minerals wish to pursue the BSIOP, they can submit new proposals in accordance with the state agreement.

Clause 10 terminates any arbitration which the state, Mineralogy and International Minerals are party to and which concerns a disputed matter.

"Disputed matter" is a key term used in the bill and is defined to include Hon Colin Barnett's 2012, 2013 and 2014 decisions relating to the BSIOP proposals and any conduct of the state connected with those decisions and the Balmoral South project more generally. Clause 10 also invalidates the two arbitral awards of Mr McHugh.

Clause 11 provides that the state, its officers and agents will not have any liability of any sort to any person in respect of the arbitrations or connected with a disputed matter; that is, it provides protection against the first and second damages claims and any future claims that might be made against the state in relation to the BSIOP proposal or the state's actions in relation to the Balmoral South project more generally. Clause 11 also provides that no proceedings can be brought against the state to the extent that they seek to establish such a liability against the state and that any such proceedings that are in progress and not completed are also terminated.

Clause 12 prevents any appeal or similar action against the conduct of the state that is connected with a disputed matter.

Clause 13 removes the application of the Freedom of Information Act 1992 and document discovery and production processes from documents connected with disputed matters, given that the capacity to bring claims in relation to these matters is removed by the bill.

Clauses 14 and 15 provide further protection for the state by creating a statutory obligation on Mineralogy, International Minerals and Mr Palmer and any person who brings, or has an interest in, proceedings connected with a disputed matter to indemnify the state against such proceedings or loss and liability to any person connected with a disputed matter.

Clause 16 provides that if proceedings connected with a disputed matter are brought against the commonwealth or create a liability for the commonwealth, the state can also enforce its statutory indemnity to protect the commonwealth or cover any loss the state may suffer as a consequence.

Clause 17 prevents a liability of the state connected with a disputed matter being paid or enforced through various means.

I turn now to the second aspect of the bill: protected matters. Clause 18 protects the state from collateral litigation and claims by providing that protected matters do not have certain legal effects, and clause 19 protects the state, its officers and agents against any liability and proceedings that may arise connected with a protected matter.

"Protected matter" is another key term used in the bill and is defined to include the preparation of this bill, the enactment of the legislation and its operation, and the making and operation of subsidiary legislation under the act and other related matters. The government seeks to enact extensive and broad protections to protect the state, its officers and agents against collateral litigation.

Clauses 19 to 25 of the bill are essentially the same provisions as clauses 11 to 17 but in respect of protected matters rather than disputed matters.

Clause 26 of the bill deals with some miscellaneous matters and clarifies the consequences of the bill in terminating the current arbitration, including in relation to costs and confidentiality.

Clause 27 provides that, going forward, the minister's consideration of proposals under the state agreement will not give rise to any capacity for damages or financial compensation to be awarded against the state.

Clause 28 protects persons who fall within the definition of "state authority" or "state agent", or those who previously fell within these definitions, by requiring the state to indemnify these persons against any proceedings connected with a disputed matter or protected matter.

Clause 29 provides a general regulation-making power and clause 30 enables the Governor to make orders to deal with various circumstances, including any matters that may not be adequately or appropriately dealt with by the bill by having regard to the purpose and subject matter of the bill. This includes orders that may improve the effectiveness of the statutory indemnities, including by creating security interests over any type of property of an indemnifying person.

The McGowan government accepts that the bill is unprecedented. It contains a number of provisions and measures that are not usual, but Mineralogy and Mr Palmer are not normal and these measures are needed to best protect the interests of the state and the community. Western Australian governments, from both sides of politics, have always refrained from intervening in the operation of state agreements by statute. This bill does not represent a change to this general and longstanding policy. This bill does not give rise to sovereign risk. Since the 1950s, the state has entered into over 70 state agreements and it currently has over 50 state agreements on foot. In the history of state agreements, no other state agreement proponent has sought to challenge a minister's decision about a proposal or taken the state to arbitration on any matter, let alone a minister's decision to reject or comment on a proposal that has been submitted. Therefore, this bill does not create a risk to other current state agreement parties or to future investors. Other state agreement parties and proponents deal properly and appropriately with the state in the terms of their proposals.

I also wish to make clear that this bill does not override the primary provisions and rights of Mineralogy and International Minerals under the state agreement. This bill affirms the terms of the state agreement and leaves open to Mineralogy and International Minerals the right to submit proposals for the Balmoral South iron ore project should they wish to do so. This bill will remove the capacity for Mr Palmer, Mineralogy and International Minerals to pursue litigation and damages claims regarding prior decisions of the then minister and the state more broadly, or damages for any future decisions of the minister on any new proposals submitted, or purportedly submitted, pursuant to the state agreement. In this regard, it is noteworthy that if the Mineralogy state agreement were statutory so that the decisions of the then minister were administrative—not dissimilar to ministerial decisions relating to the conferral of environmental approval for projects under the Environmental Protection Act 1986—there would be no capacity for damages to be sought.

There are at least four reasons that this bill must pass urgently through Parliament. Firstly, as I have said, the arbitrator, Mr McHugh, has ordered that a hearing take place commencing on 30 November 2020. A significant amount of time, resources and costs will necessarily be expended by the state, as well as by Mineralogy and International Minerals, ahead of that hearing. In the event that this bill passes, that additional time and cost will be saved. Secondly, the claims made by Mr Palmer are without precedent and outside the convention and practice of state agreements. Thirdly, if the state were to not do anything at this point and instead continued to defend the matter and awaited a decision from Mr McHugh, it is entirely possible—if not probable—that the decision would be handed down during the caretaker government period. Lastly, as I have already indicated, it would be fiscally irresponsible for this claim to continue and for the state and all Western Australians to be exposed to the risk, or even the possibility of a risk, of having to pay Mr Palmer, Mineralogy and International Minerals what might be tens of billions of dollars.

I trust also that members will likewise recognise that the alternative to this bill is to risk both the state and the people of Western Australia being exposed to an award of damages in the billions of dollars—damages that Mr Palmer says have arisen because of his frustrated attempts to sell the Balmoral South iron ore project to a Chinese-controlled entity. Now, because he could not sell the project to an overseas company, he claims billions of dollars from Western Australia, and he does so notwithstanding that the resources are still in the ground. The McGowan government will not expose the people of Western Australia to that risk, and, in this bill, it has instead taken decisive action to protect the state.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 4094.]

Debate adjourned, pursuant to standing orders.

All Stages — Standing Orders Suspension — Motion

HON SUE ELLERY (South Metropolitan — Leader of the House) [11.59 am] — without notice: I move —

That so much of the standing orders be suspended as to enable —

(1) the house to sit beyond 5.20 pm until the question on the third reading of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 has been put and determined and, if applicable, standing order 137(2) and standing order 140(b) are suspended for that purpose; and

(2) members' statements to be taken at a time ordered by the house.

I do not do this lightly. I had hoped that we could debate this bill over a few days; indeed, early yesterday morning, I reached out to the Leader of the Opposition and suggested that it could be done by the end of next week. However, Mr Palmer's public comments yesterday and his actions in the court demonstrate, in the government's absolutely firm view, that this bill needs to be passed swiftly. Yesterday in his public comments, Mr Palmer reiterated and reaffirmed, I think for all Western Australians, that he has no regard for the views of Western Australians and that he is continuing to actively pursue his claim against the state—a claim that will have devastating financial impacts on our state. It is critical that this bill be passed today without delay to minimise the window of opportunity that Mr Palmer and his companies have to attempt to thwart both the passing of the bill itself and its validity immediately following its enactment.

We have heard about the clear and present risk that the state now faces from Mr Palmer in his pursuit against the people of Western Australia. If the bill is not enacted and his self-serving claims are not extinguished, the damages exposure is quite breathtaking—$A30 billion—and that is not factoring in the second yet-to-be-quantified component of his damages claim. The more time that we take, the more time that Mr Palmer has to manoeuvre himself strategically and use his army of lawyers to attempt to thwart or undermine this process. We saw yesterday that Mr Palmer has taken the first legal steps against the people of Western Australia to prepare to challenge the legislation. Yesterday morning, less than 24 hours after the bill was introduced, Mr Palmer's lawyers filed an application in the New South Wales Supreme Court seeking recognition and enforcement of the 2014 and 2019 arbitral awards.

Members, we are not talking about something that might occur in years to come. The arbitration in this matter has been set down for 30 November 2020 and the arbitrator has said that he wants to write his award over the break and deliver the award in the new year. We cannot expose the state or the people of Western Australia to that possibility. Accordingly, the threat of immediate further legal action by Mr Palmer today—that is today, not next week or the week after—cannot be discounted.

As I said, I do not do this lightly and I regret that we are in this position. The state finds itself in a very serious position and I urge members to support the motion to suspend standing orders to deal with this bill today.

The PRESIDENT: The Leader of the House has moved a motion without notice to suspend standing orders. I remind members that this motion requires an absolute majority.

Point of Order

Hon NICK GOIRAN: At the moment, members are being expected to agree to a motion that they have not been provided a copy of. It would not have hurt to email it, would it, or is that asking too much?

The PRESIDENT: Member, that motion has just been handed over and it will be distributed in due course.

Debate Resumed

HON PETER COLLIER (North Metropolitan — Leader of the Opposition) [12.04 pm]: I will say a few things and I will not take long. I thank the Leader of the House for her comments. I say at the outset that, yes, we did have an informal agreement that we would deal with the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 next week and that the Workers' Compensation and Injury Management Amendment (COVID-19 Response) Bill 2020 would be dealt with by Wednesday. With a bill of this magnitude, I feel we need more time than the five or 10 minutes between the second reading of the bill and the committee consideration of it to scrutinise the legislation. As has been said—it is almost a cliché that rolls off the tongue in these times—it is an extraordinary circumstance. I really get that, but this is an extraordinary bill. As the second reading speech states, we have never had a situation in which a state agreement has been in question or there has been such dispute over a state agreement. Apparently, there is no sovereign risk associated with the actions as a result of this bill.

We are being asked at this stage to trust the government. I understand that. I understand it is a very fluid, moving vehicle and it is very difficult for the government, but this is massive. Fundamentally, if we deal with this bill now, in its current form, without, with all due respect, a full understanding of the implications, it will be entirely on the head of the government if it all goes pear-shaped, and it quite logically could.

There are a couple of things. What I would like to have heard in the Leader of the House's comments was what will happen if we do not agree to this motion and we deal with the bill next week. The arbitration is not scheduled until the end of November. She stated that. I would like to have heard that this would have massive implications

for the case—that is, that somehow the challenge by Mr Palmer would be seriously advantaged as a result of us dealing with the bill next week, when we would have much more time to forensically scrutinise what we are dealing with. I would prefer to have heard that it would seriously compromise the case of Mr Palmer if we allowed the interrogation of this bill to take place next week.

The opposition definitely does not want to compromise $30 billion of Western Australian taxpayers' money. I make that quite clear. We want to do absolutely everything we possibly can to ensure that that occurs, but that will not occur if we let through flawed legislation and then find out that it will not work. If this motion is passed and we agree on the deliberation of this bill today and it is passed, ideally, sometime in the early hours of this evening, we want to ensure that the legislation will not expose not just the government of Western Australia, but all Western Australians because it is flawed. That is what I am saying. I am not saying it from a political standpoint; I am saying it as a proud, lifelong Western Australian. On behalf of Western Australians, we are being asked to trust the Western Australian government, given that its representatives in the Legislative Assembly and the Legislative Council have been given zero time to consider this legislation. That is my point.

With that, I have not heard an argument to the contrary. Having not heard that argument to the contrary, I still think that this legislation deserves a lot more respect than it has been given at the moment. For those reasons, the opposition will not support the motion.

HON JACQUI BOYDELL (Mining and Pastoral) [12.08 pm]: A lot of challenging issues have been dealt with by the Legislative Council during this term of government. I do not think anyone can deny that. Every single one of those scenarios has been difficult for every member of this house to deal with, but throughout those issues, we have collectively remained focused on the issue at hand, despite all the commentary going on outside of the chamber on the issue, and we have been able to consider what was before the house.

I think that members of this house are in an unprecedented position, as members of the other place were yesterday. I am sure that members of this house will certainly note the gravity of this situation. I think that the Western Australian community notes the gravity of this situation. There is no denying the level of community concern about the actions of Mr Palmer and Mineralogy and their response to the government in this arbitration and negotiation. I also acknowledge that, particularly this morning through media and social media commentary, concerns are growing on the other side of the fence about the response of the government to this issue. People are worried and nervous about how the government is managing this issue, and about somehow being exposed to the wrath of Mr Palmer and Mineralogy. It is incumbent upon us to provide some confidence on this issue to the community of Western Australia. I acknowledge, as Hon Peter Collier said, that this very sensitive, highly emotive and potentially disastrous economic situation for Western Australia is being dealt with expeditiously by this and the other house. I do not have any doubt that the government would like to manage this with more time to consider the legal advice before it and the options that can be taken. I do not envy the government being in that position. I have no doubt that the government understands the very grave situation that it is in.

There are a lot of issues about the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 to discuss. This suspension of standing orders motion is supported by the Nationals WA to allow members of this house to scrutinise all the concerns that have been raised with us in the last 24 hours and throughout the debate in the other place. We have a right to do that and I am sure that members of this house will do that. We are probably expecting a long day today. Mechanisms within the house will allow members to scrutinise every single clause, as we do with every bill, when we get to Committee of the Whole, hopefully later today. I assure members that it is incumbent upon them to carry out their due diligence, and I am sure that they will. We must also recognise that the community is relying on this house to make a decision in this matter on its behalf. Therefore, the National Party will support the suspension of standing orders.

HON RICK MAZZA (Agricultural) [12.12 pm]: I am not convinced of the urgency of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 going through today. My understanding is that the bill was introduced into the Assembly at 5.01 pm to make sure that the judiciary on the east coast was shut. It was explained to me in my briefing, which was only 24 hours ago, that the government was very concerned about this bill being seized by the courts. Therefore, it introduced it into the Assembly after the courts on the east coast had closed so that Mr Palmer did not have an opportunity to have the court seize it. That has been done. It is now within the Parliament, so why does it have to be forced through the upper house in one day? I am not convinced that it has to be. We are nearly four months away from the arbitration. We should have time to fully understand this bill before we debate it and go through the process of Committee of the Whole. Hon Jacqui Boydell pointed out that we have a duty to scrutinise this bill in extraordinary detail. How can we do that in the very short time we have had to consider it? We are looking at extraordinary circumstances. We are going to offend the rule of law and natural justice. Freedom of information and transparency are also going to be offended. We will not be able to do that. The law of contract will be offended. A contract that was freely entered into by the state under the Gallop government in 2002 will be

changed. The separation of powers will be offended. This matter was within arbitration, which is a judicial system that the Parliament is interfering in.

We should take the personality of Mr Palmer out of this. I have not met and do not know Mr Palmer. The only assessment I have of him is the portrayal by the government and *The West Australian*. I do not know him. It makes me wonder whether, if it were $30 million and not $30 billion, the government would be going through the process of this extraordinary piece of legislation.

What really worries me about this is that I feel the government is in a state of panic. It is in an absolute state of panic. The comments of the Premier yesterday suggested that we have to get this through. He is panicked! The Attorney General was on 720 talkback radio this morning and I could hear the panic in his voice. We should have more time—at least next week—to fully go through this bill to make sure that we do not end up with a constitutional crisis in the years to come. There is every chance that this legislation, like the Bell Group legislation that the previous government tried on, might fail in the High Court. Then what? We will be in deeper. I think we need to settle down, take a deep breath and get away from the hysteria that has been built around Mr Palmer. The bill has been introduced into the Parliament and the court has not seized it at this time. Let us take some time to properly assess the implications of this bill. In many respects, we are in uncharted territory when it comes to usual commercial practice in our democratic society. All those values and pillars of democracy will be trashed with this bill. Basically, we will be saying to someone who has a contract with the state, "It looks like you're going to win a case against us and therefore we'll legislate to make sure that you can't." I have real problems with that. I would like more time to fully assess this bill and to be comfortable that I am fully informed when representing my constituents in this place, and that I am not being forced to make sure that this is done today in a panic situation. A valid reason has not been presented to me for why it needs to be done today. Therefore, I will not support the motion to suspend standing orders.

HON ROBIN CHAPPLE (Mining and Pastoral) [12.16 pm]: The Greens will be supporting the motion moved by the Leader of the House. I will not read out the motion. There are many reasons for that level of support. It devolves back to the history of the gentleman we are dealing with in this case. I have been in this chamber for 20 years and we have debated issues concerning this gentleman innumerable times. He has a penchant for litigation at every turn. Unless we deal with the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 expeditiously, I believe we will expose the state to greater potential litigation, whether it be from some of his subsidiaries in Singapore or many of the shell companies that he runs around the nation and the world. We will support the passage of this bill through to conclusion on the basis that we want to protect the state.

Discharge of Order and Referral to Standing Committee on Legislation —
Standing Orders Suspension — Amendment to Motion

HON AARON STONEHOUSE (South Metropolitan) [12.18 pm] — without notice: I move —

To amend the motion of the Leader of the House by deleting all words after "That" and substituting —

so much of the standing orders be suspended so that —

(1) The Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 is discharged and referred to the Standing Committee on Legislation for consideration and report by no later than 15 September 2020.

(2) The following members are co-opted onto the committee for the purpose of this referral —

(a) Hon Aaron Stonehouse; and

(b) Hon Michael Mischin.

(3) With any necessary modifications, standing order 163 shall apply to a co-opted member.

(4) The committee has the power to inquire into and report on the policy of the bill.

While that is being distributed, I will briefly speak to the motion. I will not say much because I do not want to hold up the proceedings of the house unnecessarily. I am mindful that what I am trying to do is likely to upset the Attorney General and the Premier. In fact, I expect that they will be very displeased and nasty comments will be directed my way and probably the way of anybody who supports me for making such an effort. I said earlier today that I expect the Attorney General to stamp his feet, go red in the face and become shrill and hysterical. Those types of theatrics may work on some in the media, but they do not work on me. I do not care what nasty or threatening language the Attorney General might use. I think we have a responsibility here, and I think that cooler heads really must prevail in a matter like this.

The very public, and at times very childish, spat between Mr Palmer, the Premier and the Attorney General does not instil confidence in me that the government right now is acting rationally or thinking clearly. My fear is that the Attorney General and the Premier are acting desperately, perhaps, in this case and have not thought this through properly. Normally, there is a check and balance against that kind of behaviour, and it is called the Parliament. The Parliament has standing orders that ensure that it takes its time to properly consider legislation. There is a house of review specifically for that purpose. There are standing committees for the scrutiny of legislation specifically for that purpose. That gives us an opportunity to consult subject matter experts and seek independent legal advice, and it gives legislators the time to actually do their job and properly consider legislation and consult with their constituents and stakeholders. We will not be afforded that in this instance.

I know that some members would rather deal with this bill next week. That would certainly be better than dealing with it today in a few short hours. I think the Standing Committee on Legislation is well placed to deal with this kind of scrutiny; it has done it before. I know that the members of that committee work very hard. In the experiences that I have had when I have been co-opted onto or substituted for members of that committee in the past, I have seen the work that the legal advisers of that committee do and the experience of its members when it comes to complex legal issues. That is why I have included in my amendment to the motion Hon Michael Mischin, a very learned member who is very experienced in the law, and, of course, myself, because I take a particular interest in this matter.

The question that we will be dealing with in this bill is not a simple question of economics, arithmetic or even the silly feud between Mr Palmer, the Premier and the Attorney General. There are serious questions, of course, about justice, fairness and the principles that underpin our liberal democracy, as was said by previous speakers. As legislators, we have been put in a very difficult position because we cannot see all the information. The arbitration process to date has been confidential. I have been told by advisers during briefings that the rulings made by Mr McHugh during the arbitration were problematic, that there were issues with the rulings and that there are limited avenues for appeal. I have to take their word for it because I do not know. I have not seen those rulings and they cannot be provided to me. I have no idea what evidence has been presented by Mr Palmer or Mineralogy Pty Ltd or International Minerals Pty Ltd in these claims. I have no idea of the extent of the damages claimed. All this information is confidential; it is all being kept private. Parliamentary privilege may protect us to a certain extent, but unless these parties are willing to table that information and let us look at it and consider it as legislators so that we can do our jobs properly, we are literally being asked to legislate blindly. We are being asked to trust blindly in the Attorney General in this matter that he has it right. I am sure that the legal advisers and the State Solicitor at the time back then were certain that they had it right with the Bell case. Obviously, it proved to be a little more difficult than that. There really can be no certainty when it comes to legality. We can never be 100 per cent sure, but I would at least like the opportunity to consider it properly.

We have seen this with bills in the past when so-called emergency or priority legislation is rushed through. Any time I have seen rushed legislation, it has always been bad legislation. We have had bills in here with typos and mistakes and bills that were deemed to have fallen foul and offended commonwealth legislation. It has been only through committee scrutiny that we have been able to identify those problems. Sometimes we have been able to improve bills. Certainly, the attitude of members here would be that no-one wants the state to be liable for $30 billion in damages—of course; that goes without saying—but does the government have it right? Can we improve this and do it differently? Can we be assured that the government is on the right track? The hearing is scheduled for 30 November. A reporting date of 15 September would give us more than enough time. I would not be surprised if the committee was able to deal with this in a couple of weeks and have a report ready to go before 15 September. I think that everybody appreciates that time is of the essence.

Lastly, this morning the Attorney General said there was no time for a namby-pamby committee. That is quite funny. It makes me think that the Attorney General is unaware of the work that the Legislative Council does and the work that the committees do. “Namby-pamby committee”! We are meant to trust the Attorney General’s judgement in this matter. In the other place yesterday, when the bill was brought on for debate at about 1.36 pm, the member for Scarborough, the Leader of the Opposition, was supportive of the bill, and the members, in their contributions in the other place, all said that they supported the bill and were happy to see it passed quickly. That was, of course, before the Legislative Council dealt with its motion on notice yesterday. It was not until about 5.00 pm that the Legislative Council made the Legislative Assembly aware of the motion and the resolution that was passed in the Legislative Council. I remind members that the message from the Legislative Council to the Legislative Assembly was —

> That this house —
>
> (a) notes the false and misleading claims of the Attorney General on 28 May 2020;
>
> (b) notes his repeated failure to provide full, frank and reliable information to the Parliament;

(c) expresses its concern about the suitability of the member for Butler to continue as Western Australia's first law officer; and

(d) acquaints the Legislative Assembly accordingly.

Members of the Legislative Assembly were placing their trust in the Attorney General and the government at that time. That was well before 5.00 pm when that message was relayed to the Legislative Assembly. The Attorney General may be right, and the advice he is getting may be accurate, robust and convincing, but I cannot be convinced of that at this point until I have had the opportunity to properly range over it. I implore members to carefully consider the amendment before us. It would allow us a brief pause to relax, put an end to the hysterics and carefully scrutinise this legislation and make sure that we are not making things worse, perhaps, for Western Australia.

HON SUE ELLERY (South Metropolitan — Leader of the House) [12.27 pm]: The government will not support the amendment. There is a real and present risk that if we give Mr Palmer more time, he will use that time and his considerable resources to thwart our efforts to protect Western Australia. There is no panic. There is no desperation. There is no silly feud. There is no hysteria. There is, as has been evident in every decision that we have made—for example, in respect of the pandemic—methodical, considered decision-making based on expert advice. There is a single-minded determination to protect Western Australia against a single individual with more money than anyone in here will ever see and who has form for using that money to litigate as the default position. It is critical that the bill be passed urgently. We do not want to provide Mr Palmer with the opportunity to take steps in the courts, which he started yesterday, to protect his position. We know that he will take those actions. He has already taken steps to secure his claim in the courts in New South Wales and Queensland, and also in the Federal Court. One of those matters, the New South Wales proceeding, is listed for 28 August. The State Solicitor's Office is also monitoring court registries to see whether Mr Palmer is seeking an expedited hearing. There is a real and substantial risk that if we delay consideration of this bill by referring it to a committee, no matter whether that committee is for two weeks or two months, we are risking the finances of the state of Western Australia. We cannot support this amendment.

HON PETER COLLIER (North Metropolitan — Leader of the Opposition) [12.30 pm]: I am sorry, Leader of the House, but I have to say that once again I am a little disappointed with that response. The Leader of the House did not say anything that would gauge the urgency of this issue. One thing she did say was that everything the government has done has been meticulously timed, and it has been. The Attorney-General read in the bill in the other house at 5.01 pm. I understand that that was to prevent Mr Palmer from launching court action. I understand exactly why the government did that, because once the bill had been read in, that completely nullified any court action that Mr Palmer could take. The Leader of the House did not refute that. I have not heard anything contrary to that. I would be fascinated to know whether that is the case because that is what we have been fed. We have been asked to believe the government—to trust the government. The Leader of the House just said it herself—everything has been done meticulously. If that was not the case, we would have had to sit all night on Tuesday and get the bill through both houses to prevent any action on Wednesday. That did not occur. I am saying that, yes, this is significant. I am not being political. I am, believe it or not, speaking on behalf of Western Australians. This is a vital thing. As I said, we are being asked to put this on a trust-us mentality.

We have given the government numerous opportunities to respond to that. Yesterday, in the other chamber, Hon Liza Harvey alluded to the notion of the bill going to a committee in the upper house to make sure that the legislation was watertight so that Mr Palmer's challenge could be knocked for six. She was ridiculed and scoffed at by the Premier. It would have been a good opportunity for that man to show a bit of statesmanship in his response and say, "No, we can't do it for this reason, that reason and the other reason." We heard the Attorney General on radio talking about the bill going to a "namby-pamby" committee. It is that disrespect that we spent an hour and a half talking about yesterday. I wish that you guys, the Premier and the Attorney General would just once give this chamber a modicum of respect.

All Hon Aaron Stonehouse is asking for is not to stymy the legislation, but to delay it ever so slightly so that we can make sure that this challenge against Mr Palmer is watertight. That is what he is asking. He is not asking for all of it to be watertight. All we want is to know why it is being rushed through. What the Leader of the House said just now does not convince me at all. The stakes are higher on this issue than any of us have ever faced on any issue. The stakes are $30 billion for Western Australians. What happens if this bill gets through and is challenged in the High Court, and Mr Palmer is successful and we lose? You guys cannot just say, "Oops! We wish we'd thought about that. We wish we'd sent it off to a committee for just one month." That is all Hon Aaron Stonehouse is asking for. People with clear minds could look at the bill. They could bring in the Attorney General and the State Solicitor as witnesses and go through the bill and say, "Yes, this is problematic and this is problematic, and this will make it watertight." It would be wonderful if we could do that in a bipartisan way and say, "Yes, let's do this. Let's make sure that this legislation is absolutely watertight. It wasn't rushed through the Parliament in less

than 24 hours." That is what will happen if we combine the LA and the LC, and it will come out as absolutely flawed legislation. We must make sure that the bill is absolutely watertight.

The opposition will support this referral of the bill. We are doing it. I am sure that the Premier and the Attorney General will go out there and lambaste us yet again without looking at why we are doing it. We are not doing it for political purposes. We are doing it because we think it is the right thing to do. We are doing it because we think this piece of legislation—which we have been told ad infinitum for the last 48 hours is massive—is the biggest thing that we have ever seen. That is true. It is a massive piece of legislation. We are doing it because we believe that this legislation should be treated with the respect that it deserves; that is, when it goes to the Standing Committee on Legislation, that committee can look at the legislation, find any flaws in it and bring it back, and then every single member in this chamber can collectively look at Mr Palmer and say, "We gotcher, mate! No matter what."

I would absolutely hate it—I would absolutely loathe it—if that man won because this bill was flawed. I would hate it. Would it not be terrible for that man from Queensland to take $30 billion out of our coffers only because we did not have the moral fortitude to send this bill to a committee for 30 days to find out whether something was missing? Would that not be terrible? I am telling members that we have an opportunity right now to resolve this. We have an opportunity to say to Mr Palmer, "We're going to make sure you are hit to the boundary, mate. You're not welcome in Western Australia. Stay in Queensland. We're going to keep our $30 billion."

That is all I will say right now. I promise the Premier and the Attorney General—I implore them yet again to please start showing this house a bit of respect—that by supporting this motion, we are not doing it for political purposes; we are doing it for Western Australians.

HON RICK MAZZA (Agricultural) [12.36 pm]: Consistent with the comments that I made earlier on the suspension of standing orders, I am very concerned that we are trying to get this bill completed today without proper scrutiny. We are flying blind on a very significant piece of legislation that could have absolutely catastrophic consequences.

I also listened to some of the talkback radio this morning and heard the comment about the namby-pamby parliamentary committee. That is quite offensive. A lot of work is done in committees, particularly the Standing Committee on Legislation, which I know works very diligently and professionally to identify issues that could exist within certain pieces of legislation. Flaws have been found in some legislation that has gone to that committee and that legislation has never seen the light of day again. We could find ourselves in that situation with this legislation, which has been prepared in back rooms under a cloak of secrecy to make sure that Mr Palmer was not aware of what was going on. We found out about this very, very recently, and we are supposed to be across the legislation.

It has been suggested that every single Western Australian supports the government on this piece of legislation to hold back Mr Palmer, who was portrayed yesterday on the front page of *The West Australian* as Dr Evil, with his little cat. I understand the catastrophic and grave consequences of $30 billion being lost in an arbitration, but, as the Leader of the Opposition pointed out, I also want to make sure that if we pass this legislation, we ensure that it is watertight. Some members of the public have raised concerns about this legislation. I listened to two callers on talkback radio this morning, both of whom were very, very worried about the consequences of this legislation. In fact, in today's letter to the editor, Mr David Dwyer, a constituent of the Agricultural Region in Esperance, in part, says —

> This appears to have panicked the State Government to rush retrospective legislation through to protect the State Treasury and in effect the Opposition is blackmailed into conditional support.

Members of the community are very worried about where this is going to lead to, and it would pay us to take pause and have a short, sharp inquiry by the Standing Committee on Legislation. We have been told that the court cannot seize it at this point in time because it has been introduced in the dead of night in the other place to make sure that Mr Palmer was not able to have it seized by the court. Therefore, we should take time now to pause and ensure that this is done right, that there are no flaws in it and look at it with a fresh pair of eyes.

With that, I support this referral to the committee and I hope that other members of this place feel the gravity and responsibility to ensure that we are fully apprised of this before we embark on forcing through the Parliament, at breakneck speed, a piece of legislation that is the most significant that I have ever been involved in. The voluntary assisted dying legislation was portrayed as being the most significant piece of legislation that we will ever deal with in our careers in Parliament. I think that this legislation could trump that. We had a lot of time on the voluntary assisted dying legislation. There was a lot of community consultation, briefings and a hell of a lot of background to getting us to the point of passing that legislation, but for this one we have had 24 hours, and we

have to trust that the Attorney General and the Premier have got it right. I do not have that trust, so I support the referral to the committee.

HON ROBIN CHAPPLE (Mining and Pastoral) [12.41 pm]: In many cases, we the Greens are people who would like to see legislation referred to a committee. But, as the Leader of the Opposition said, it would be terrible if we delayed this in any way, shape or form so that it allowed this gentleman, who is a notorious litigant—with all of his sub-corporations that he has around the world and $2 companies everywhere—to start a series of litigation in the time frame that we give him.

I am not concerned about the competency or otherwise of the Attorney General. I listened to the advice of Clayton Utz and the State Solicitor's Office and the fact that this piece of legislation has had 13 drafts. It has been tested and tested and tested—not in the public domain, because it could not be in the public domain because of the litigious nature of this gentleman.

We will not be supporting the referral of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 to the Standing Committee on Legislation because we are concerned for the wellbeing of the state, and any delay threatens the economy of this state.

HON JACQUI BOYDELL (Mining and Pastoral) [12.42 pm]: I indicate that the Nationals WA will not be supporting the referral of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 to the Standing Committee on Legislation. As I said earlier, this is a very difficult situation for all members of this house to deal with. I understand that. I do not disagree with any of the comments that have been made by the contributors so far about this bill; a number of issues have concerned me greatly.

Earlier, when I alluded to the commentary coming from outside this chamber on this issue, I include in that the Premier and the Attorney General. The Premier and the Attorney General have a long history—over the last three years of this term of government—of threats, of disrespect, of falsehoods being told of the actions of members of this house and of issues that we as members of this house have dealt with. It concerns me, on another level, that they seem to have no understanding of the operations of this house or indeed that this house of review has given the government, during these three years, some stability in the way it has approached legislation. As Hon Rick Mazza alluded to, a number of pieces of legislation have been brought to this house that had serious flaws in them and if it were not for the work of this house, the government would have been exposed legally because of those pieces of legislation.

Earlier, I appealed to members to say that we have to remain responsible, calm and focused on the job before us—that is, to not respond to the threats of the Premier, who promised a rolled-gold level of transparency of government, by the way, at the outset and prior to him forming the government, or indeed the threats of the Attorney General, whose actions were discussed during the debate yesterday when this house expressed its concerns about the way he has conducted himself as the state's first law officer. The Attorney General needs to take responsibility for how our people judge him and his actions as the Attorney General, and at some point he will be held accountable to that, I am sure. Therefore, I am disregarding the commentary of the Attorney General and the Premier, as I have done previously when they have threatened this house and members within it.

Regardless of what the Attorney General may think of the legislation committee or the processes of this house, that is not my motivating factor on why I would or would not support a referral to committee. I do not care what the Attorney General's personal view is on the committee, so I share that view with Hon Aaron Stonehouse. We will get on and do our job, as we have done previously. The reason we will not support a referral to committee is that this is a grave issue for the state. We need to get on and deal with these issues and raise them in this chamber during Committee of the Whole House. Let us have those debates and scrutinise the legislation.

I make one final point that goes to the future of how states and governments deal with state agreements. The very nature of state agreements and the lack of transparency around them add to members' uncertainty in dealing them and that does not provide the Parliament an opportunity to properly scrutinise them. In this case, that is being felt intensely by members because this legislation was introduced exceptionally quickly. The government chose a course of action; we have to scrutinise that course of action as quickly as we can in the interests of the state of Western Australia. As members, we have not had the option to choose how to deal with this issue, but the government has, so it is now up to the government to legitimise that choice and it is up to us as members of this chamber to scrutinise that choice. Therefore, we will not be supporting the referral to committee.

HON NICK GOIRAN (South Metropolitan) [12.47 pm]: In one month and two days it will be the fifth anniversary since these comments were made in the Legislative Council, and I quote —

> I understand why the government is trying to step in and stop the ongoing litigation. I do not know whether this bill will do that. That is something that the committee may turn its mind to as well. We have

> not asked the government to look at policy. We have agreed that we will not look at policy. We have also agreed that this bill will come back into this place on 10 November. That means that, hopefully, it will be brought up for debate in the house in the week starting 17 November and we can endeavour to get this bill back to the Assembly because it rises in late November. That is the agreement that we have put in place. We understand that this is a very complex bill, and it should be sent to a committee. If we were to open up this bill to policy, we would probably go down all sorts of interesting rabbit holes going back 20 years plus, and it would probably be very colourful and involve a range of other matters. Therefore, we want to keep this quite tight, given that the committee has only a very short time in which to engage in its inquiry, call on the stakeholders, hold hearings and put in evidence, and hopefully make recommendations to the government to address the concerns that have been canvassed by all the stakeholders.

Madam President, this speech, given almost five years ago, continues —

> We do not often get the opportunity in which there is an agreement; normally, we are battling very hard to persuade government to refer a bill to the Standing Committee on Legislation for examination. It shows a maturity on the part of this government when dealing with such complex legislation that it has agreed so swiftly.

Those remarks were made by Hon Kate Doust on 15 September 2015 when speaking on behalf of the then opposition on the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015. I particularly draw members' attention to the government backbenchers at that time. At that time, I was a government backbencher, and I rose and supported the comments made by Hon Kate Doust and agreed as a government backbencher to a referral of the Bell litigation to the Standing Committee on Legislation. I say that to government backbenchers at this time because I have an immense amount of sympathy for them on the motion currently before the house. They are left in an extremely difficult position. It is on the public record that very few members were privy to the sequence of events that has occurred over the last week. It is abundantly clear to me that that would include government backbenchers. I have a great deal of sympathy for them because that was exactly the same position that I was in five years ago. The big difference is that at that time, I decided that my responsibility and my duty to the people of Western Australia and to the Legislative Council was higher than the view that might be expressed by some of my colleagues in government at the time, and I supported vocally, on the public record, the necessity for that legislation to go to a committee. So far today I have heard nothing from any government backbencher on this matter.

I have a lot of sympathy for the motion that has been moved by Hon Aaron Stonehouse. It is entirely consistent with how the Labor Party dealt with the Bell Resources bill some five years ago. The Leader of the House and others might point out that the comments made by the opposition some five years ago stated that the scope of the inquiry would not include the policy of the bill, and that would be quite right. Certainly, I would have no problems if the government wanted to move an amendment to the motion before us to ensure that the committee did not have the power to look into the policy. If the government's major point of contention was whether the committee had that capacity or not, I would not want that to be a stumbling block, if that was going to be the way forward. But it is already clear from the remarks of the Leader of the House that the government will be opposing the motion and has learnt absolutely nothing from the episode five years ago.

The only explanation that has been provided by the Leader of the House today is what she has referred to as a real risk of delay. In other words, notwithstanding the fact that it was apparently the view of the government as recently as yesterday that it would be okay for us to deal with this bill next week, apparently, that has changed substantially over the last 24 hours, and there is, according to the Leader of the House, a real risk of delay. I put this to members, particularly to the Leader of the House.

Incidentally, I do not know how long an opportunity some members have had to consider this bill. The first opportunity I had to consider this bill was at approximately 10 o'clock this morning, because, as the Leader of the House in particular will be aware, I have been otherwise engaged in other legislation before the house that the government had previously professed was urgent. However, having had a look at the bill at approximately 10.00 this morning, my point to the Leader of the House is: if this 64-page bill of hers, which consists of some nine clauses, is so fragile that we have to deal with it today, we cannot possibly deal with it on Tuesday next week because it is so, so fragile, the government has lost already. What a joke! As if this bill will live or die on whether it gets passed today! What do we think Mr Palmer is going to be doing during the course of today? If it is actually as urgent as the Leader of the House says, and apparently there is a real risk of delay, why did the government let the Greens have their non-government business today? The Leader of the House could have stood up at 10 o'clock this morning, moved a suspension then, and we could have dealt with it straightaway.

According to the government, there is a real risk of delay. What rubbish. If this bill is so fragile that the government needs it to be dealt with today and is asking us to suspend all proper process and to sit here as long as we need to tonight to give it some form of scrutiny, the government has lost already. The government has already let Mr Palmer win. Well done, Leader of the House! She and the government have so much to be proud of with their conduct in recent times. I said to someone recently that the McGowan government in recent times has been consistently overreaching, and now it is out of control. Now, the Leader of the House will not even agree for the bill to go to a committee. Hon Aaron Stonehouse, whose party consists of one member in this place, is expected to get across all this legislation. The Leader of the House will not even do him the courtesy of sending it to a committee for a mere 32-day period—just over a month—but when she was in opposition, she wanted the Bell Resources bill to be considered for about two months, and we all know how that ended up. But, according to the Leader of the House, it is crucial that we have this legislation passed immediately today.

I listened with interest to the contribution by Hon Robin Chapple. He made the point—he is quite right—that, ordinarily, the Greens would support the referral of a bill to a committee. He is absolutely correct; I have seen the Greens do that on many occasions. He said that he was persuaded by the fact there is apparently a real risk in delaying this legislation, yet I did not see the Greens offer to give up their non-government business this morning. We have spent the best part of an hour and a half dealing with other matters that are apparently more important. Is there a real risk of delay or not? If there is a real risk of delay, no problem. Let us get on it with it.

I have said many times: bring in a piece of legislation at any time, give me no notice, and I am quite happy to scrutinise it. I am very happy to do it. I understand other members will need to have briefings, consult with stakeholders and all the rest of it, but I have absolute confidence in my ability to be able to do it at no notice anytime—but that is not the point. The point is that there should be proper processes undertaken by the house. All 36 members of this place need to be able to understand it. It is no good to give members a bill with no notice on a matter that goes to the heart of state agreements—I will deal with this later today when we get to the second reading speeches—with significant interference with state agreements, the rule of law, sovereign risk and the like, but the government is saying, "No, we can't possibly see it go to a committee. We could see the Bell bill go, but not this one here. It absolutely cannot be done."

Members, frankly, at the end of the day, I know how this is going to play out. What is going on at the moment is actually a pathetic charade for democracy. It is a pathetic display, and I distance myself entirely from this process. I absolutely support Hon Aaron Stonehouse's bid to have this go before a committee, which is consistent with how Labor Party members wanted this type of extraordinary legislation dealt with when they were in opposition, but they are such hypocrites that they will not allow this to happen with this bill, and their only defence is to say that there is a real risk of delay, which in itself demonstrates that the bill is going nowhere fast. They have already lost the case against Mr Palmer.

Later today, I will say more on the issues of quantum and the like. I just ask members to seriously show some sense of pride for their performance and to support the obvious motion by Hon Aaron Stonehouse, or otherwise proceed as was originally intended by the government and deal with this matter next week, when members have had an opportunity to consider the bill.

HON COLIN TINCKNELL (South West) [12.59 pm]: Madam President, I have listened with interest this morning and this afternoon. I have heard people say that this is not about political gain, but I think I have been here long enough to know that it is. When I became a member of this house, I was very proud to become a member of this house, because this is a house of review. I made a promise to the people who elected me into this house to properly look at each piece of legislation and make decisions based on the information.

Sitting suspended from 1.00 to 2.00 pm

Hon COLIN TINCKNELL: As I mentioned before the lunch recess, One Nation members were in this house in 2002 during the Gallop government when this state agreement was debated and it was suggested it should go to a committee. Years later, I imagine that we will not be changing our view and we will obviously be supporting the amendment to the motion.

Let us forget about Clive and take Clive away from this. The legislation is fundamentally undemocratic and will set a precedent that facilitates corruption. That is what it will do. It is retrospective legislation to remove the rights of an individual. That is what we are doing. As a member of this house, I cannot see how I can be any part of that. All those years ago the Labor government signed a legally binding agreement, but 18 years later it wants to legislate it away. That is what is happening.

When people say that there are no politics at play here, there is; that is just rubbish. Members and parties in this chamber will vote a certain way on this motion because of their beliefs about longstanding agreements with mining

companies on state agreements. To my mind, there is no doubt that politics are very much at play in this house. When I hear that rhetoric, realising that I am a member of the house of review, I think: hold on, I made a promise to the people who elected me and my fellow member that we would scrutinise each piece of legislation. Scrutinising legislation under the bullying tactics of the Leader of the Government in this house, who said that we have to do it today and it has to be done tonight and that we cannot send it to a committee or debate it even next week, is absolutely ridiculous. That is not what this house is about. This house scrutinises legislation and we need time to do that properly. We need to consult with legal practitioners, we need to talk to people and we need to look at the bill. It is a substantial bill and that cannot be done under pressure in one night. When the Voluntary Assisted Dying Bill came to this house, we were told it was perfect; 50 or something amendments later, it went back to the lower house. Again, the government is telling us that this legislation is perfect and we must pass it now. I do not see that. I know that when we rush things, mistakes are made. I believe that mistakes have been made in the lower house and, unfortunately, like Hon Nick Goiran, I think a major mistake will be made in the upper house when the final vote on this legislation is taken either tonight or tomorrow morning. Who knows, maybe it will be tomorrow night if we sit continually until this legislation has been debated and voted on.

I cannot in good conscience support the government getting this done tonight and that is why I fully support the amendment to the motion. As I said, my responsibility to the people of Western Australia is greater than what may be playing out in the media or in the public. We have heard no good reason why it needs to be done in a hurry, just that it has to be. I sometimes wonder whether the government is worried about public perception. If members listen to 6PR and other stations, they will hear people saying that the government is wrong to do this. The government has got this wrong. Maybe "Mr 89 per cent" is worried about that. I think that is also coming into play here. When they say politics has nothing to do with it—rubbish. It has everything to do with it. It is about this legislation going through quickly. But we need to properly scrutinise this bill. Hon Aaron Stonehouse is correct and this amendment to the motion should be supported. It is the wise and the correct thing to do. When members look at their own conscience, they should make sure that they have done everything they can to get this right. If we rush this process, there is a pretty good chance a mistake will be made. I have a feeling mistakes will be made in this house either tonight or tomorrow morning.

Amendment put and negatived.

All Stages — Standing Orders Suspension — Motion Resumed

The PRESIDENT: Members, that amendment to the motion has been defeated and we return to the earlier motion moved by the Leader of the House to suspend standing orders. The question is that that motion be agreed to. Those of that opinion say aye and to the contrary no.

Question put.

The PRESIDENT: I think the ayes have it. Members, as I referred to earlier, this motion requires an absolute majority. Having counted the numbers in house, there is an absolute majority, and so that motion has been agreed.

Point of Order

Hon NICK GOIRAN: Madam President, I just ask whether the most recent sequence of events is in accordance with the standing orders. I am sure that I heard at least one dissenting voice.

The PRESIDENT: Yes, of course. Thank you for reminding me. My error; I was treating it as a normal call for division. I should not have done that. The member is correct; there was a dissentient voice.

Debate Resumed

The PRESIDENT: There being a dissentient voice, it is necessary for the house to divide.

Division

Question put and a division taken, with the following result —

Ayes (19)

Hon Martin Aldridge	Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Matthew Swinbourn
Hon Jacqui Boydell	Hon Colin de Grussa	Hon Kyle McGinn	Hon Dr Sally Talbot
Hon Robin Chapple	Hon Sue Ellery	Hon Martin Pritchard	Hon Alison Xamon
Hon Tim Clifford	Hon Diane Evers	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*
Hon Alanna Clohesy	Hon Laurie Graham	Hon Charles Smith	

Noes (10)

Hon Jim Chown	Hon Rick Mazza	Hon Tjorn Sibma	Hon Ken Baston *(Teller)*
Hon Peter Collier	Hon Michael Mischin	Hon Aaron Stonehouse	
Hon Nick Goiran	Hon Robin Scott	Hon Colin Tincknell	

Pairs

Hon Darren West	Hon Simon O'Brien
Hon Adele Farina	Hon Dr Steve Thomas
Hon Colin Holt	Hon Donna Faragher

Question thus passed with an absolute majority.

Second Reading Resumed

Resumed from an earlier stage of the sitting.

HON PETER COLLIER (North Metropolitan — Leader of the Opposition) [2.12 pm]: Thank you, Madam President. I have just received something that the Premier has just tabled in the other place regarding the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. Sorry; I do not know what it is, but it is to do with this bill. Could someone follow up on that, thank you.

Not to take too much time on this bill, but I intend to make a few comments about the bill's implications and state at the outset that the opposition will not oppose the bill. We appreciate and acknowledge not only the significance of the bill's potential financial implications for the state of Western Australia, but also, on the other side of the ledger, the implications of the precedent it sets. Never before has such an action been taken by a proponent of a state agreement—never before. That is why this is such a significant issue. It, essentially, deals with the damages claims by Mr Clive Palmer against the terms of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act 2002, which stem back to a previous Labor government. However, the genesis of that was well before that in terms of the iron ore deposits in the north. The claims for the current action were submitted in August 2012 and June 2013 and they relate to the Balmoral South iron ore project—BSIOP—which then had a life span of 28 years. This claim was first rejected and then significantly conditioned by the then Premier, Colin Barnett. That rejection was based on 46 conditions, and it is important to remember that. That is where it stemmed from. As a result of that decision, Mr Palmer is making claims for billions of dollars from the state of Western Australia for what he deems is lost revenue. From all accounts, and certainly if we accept the information in the second reading speech, Mr Palmer has not adopted a cooperative approach during this process in any attempts by both governments to try to settle the issue.

It needs to be recognised also that Mr Palmer and Mineralogy intended to sell the BSIOP project to Chinese government–owned corporations. As I said, former Premier Colin Barnett rejected the proposal because it proposed to undertake works that were already approved to be undertaken pursuant to another project that is under the same state agreement, and that cannot be done. Also, the proposal failed to provide sufficient detail, clarity and firm commitments. They were the 46 conditions the then Premier agreed to. In a number of public comments the current Premier has made since this has become public, he has acknowledged that Colin Barnett's decision was the correct decision.

There has been no communication over the ensuing years with both governments and Mr Palmer, even though the ruling from former High Court Judge Michael McHugh found in his favour in May 2014. As I said, Mr Palmer is now seeking considerable damages against the Western Australian government for those 2012 decisions. He is seeking $10.72 billion from this decision, another $11.37 billion from the loss associated with being unable to sell any project required under the state agreement, interest of $5.21 billion and so on. The total impact then is close to around $30 billion. In essence, the claims being made against the state for perceived breaches of the state agreement are to the tune of $30 billion.

The second reading speech is quite comprehensive. I will not go through all the clauses yet again. As I said, this has been done to death, particularly over the last couple of days. However, I encourage members to avail themselves of the second reading speech, particularly clauses 11, 12, 13, 14, 15, 16 and 17 about the specific areas of the bill that attune to the claim by Mr Palmer, and also regarding freedom of information. I have to say that the freedom of information provision raises the hairs on the back of my neck somewhat, Leader of the House. I would like a bit more information on why the freedom of information provision is broad based. Again, in a period of openness and transparency, not just from this government but the Western Australian government as a whole, the notion of putting a line through freedom of information raises some concerns, particularly given the short time we have had to consider

this legislation. How wideranging is it and what implications does it have for other areas? Who will it exclude from an FOI perspective?

The second reading speech indicates that this bill does not give rise to sovereign risk. That is something I mentioned in my earlier comments. Again, we can assume from the government's perspective and from the second reading speech that that is sacrosanct, but I would like it confirmed, please, that there is no sovereign risk associated as a result of this bill. The second reading speech states —

> Since the 1950s, the state has entered into over 70 state agreements and it currently has over 50 state agreements on foot. In the history of state agreements, no other state agreement proponent has sought to challenge a minister's decision about a proposal or taken the state to arbitration on any matter, let alone a minister's decision to reject or comment on a proposal that has been submitted. Therefore, this bill does not create a risk to other current state agreement parties or to future investors. Other state agreement parties and proponents deal properly and appropriately with the state in the terms of their proposals.

That is nice and comforting, but I want clarification and I will perhaps interrogate the sovereign risk issue a little further in the Committee of the Whole House. Again, it is a sacrosanct issue. I have had some communication with the Chamber of Minerals and Energy, which, as I understand it, is quite comfortable with this bill, but the sovereign risk aspect of it is something that I would like to pursue a little bit further. It also states —

> This bill affirms the terms of the state agreement and leaves open to Mineralogy and International Minerals the right to submit proposals for the Balmoral South Iron Ore project should they wish to do so. This bill will remove the capacity for Mr Palmer, Mineralogy and International Minerals to pursue litigation and damages claims regarding prior decisions of the then minister and the state more broadly, or damages for any future decisions of the minister on any new proposals submitted, or purportedly submitted …

Quite frankly, the opposition does not have any issues with that, but we are concerned about ensuring that every single t has been crossed and every i dotted by the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill and that it will unambiguously solve the problem. As I mentioned when we debated the referral motion, that is good if we take the government at face value. I am sure that its legal brains have been providing it with advice on the bill. But as I said, I would hate to think that we will get down the road and the man from Queensland, Mr Palmer, has a win. That would be the worst outcome. I do not care about it from a political standpoint; I just care about it from a Western Australian standpoint. Again, I am sure that we have some legal minds on this side who will interrogate the bill even further during Committee of the Whole to ensure that there is no ambiguity in it, that the government is absolutely sure that this legislation is going to resolve the issue, that there will be no issues with regard to a High Court challenge, that the government is rock solid on its advice and that this bill solves the problem.

I will make other comments about the lead-up to this legislation and the 2002 state agreement, because I want to make sure that people understand that this agreement, like every state agreement, had bipartisan support.

Hon Robin Chapple interjected.

Hon PETER COLLIER: No, bipartisan support.

Hon Robin Chapple interjected.

Hon PETER COLLIER: I will always remember Hon Robin Chapple for one thing; that is, he has consistently prosecuted arguments against state agreements. I respect him for that. I do not agree with him, but I respect him for it.

Hon Robin Chapple: You need to read the debate in 2002, which I will allude to shortly.

Hon PETER COLLIER: That is before the member had a sabbatical.

Hon Robin Chapple: Yes.

Hon PETER COLLIER: On Tuesday, 11 June 2002, during consideration in detail on the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Bill 2002, none other than Hon Colin Barnett stated —

> There was some debate on clause 1 several weeks ago. At that time I drew attention to the full title of the Bill, which is about implementing an agreement between the State and Mineralogy Pty Ltd. However, I questioned all the other parties to this agreement. Austeel is the name of the project, but the agreement also involves Balmoral Iron Pty Ltd, Bellswater Pty Ltd, Brunei Steel Pty Ltd, International Minerals Pty Ltd and Korean Steel Pty Ltd. That is a most impressive set of names. However, they all essentially seem to be associated with the one address.

Hon Robin Chapple interjected.

Hon PETER COLLIER: Was that an unruly interjection?

The ACTING PRESIDENT (Hon Martin Aldridge): Order, members! This is going to be a very long debate and we are just commencing it. Can we please concentrate and try to resist interjections?

Hon PETER COLLIER: Thank you, Mr Acting President. I will not take up too much of the house's time. It continues —

> That is clear in the schedule, which states the address as Mineralogy House, Level 8, 135 Wickham Terrace. I have never been to Wickham Terrace in Queensland, but it seems that a remarkable number of major international mineral houses are located at Level 8, 135 Wickham Terrace. I asked about the status of those companies. I did not do so in a flippant way. I imagine they are there for various marketing, agreement or subsidiary arrangements that Mineralogy Pty Ltd may wish to enter into. The point I made then and restate now is that I do not believe that the State of Western Australia should enter into and ratify through the Parliament agreements that are essentially with shelf companies.

Mr Brown, the minister at the time, stated —

> In the interim period I have had the opportunity to further check on the matter raised by the Leader of the Opposition. In speaking to the main proponent, Mr Clive Palmer, about the structure of the agreement and the use of what are effectively shelf companies, I was assured that this arrangement was agreed between him and the former Minister for Resources Development. That former minister is now the Leader of the Opposition.

They had a bit of a tete-a-tete on that, but then Hon Colin Barnett responded —

> It is true that the negotiations about the Fortescue magnetite deposits—the Mineralogy project—have been going on for several years. It is true that I, as a former minister, and the department had agreed to most of the provisions. However, I want to place on the record that, while Mr Palmer had a range of shelf companies that were continually variable, I did not recommend the signing of this agreement. During my time as minister I considered it to be premature. Time will tell whether this is so today —

I will say it is. It continues —

> It is significant that the former Government did not sign this agreement, and I assure members, as a member of Parliament, that I would not have brought an agreement that included a whole host of shelf companies into this Parliament to be ratified. If Mr Palmer, or Mineralogy, wish to have subsidiary arrangements, or to hive off part of the project, there are mechanisms that he can legally use to do that. That is his corporate business, which he can do with co-proponents, investors or people supplying equipment and technology, or to whom he may be marketing iron ore or its derivative products. It is not for the State, nor this Parliament in particular, to give status, through legislation, to shelf companies. I do not criticise; I can understand why Mr Palmer may want a series of shelf arrangements, but we are effectively adding value and status to shelf companies by ratifying the Bill in this way. I will not go on and on about that, but I assure the minister that I would not have brought to this Parliament a Bill containing an agreement between the State of Western Australia and shelf companies.

That is pretty much coming home to roost now. At the time, there was some considerable support for Mr Palmer and the bill, and on 12 September 2002 it was provided by a former member of this chamber—someone whom I really respected as a member of Parliament—Hon Ken Travers. He was the parliamentary secretary at the time and he stated —

> I thank members opposite for their support of this Bill. In the light of the debate, it is worth reminding members that this Bill, and the agreement that goes with it, has been in the developmental process over a considerable period. Members will note in *Hansard* that my speech in the second reading debate stated that —
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> > Negotiation of the Mineralogy agreement was first approved in 1994 and was essentially completed in 1998. At that time, the minister of the day advised Mineralogy that approval would be sought from Cabinet for parliamentary drafting and for the agreement to be executed once he was satisfied that commercial negotiations in regard to at least one project were successfully completed and the project proponents had made substantial progress in obtaining the various government approvals.
>
> I urge members to go back and read those points.

There is no doubt that we have been successful in attracting developments to Western Australia with a number of those developments under state agreements. One of the reasons for that success is that this State is seen to have a low sovereign risk. Sovereign risk is a broader term than the term "insurrection" or "civil war". It is also about companies having confidence that if they negotiate and reach agreement with a Government, a new Government will not begin the negotiations all over again. If the agreement were absolutely horrendous, that would happen. However, this Government believes that the agreements and negotiations have been good ones. I agree with the Leader of the Opposition that we cannot go back and keep the good bits of the agreements that have been agreed to over a long period and throw out the bits that we do not like. That is not negotiating in good faith by anybody's measure. Members must keep these matters in perspective.

The Keating review referred to state agreement Acts and doing away with them. The Government is examining that issue and the recommendations of the Keating review. At the time of the review, two projects had been involved in the process for a considerable time; this one and the laminated veneer lumber plant. This State would be far worse off if it was to suddenly walk away from processes into which companies had put considerable time and effort.

The company involved in this agreement is an Australian company. Mr Clive Palmer has been trying to put these projects together and he has managed to bring together the support of a range of international companies, which are outlined in my second reading speech. The professional officers in the department believe that all the prerequisites are in place for the state agreement Acts to be supported. We hope that Mr Palmer is successful in this proposal. We believe he will be but circumstances always change. However, a team has been brought together to get the first proposal up and running. We need to support people like Mr Palmer who are prepared to have a go. In the other place, the minister certainly wished every success for people who try to create jobs in Western Australia.

Hon Aaron Stonehouse: Happy days.

Hon PETER COLLIER: They certainly were. As I said, my whole point in doing that was not to make light of anything that Hon Ken Travers said. However, what Hon Ken Travers said is exactly what I have been expressing today. Everything could be fine and we think everything is wonderful, a deal has been done, every t is crossed and every i is dotted, but it all falls into a heap unless we get it meticulously right. That is why I hope this legislation is watertight.

I have a lot more to do, but I am conscious that a large number of people want to speak on this motion. I might get a chance during Committee of the Whole to go through a few of the other things. I would like to identify a number of other areas with regard to the bill, but I would like to spend a lot more time in the committee stage rather than wasting time reading in newspaper articles et cetera in my second reading contribution.

As everyone knows, the stakes with regard to this legislation are extremely high. The ramifications are absolutely profound and that is why we must get it right. As I said, the government situation remains pretty much: "Trust us." We do want a positive outcome. We like to trust the government and assume that we will get a positive outcome. I like to think that the government is confident that the bill will achieve a positive outcome for Western Australia. That is what I genuinely like to think. I have asked this a couple of times now: when the Leader of the House responds—I know there are no guarantees, even in the black and white area of law—I want her to explain to me and to the house why she or the government feels that this legislation will provide a positive outcome against this action by Mr Clive Palmer for the people of Western Australia. That is fundamental to this whole bill. In normal circumstances, I do not think anyone in this chamber, including members opposite, would ever, ever consider the prospect of bulldozing through this place a bill of this magnitude in the short space of time that we have had over the past three to four hours, and certainly in this Parliament over the past two days. It would be unheard of. But I am very conscious that this is an extraordinary circumstance. We are from the upper house; it is in our DNA. The notion of rolling things through does not sit kindly with us; it just does not. We see the nonsense that members in the other place send up to us. It was the same when I was sitting in that chair opposite. They would send us rubbish legislation and moan and groan because we would send it to a committee, fix it, send it back to this place, and then send it back to them, and they would accept the amendments in five minutes. This happens time and again, and pretty much every single piece of legislation that comes to this chamber ends up with some form of amendment. It is done so, in the end, in good faith, and it is accepted by the government. This legislation is as complex as we will ever find, but the stakes are higher than anything that any of us have ever dealt with in terms of the implications for Western Australia, and I really hope that the government is watertight on this. I know the house has made its decision about referring it to the committee, so that opportunity no longer exists, but we will have an opportunity in the committee stage of this bill. If we are going to keep it as tight as we possibly can for the government and for everyone in this chamber, it would be helpful to have a watertight guarantee from the Leader of the House, as much as she possibly can, that the government is very, very confident in its space.

As I said, the intent of the opposition with this bill is to ensure that the government is successful in defending the action from Mr Clive Palmer, that Mr Clive Palmer stays in Queensland, and, quite frankly, that we are never again placed in a situation in which a state agreement is brought into such disrepute. With that, the opposition will not oppose the bill.

HON AARON STONEHOUSE (South Metropolitan) [2.35 pm]: I will be very quick. I have no intention to hold up this debate unnecessarily. I have made some of my points already. The bill we are dealing with today, the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020, does some pretty remarkable things—some pretty extraordinary things. It strips a private citizen of some of their most fundamental and basic rights. It strips away their right to natural justice. It strips away their right to procedural fairness. It forces them to indemnify the state. It up-ends some of the most bedrock principles on which our liberal democracy is based. It is the kind of legislation that we should not pass lightly.

Of course, earlier today the house determined that we will deal with this bill today in a few short hours because it is so urgent. However, I have just learnt that according to *The Australian*, Clive Palmer has successfully registered his arbitration claims in the Queensland Supreme Court, so is it too late? I do not know; that is unclear to me at this point. I look forward to getting some answers from the government on that because apparently that is precisely what we were trying to avoid by expediting this bill. It is so important, of course, that mid-debate we broke for an hour for lunch. Maybe it is not as urgent as we thought—who knows?

These are not problems for me to worry about at this point. I have my objections to this, but ultimately this falls to the government. This is on the government's head. If we are back here in a few years and we are dealing with a situation in which Mr Palmer has raised a constitutional challenge and the High Court has ruled in his favour, that will be on the government. What will be the consequences then? If this $30 billion figure is based partly on interest accrued over the past few years, what will it be in a few years after this is litigated in the High Court and after a constitutional challenge is settled there? We have been denied the opportunity to properly explore those kinds of issues, so we have to legislate blindly.

My objection gets down to this, and I feel silly that I have to spell this out; I really do. It feels ridiculous that I have to say this, but I will say it now: someone's popularity, how much somebody is liked or disliked, is not a determining factor in whether they have access to equality under the law. This idea really should not be radical. Unfortunately, just by saying that, one will be ridiculed. One will be criticised in the press and abused and hounded for saying something like that. It is not a complex idea; it is not a radical idea. It is an idea we have had for a few hundred years now at least under our system of government. Everybody is entitled to natural justice and everybody is entitled to procedural fairness, even people like Clive Palmer, who is apparently loathed across Western Australia and loathed by the Premier and the Attorney General. Even people like him have rights. To pass legislation like this, to retrospectively take away his right to arbitration, his right to justice and his right to procedural fairness, is something that I cannot be a party to. I cannot be a part of something like that in good conscience.

I will not stand in the way of this bill. If this is the way the government wants to go, and if the opposition and other parties support it, fair enough. I understand that I am in the minority here. I will not stand in the way of it if that is what they want to do. However, mark my words: if we are back here in a few years and this has only made things worse and we are staring down the barrel of a High Court ruling in favour of Mr Palmer over a constitutional challenge, we had an opportunity to look at these issues and the government rejected that opportunity. It declined that opportunity. There is not much more I can do. I will have some questions in Committee of the Whole House, but for now I suppose we might as well get on with this. As bitter and painful as it is, I suppose we have more work to do.

HON JACQUI BOYDELL (Mining and Pastoral) [2.40 pm]: I rise to add the perspective of the Nationals WA on this Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020, to allow some debate and clarify some issues that I think all members, let alone the people of Western Australia, are seeking some answers to. The year 2020 seems to be one of extraordinary legislation and unprecedented circumstances, and this most certainly is a piece of legislation that sets those two challenges before members of this house today. After, really, a 48-hour period from when the Premier and the Attorney General advised the Legislative Assembly that they would seek this course of action on behalf of the government, we find the bill being debated in the Legislative Council today. That in itself is an unusual circumstance; nonetheless, during the pandemic the chamber has dealt with pieces of COVID-19 legislation in that manner. As nimble as members are in supporting the government's response to the pandemic, this bill is something entirely different, so I will take some time to step out the National Party's view. I will highlight some of the concerns that the National Party has always held with state agreements, which members will not be surprised about, and the sovereign risk aspect that one could either agree or disagree with. The Premier and Attorney General taking the action that they have in this case maybe provides some uncertainty and therefore a sovereign risk to the state.

The Attorney General's office briefed the National Party on Tuesday night, and our party met on Wednesday morning at 11.30 to discuss this bill. It was an interesting and in-depth conversation about how to deal with something like this, which none of the members of our party have had to deal with previously, and I doubt any members of the other place or this house have had to either. I say from the outset, with all the concerns that I will raise and that other members have raised already, that the Nationals will support the progress of this bill through the house, but I want to put on the record, as I did earlier today, that it does not sit comfortably with me and my National Party colleagues. Unfortunately, there are times and extraordinary circumstances when the passage of legislation through the Parliament is not perfect and we do not always get adequate time to properly scrutinise the bills before us. That is the nature of the Parliament, and sometimes the people of Western Australia have to rely on the Parliament dealing with those extraordinary circumstances in a responsible manner, considering the response the government has chosen to take in this case, and to ensure we do not place the state of Western Australia in an untenable position. I think that is at the forefront of the minds of all members as we debate this bill. Unfortunately, we find ourselves in that circumstance today. This is not perfect, and there will be other times in the future when debate on legislation is not perfect and we will not have the comfort of the amount of time desired to scrutinise legislation. That is just the way that it is, unfortunately.

Since coming to opposition 2017, the National Party and, indeed, the Legislative Council, has played an important and sometimes difficult role in dealing with extraordinary circumstances with some really sensitive social issues in the community and responding in a timely manner to issues facing the state. As I alluded to earlier today, we have had to keep our heads while those around us are trying to pull us in many different directions. That is really difficult and that is why it can be really hard to be a member of Parliament. But we have been able to do it as members of this chamber, and that is what we are being asked to do today as well. There will be many armchair critics that tell us we got our decision wrong, but it is up to the members of this house to make their decisions and vote. We have that vote in this house today.

We have had no time to interrogate this bill, seek any legal advice or test the strategy that the government has chosen—I emphasise—to pursue, and I understand the government had a couple of different options to pursue. I hope that is the case, and I ask the Leader of the House to clarify that in her response to the second reading debate. Members of this house and the other place, particularly from the opposition, have not had the available resources of government. I hope that members, including backbench members of this government, have given themselves some comfort that their executive of government has got this decision on the path it has chosen right. We, as members of the opposition, have to put some trust in that decision, but we also have to scrutinise it today. I think the Leader of the House has heard very loudly the concerns of members on this side of the chamber about how the government came to that decision, what the other options available were and why this course of action was chosen. As has been highlighted previously, should there be an appeal by Clive Palmer or Mineralogy in this case, this debate will be referenced, and I think it is very opportune for the government to be able to put on record why it chose this decision and why it is asking members of the opposition to support it. I think it is important to examine the circumstances under which we are debating this legislation today and the way the opposition has been brought in to contribute to and participate in this debate. I want to make it very clear for the record of the debate in the future and also for people outside this house just what extraordinary circumstances the members of this house have been under in having to consider this legislation today.

From the outset, I find the claim made by Mr Palmer to be quite extraordinary. There is no doubt that the majority of people I have had contact with about this topic share a similar view, and a similar disdain, that one person, no matter who they are, would seek that sum of money from the state. I think that rests very uneasily with people. It is simply extraordinary for Mr Palmer to behave in the manner in which he has. I also recognise the contact I have had from people in Western Australia, and my electorate in particular, who say that Mr Palmer has a right to access our legal and justice system, and I agree with that, but it cannot be denied that the extreme nature of the demands that Mr Palmer has put on the state government have seen many Western Australians come to this issue with disdain. The government has therefore—rightly or wrongly; it is its decision to make—put forward the argument that because of the extraordinary nature of Mr Palmer's claim and his behaviour, the remedy and the response to that problem is justifiably extraordinary as well. I want to be really clear about what this legislation means and what we are being asked to agree to in supporting this bill. I am sure that the Attorney General will do his best, and has tried to do his best, to suggest that this could be seen as a normal process that might be done again, and that it is just something we have to deal with. No-one I have spoken to about this legislation believes that it is in any way a normal process, and they do not want to see it happen again, so it is indeed a sensitive issue for the government in respect of the way in which it is managed. Many people will be waiting with bated breath on the words of the Attorney General, I am sure.

The Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 will remove the ability of Mr Palmer, Mineralogy and International Minerals to pursue their claim through the court system. That is a serious step to take, because it is a fundamental right of every Australian citizen. The one aspect of this legislation that most people who

have contacted me do not agree with is this decision of the government. The bill will amend a state agreement act. In principle, I do not disagree that governments should have the capacity to amend state agreements—I have said that many times in this place—but the way in which a state agreement is amended is, I guess, a matter for the government.

The Attorney General says that the bill does not give rise to sovereign risk and does not create any risks for current state agreements or the parties involved in those state agreements, or for any future investors in the state, and he says that with great conviction. However, just because he says that, it does not make it true. I have also had contact with the Chamber of Minerals and Energy of Western Australia, which told me that it understands the complex situation the government finds itself in, that it understands the government's actions in dealing with this complex issue, and that it does not believe that this legislation will affect future investment in Western Australia. I hope that is correct because sovereign risk, as put by the government, is about instability around the negotiation of state agreements in the future. Time and again this government has said, "Oh, no, you cannot possibly review state agreements because you will create a situation where sovereign risk is an issue for the state." If the government is going to unilaterally change a state agreement and deny the proponent any legal action in response, there is no greater sovereign risk than that.

There are concerns, and will be concerns, for future proponents of state agreements. The 50 or so proponents who are currently in state agreements with the state of Western Australia might be a little uneasy today. Members in this place have had to view the government's decision-making from the outside looking in, because we have not been given access to the legal advice and internal conversations the government has had with the State Solicitor's Office. Although we are, in effect, closer—we are not as removed as the people of Western Australia—we are looking at the optics of this decision-making from outside and it might appear to industry that the government has just decided that it does not like Mr Palmer and his actions so it is going to take away his capacity to arbitrate or negotiate a legal process by amending his state agreement, which will mean that he cannot take any of those actions. I do not think a reliable, responsible government would do that if it wanted to see investment come into the state.

I reiterate that the Attorney General may try to say that this is not a case of sovereign risk, but just saying that does not make it so. The government needs to provide industry with some confidence that it will not take this action every time it does not happen to like a decision made by a proponent of a state agreement. That is a very dangerous space for any government to be in and it is not the sort of statesmanlike, nation-building behaviour that the people of Western Australia want to see from their community leaders. Although there may not be any shockwaves being felt in the industry at the moment, that could build in the future if the government does not provide some confidence in that space.

This government, in particular, has made a point of avoiding conflict with the mining sector and of avoiding the contemplation of any changes or reviews of state agreements at all during this term of government, except in the case of Mr Palmer. That is unusual, and needs to be highlighted, I think.

Hon Robin Chapple: It was also done with Lang Hancock many years ago.

Hon JACQUI BOYDELL: I am talking about this government.

That 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 does not agree? We find ourselves in very tenuous territory. My Nationals WA colleagues and I can speak with some experience on the issue of the review of state agreements, because the Nationals WA bore the full brunt of a campaign against our proposal before the last state election to amend legacy state agreements. We remember very clearly the concerns raised by industry about any notion or proposal to change state agreements without consultation with the proponent with whom the agreement was struck; yet that is the situation that faces us today.

The third matter in this legislation that might cause concern and that may, indeed, raise some eyebrows is that it creates a general regulation-making power and provides the Governor with the ability to make orders to deal with various circumstances, including any matters that may not be adequately or appropriately addressed by this bill. That is unbelievable. I said to someone yesterday, "Just when I think things won't get any weirder, they get slightly weirder." That is an exceptionally concerning aspect of this bill for any legislator, because we are basically abrogating our responsibility for decision-making. That is a really extraordinary position to find ourselves in. We are essentially allowing the government to write and enact its own rules without the requirement to revisit Parliament. To me, that raises some really serious concerns.

This is a serious matter on which, I hope, many lawyers will work to provide their solutions, but it may well be that future governments will face unforeseen circumstances as a result of today's decisions. That part of the bill is not something that any Parliament would ordinarily contemplate agreeing to. As I said at the outset, we find ourselves in yet another extraordinary and unprecedented time in respect of the legislation before the house. I do not believe any Parliament at any other time would consider or contemplate agreeing to it.

I also understand that the government has contemplated Western Australia's relationship with free trade agreements, and whether we or the commonwealth government might be in breach of those agreements. I therefore ask the Leader of the House in her response to provide some commentary and clarity around the government's decision-making and whether the government thinks there will be breach of free trade agreements for either Western Australia or the commonwealth. That is obviously an area of concern, particularly to industry, and there may be ramifications for Western Australia. Obviously, because the commonwealth is involved, that is an issue not just for Western Australia; it could potentially become a national or international issue.

There are some really serious parts to this legislation. I am not dismissing the principle of this whole piece of legislation. I am sure we will interrogate those parts of the legislation during Committee of the Whole. In contemplating what we are doing today, if the Leader of the House were to give members an opportunity to discuss those points and have those questions answered, that would be a good outcome.

I will not take up too much more of the house's time, but I want to go back to why the government has come to this point. The government has previously taken the position that it will not review state agreements unless both the proponents and the government agree and came together and negotiate that. Therefore, it would be exceptionally interesting to know why the government feels that it can do that in the case of Mr Palmer and Mineralogy. We in this Parliament have a duty to protect the Western Australian public. We have a responsibility to protect the finances of the state. We need to ensure that the state does not go bankrupt, or that the people of this state are not subject to higher taxes and charges for generations to come. I understand that it has been the absolute and paramount responsibility of the government to ensure that does not happen. This house also has a responsibility to ensure that does not happen. The government is asking members to support the option that it has chosen in response to this issue. Therefore, we will need to seek some of those answers during Committee of the Whole. We have a responsibility to support the government in its decision-making, because, at the end of the day, the responsibility rests with the government. In times to come, that may prove to be a good thing, or it may prove to have some challenges. The National Party will be supporting the bill, and I look forward to the contribution of other members when we get to scrutinise the legislation further during Committee of the Whole.

HON RICK MAZZA (Agricultural) [3.03 pm]: I also wish to speak on the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. The barbarian is at the gate. Earlier in the week, Mr Palmer was King Kong hanging off Dumas House, yesterday he was Dr Evil, and today he is a cane toad. What is the state going to do about that? We pretty much slam the doors shut, pull down the shutters, and hope he goes away.

We have been presented with this extraordinary legislation, which we have had a very short time to go through. The claim by the Attorney General is that the risk to this state is between $30 billion and $45 billion. However, we have to ask ourselves: how did we get to this position? Mr Palmer would need to substantiate his loss. He cannot just make an ambit claim and say he is out of pocket $30 billion. He must be able to substantiate that claim. This matter has been before arbitration a couple of times to date. Mr Palmer obviously has some very real claims against the state, for the state to take the extraordinary step of the legislation that is before us. I think this is extraordinarily embarrassing for Western Australia. I do not know that we will be able to quantify the reputational damage that we will end up with over this. Already on Sky News last night I heard Western Australia referred to as a banana republic, because we do not follow our state agreements. A state agreement is no different from any other contract.

Hon Alannah MacTiernan: Do you think we should pay them $30 billion?

The ACTING PRESIDENT: Order, members! As I expressed earlier, this will be a long debate this evening, and it would help if everyone in this chamber heard the second reading contribution in silence and listened to the member on his feet.

Hon RICK MAZZA: We are now presented with this extraordinary bill, which goes against all the established processes that we have in a democracy that recognises and respects the rule of law. I would imagine that a state agreement, like any other contract, comprises a series of clauses that have particular requirements for each of the parties who enter into that contract. The contract itself, which was established by the Gallop government in 2002, was obviously deficient. It was flawed. It has allowed Mr Palmer in this case to make a claim against the state at this level. I am very, very concerned that Mr Palmer might be successful. The damage to the state would be irreparable. I can understand why the state government is in a state of panic and trying to get this bill through.

The second reading speech refers to some of the clauses of the bill. It states —

> Clause 10 terminates any arbitration which the state, Mineralogy and International Minerals are party to and which concerns a disputed matter.

We are going to legislate to get rid of the arbitration. It states also —

> Clause 11 provides that the state, its officers and agents will not have any liability of any sort in respect of the arbitrations …

We are going to legislate indemnities to protect officers of the state and the state itself against prosecution. It states also —

> Clause 12 prevents any appeal or similar action against the conduct of the state.

We are going to legislate that there will be no appeals process. It states also —

> Clause 13 removes the application of the Freedom of Information Act.

So we cannot even know what went on as far as this legislation is concerned. It is all very cloak and dagger. It states also —

> Clauses 14 and 15 provide further protection for the state by creating statutory obligation on Mineralogy, International Minerals and Mr Palmer and any person who brings, or has an interest in, proceedings connected with the disputed matter, to indemnify the state against such proceedings …

Anybody who brings proceedings—Mr Palmer or one of his companies—will have to indemnify the state against those proceedings. This is extraordinary stuff.

Further into the second reading speech, it states that Mr Palmer and his companies are not "normal". What is normal? I think some of the members of the government who are promoting this could also be considered not normal. That is an extraordinary claim to make.

I have grave concerns about the very draconian and oppressive clauses in the bill. This is unprecedented. I am also very concerned about how this might play out in the High Court constitutionally. It is okay for the government to say, "We've got all the bases covered. We've got an army of lawyers swarming all over the bill to make sure there are no cracks anywhere." However, it is very difficult to determine the outcome of litigation. That is one of the reasons this bill is before us. In the briefing I had yesterday, the concern was that we do not know how this might play out; and, if it plays out against the state, we are in deep trouble.

It would follow that even with this bill, if the matter goes to the High Court, there is still no guarantee that it will not go against us or that the very problems we have before us now will not be magnified tenfold. I do not know what the cost to the state in legal fees is so far or what the ongoing cost will be to continue to defend the state against the barbarian at the gate, because the litigation could go on for years and years. There are certainly lessons to be learnt out of this. At this point in time, I think the collateral damage will be with us for a long while, regardless of whether this bill passes and protects for a time.

I have not had the opportunity to go through the fine detail of the bill; however, I am sure we will spend a long time going through it in Committee of the Whole. There are some very good legal minds sitting on the benches of this Parliament who I am sure will skilfully work through the legislation. I look forward to hearing some of the issues that will be raised and will assist where I can, because this is a very complex bill. Mr Acting President, at this point in time, I will not indicate whether I support or do not support the bill. I am sitting on the fence and am interested to hear from other members to assist me with coming to a decision on something I have not had a lot of time to digest.

HON ROBIN SCOTT (Mining and Pastoral) [3.10 pm]: I rise to speak on the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. I do not know anything about the rules and regulations for changing a state agreement, but I know Clive Palmer. In fact, I had a ride in his Rolls Royce over in Maroochydore. The man is a self-made billionaire and he is not stupid. A person cannot be stupid and a billionaire—they are at either one end or the other. He is a very astute businessman and he knows when to fight and when to flee. He is no lawyer, but he does not have to be, because he has the means to hire the best lawyers in the country. Yesterday, I had a 15-minute briefing from the government. To be honest, the briefing gave me no confidence. It seems to me that we have a suck-it-and-see defence. The defence has so many layers that if Mr Palmer manages to break through one of the defences, we will all take a step back to the next level of defence. If we keep poking this guy with a stick, it will strengthen his will to win this legal fight.

I do not want my grandchildren's children to have to pay a $30 billion debt; however, changing the goalposts midgame is also wrong and would give other stakeholders no confidence into the future. Labor is changing a state agreement, not the law. Our laws are laid out and it is the law and the lawyers who will decide who wins and who loses. I will not be supporting this amendment bill the way it is laid out. Thank you.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [3.13 pm]: I rise to make a few comments of a relatively general nature about the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020.

The ACTING PRESIDENT (Hon Martin Aldridge): Order, member. I am sorry to interrupt; can I confirm that you are the lead speaker for the opposition?

Hon MICHAEL MISCHIN: I understand that Hon Peter Collier is the lead speaker.

The ACTING PRESIDENT: The Leader of the Opposition has a separate time entitlement, so you can elect to be the lead speaker for the opposition.

Hon MICHAEL MISCHIN: In that case, I am the lead speaker, although I do not think I will take up as much time as will be available to me.

I have a number of concerns to raise. Perhaps we should start off by admitting that extraordinary circumstances require extraordinary measures in order to deal with them. It is not every day that the state of Western Australia faces alleged bankruptcy at the hands of a private litigant, if we are to accept what the government has told us—in particular, the Premier, who is not noted for being circumspect or moderate in his views when he has his blood up, and the Attorney General, who, as we know through reputation and we acknowledged yesterday, tends to exaggerate, get emotional, indulge and engage in hyperbole; loves rhetoric; and is prepared to say just about anything to make his case. So, yes, we accept that there may be occasions when the government needs to take extraordinary measures in order to meet an existential threat. It concerns me and, if I gauge the temper of the chamber correctly, the non-government side of the chamber that the attempt to meet this existential threat, if in fact there is one, has not been done with the cooperation of the parties that have a responsibility to represent their constituencies in this Parliament and the interests of the state in that regard.

The bill was introduced into the other place a couple of minutes after close of business in the eastern states in order to avoid a problem, apparently. It has taken some months of clandestine preparation under considerable security, for obvious reasons, if I understood correctly from the briefing I had this morning. However, those who have to make the decision on whether we support this extraordinary measure have not been brought into the government's confidence, nor was the cabinet, it appears. I understand that the Legislative Assembly on Tuesday evening had more notice that this bill would be introduced than cabinet had before deciding whether it would be introduced. That is astonishing. It appears that cabinet had to take the word of the Premier and the Attorney General to move this extraordinary measure.

Hon Nick Goiran and I had a briefing on this bill only this morning. Hon Nick Goiran has been occupied with other matters of an urgent nature that this government has brought forward and that the opposition and this chamber generally have attempted to accommodate in order to meet the problems that the government is facing on behalf of the state. However, I have not even seen a blue bill for this legislation. One was sent to me by email at 11.36, I think it was, this morning. I have not had a chance to print out the 110 pages. We were given an explanatory memorandum but no great detail about time lines or the history behind this matter. We are told that there have been arbitration rulings but we cannot see them because they are confidential. I accept that. We are dealing with matters on the run. I understand that members of this house, or at least members of the Liberal Party, have had about three verbal briefings over the last couple of days. On not one occasion has the Leader of the Opposition, as I understand it, let alone the leaders of any other party responsible to their constituents, been brought into the Premier's confidence and told, "Look, we've got a problem. This problem affects the people we represent—the state of Western Australia." On the other hand, we were presented with a bill, an explanatory memorandum and a lot of hyperbole in the second reading speech, and told that this is really essential legislation that has to be passed as soon as possible. We cannot even have a committee look into it because it is so urgent because this evil man who is suing the state and trying to bankrupt it—apparently that is his objective, according to the government—might do something.

Let us get down to basics. This bill affects a litigant against the state. We can leave aside who it is for a moment. There is a state agreement; it is a contract. The state entered into that contract. For all the talk about the nasty, self-serving litigant who is looking for his own advantage, that is what parties to an agreement and a contract do. When people contract, they expect their share. If they do not get it, there is usually a process by which it can be arbitrated according to law or they sue in the courts. We do not say, "This is a little bit self-serving. The person suing me for not completing my end of the bargain or not fulfilling the obligations of an arbitration is not a nice guy; therefore, we should stop him from getting it." If there is a systemic problem with state agreements and what has happened in this case, it needs to be addressed. Demonising one of the litigants is not the way that a state operates as a model litigant. One of the things that concerns me is the matter of principle. The principle is that this particular litigant, Clive Palmer, is a bad guy and therefore any measure should be taken to avoid paying him a dollar, which is what the Attorney General has said: "He won't get a dollar out of WA", never mind making a commercial settlement and using a rational approach to any of this. It is a matter of principle: "We don't like Clive Palmer; he is a political opponent; he is an eastern stater—even worse—and he is suing the state of WA under a contract we don't like because it is not operating to our benefit. Guess what? He might actually win because he has a good

case; therefore, we have to do something to stop him." That is what this amounts to. It appears that for some reason—we do not know exactly what because we have not had an opportunity to look into or have access to the material the government has—the state has got itself in a position in which it looks as though it is on the losing side, so it will change the rules. It will not just change the procedural rules and the like and give itself an opportunity to have a fair hearing; it is seeking to actually eliminate the rights of one of the parties to a contract. By reason of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill before us, it is seeking to ensure that any action that person takes to pursue their rights, selfishly or otherwise, will have to be indemnified by him, and that any action by anyone on the state's part, even if it is criminal, will be indemnified and absolved. It is extraordinary stuff.

As I say, extraordinary times need extraordinary measures. I would be happy to look into this to consider and understand it. But that is what we are being denied, and it was reinforced to me at the briefing I had this morning. I thank the advisers from the State Solicitor's Office and the adviser from the firm Clayton Utz for their information. I do not doubt what they are saying, but we need time to absorb and digest this and come to a view about which bits can or cannot be agreed to and whether they should or should not be agreed to as a matter of principle. That is what we are being denied.

We are told that this is not a precedent. The only way we can stop something from being a precedent is not doing it in the first place. What does it mean to say that this is not a precedent for anything else? Does it mean that the government has no intention over the next six months, during this term, to do something like this to someone else who is suing it, when it might cost the government money? Is that the precedent? Or is it saying that the Labor Party will never do this again if it is in government? Or is it saying that if at some time in the future a Liberal government is faced with a similar situation and takes this measure, the Labor Party will say, "Hey, you can't do that", and we will say, "Well, you did it back in 2020", and the Labor Party will say, "Yes, but that wasn't a precedent, because we said so"? Is that the way it will work?

There is no sovereign risk. The Leader of the House, the Premier and the Attorney General have said so, so it must be so. The Chamber of Minerals and Energy will not have a problem. I am sure it will not, unless one of its members faces the same situation in a couple of years. Just because the government says there will be no sovereign risk, does not mean there will not be one. I would have thought there would be. Is the principle of this bill simply that the government is worried—there is no certainty about it even in the second reading speech; it just might happen—that it might lose and there may be a payout of money it does not really want to spend? I do not accept for a moment that it will be anything like $30 billion. I cannot imagine the opportunities from this mine are more than the state's gross domestic product. However, if that is the case, we need to fix the problem, not leave it open for the future. There has been no evidence that it has been considered in that light.

We are told about the risk of this being delayed and properly scrutinised by this Parliament. We have heard that no delay is possible. All right; that needs to be explained further. If I understand it, part of the difficulty that the government has faced—this is what has brought it to a head—is that there have been programming orders by an arbitrator who has so far not agreed with the state's position to resolve this matter in a hearing towards the end of November. The state is concerned that it is not able to put its case properly and it is worried about the decision that might be made. That is a risk with litigation and we do not eliminate it by ensuring that there is indemnity for the state in every case. But maybe we should, if that is the solution. It seems to me that this is likely to happen again. To say that this has not been done before by any party to a state agreement is all very well. It is up to them whether they enforce their rights, but I have not heard anyone tell me that despite the demonisation of this person. I should add that I have never met him and I do not particularly want to meet him. I have no interest in what he is doing. I do not like it, but that is by the by. If he has legal rights that he is trying to enforce, simply saying that he is someone that the Premier, on behalf of the state of Western Australia, has declared war against, hardly takes us anywhere. That makes it personal and that does not help in assessing the gravity of what is being proposed other than to fight this matter in the arena of public opinion rather than in a court of law, which is where it appears that Mr Palmer is trying to take it to deal with it. It appears that the state does not like that—I can understand that—and feels disadvantaged and the solution is to eliminate any possibility that he can exercise his rights into the future and retrospectively.

We are told that it would be fiscally irresponsible. That is what seems to be the touchstone for these sorts of measures in the future: "It will potentially cost the state an enormous amount of money; therefore, we need to stop it." However, it does not prevent the problem. Hon Robin Chapple has argued against state agreements for decades. So be it. I think there is merit in the idea that was floated at one stage that a parliamentary committee ought to review state agreements as a matter of course. But if there is a problem with state agreements, they need to be fixed to ensure that this sort of thing does not happen again, not simply because people have not enforced their rights under them.

I will wind up by quoting something that was said in this Parliament. It is not an un-analogous situation. I will give some further details in a moment. It was legislation that also affected the rights of litigants. This member started by saying —

> The hypocrisy of this government knows no bounds.
>
> …
>
> … the government has no regard to the principles involved—the principles of the rule of law, an independent judiciary, and a civil society in which disputes between contracting parties are decided by an independent court system …
>
> The actions of the government in this case stand in stark juxtaposition to the recommendations of the royal commission into WA Inc. The independence and proper functions of the three branches of our democracy should be respected and adhered to: an executive branch that sets and executes policy; a legislative branch, which we all form part of here in this chamber, which debates the policy as presented in bills; and any disputes arising from that are to be determined by an independent judiciary.

Just think for a moment whether the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill meets any of those principles. The member continues —

> Any government that decides to resolve disputes between citizens and corporations in this manner —

He was talking about the bill at the time —

> can hardly lay claim to the title of a conservative government that respects the rule of law and a well-ordered system for the resolution of disputes between citizens.

This arbitration process is something that the state appears to have agreed to, and now does not like the way it is going. He continues —

> It is completely putting aside one pillar of our democracy and saying, "It doesn't matter; we have the numbers."

It is a —

> … brutal piece of legislation. It extinguishes property rights, not on just terms, but on terms that suit the government of the day … In a very real way the government is outing the judiciary from the process of justice, as is happening with this bill before the chamber.

And by —

> … outing the judiciary without any regard to justice, the government has no regard to justice.
>
> …
>
> … The core message that came out of WA Inc is that the government of the day bypassed and sought to out one of the important three pillars of our democracy. The government of the day decided to bypass this chamber—the legislature—and set up a number of off-budget entities through which dealings were done that this Parliament did not scrutinise or approve. The executive found ways to achieve its ends outside the true democratic process of coming to this Parliament and seeking authorisations and appropriations—indeed, that is why we are here today, in a sense. The big criticism made by the WA Inc royal commissioners was that the executive had bypassed the judiciary, which is one of the three pillars upon which our democracy is founded, the others being the executive and the legislature.
>
> It is as though nothing has been learnt from that because we have a government today that says the solution to its problems is to bypass one of the other pillars of our democracy—the independent court system, or judiciary—and bring to this Parliament a bill that will cast aside all the contractual rights that the government of the day had entered into, with legal advice …
>
> The government is now saying that the way to deal with this is to bypass the regular way in which disputes are settled and take all the pieces off the table and institute the government's own liquidation process.

That was the now Attorney General back on 17 June 2015, railing against something that was brought in by the last government that was modest by comparison to this. Every member of the Labor Party complained about how the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015 extinguished rights, how it was disrespectful to the dispute resolution system and how it affected the rights of litigation speculators. Over a period of some 20 years, litigation speculators were entering into agreements and trying to overturn them and then appealing and commencing proceedings in other countries and jurisdictions and sucking up the corpus of the amount that was in dispute between agencies of the state and sometimes myriad shelf companies. That was apparently very unprincipled. I remind members that back then, the government, of which I was a part—that was a bill that I was managing in this place—agreed to have that bill referred to the Standing Committee on Legislation of this chamber, even though there were risks with it, in order to satisfy the members of this chamber and allow them to do their job.

It was referred in about mid-September for a month's report, it sought an extension and it reported mid-November. This is nowhere near as complicated as that.

I need to be satisfied and the government will need to tell members of this chamber and future generations and governments why this bill cannot have proper parliamentary scrutiny. We are being asked to take the government, once again, on face value. Once again we are being asked to listen to a Premier who has declared "war" on a litigant, a political opponent, and made allegations as if it will be a certainty that up to $30 billion or more will be recovered. The Premier is now seeking to eliminate any prospect of someone who is in the process of enforcing the rights under a contract with the state and within the laws of the state, from having access to that process the state was agreeable to, and the judicial process, because the state does not want to pay that money, says that it cannot afford it and is worried that it might lose. The Attorney General, despite all the large talk back in 2015, thinks that a parliamentary committee doing its job and fixing up the legislation that he has put forward in a way that it has done until now, is "namby-pamby", presumably, rather than being histrionic, hysterical, exaggerating, emotional, irrational and demented.

Although we will not be opposing this legislation, because we are assured that it is in the state's interest, be it on the government's head. It will not be forgotten if this goes pear-shaped, and, if this is challenged, this government will have to account for it. I am most concerned about some of the provisions in this bill that seem to be able to cover up any prospect of finding out what the true story is behind the way it has come to us by limiting freedom-of-information access and the like. This is like a doctor burying his mistakes. If the government has mismanaged this—I do not much mind, frankly, whether it was the last government or the one before that or this one—and if there have been problems, such as criminal offences committed, that are going to be absolved, and if there are defects in process, we are entitled to know about it. I hope that there will be at least that level of accountability in due course.

HON CHARLES SMITH (East Metropolitan) [3.36 pm]: I rise briefly to make a short statement on the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. The whole world currently finds itself in a precarious state of chaos. Until now, Western Australia has been reasonably immune, and at last politics in WA is getting interesting just as the Parliament is coming to an end—what a shame. The coronavirus pandemic has caused unprecedented change in the world, but as Perth is an isolated city, we have been lucky enough to have avoided a catastrophic outbreak. We, like everywhere else, however, are feeling that heavy pinch of the whole country's lockdown.

The dispute that Mr Palmer has with our state is an unfortunate case of politicking gone mad. Generally speaking, I have no issue with Mr Palmer and his desire to undertake work in WA if that work is lawful and employs Western Australians. I am happy to support almost anything, any endeavour, that provides work and educates and trains Western Australian locals first. However, due to the national lockdown and the conditions of each of the states, Mr Palmer should have been a little more tactful in his approach, particularly given that his home state has closed its borders as well. But it is not those borders that he is after; Mr Palmer is after WA's borders. Although he may be correct in his public statements that there may be constitutional implications with these lockdowns, he has perhaps taken the worst course of action at the worst time to have that question answered, especially with the overwhelming popular support of the state and its people to remain closed and essentially an island.

The Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 is the Labor government's attempt to legislate away the state's liability. As some other speakers have said, it is somewhat similar to what happened with the Bell case and how it was struck down in its entirety by the High Court, which is a concern of mine and other members of this house. Should Mr Palmer take the state to the High Court over this legislation, contrary to the advice that I have been given, he may be successful, and the implications for the state would be anyone's guess. It could put us in a worse state than the alleged $30 billion that he is after. Be that as it may, in any other circumstance, I and maybe others would probably not vote for a bill like this. I will talk about the rule of law, justice, section 109 of the Constitution, order, good governance and our legal traditions, all of which have been somewhat trampled on. However, today the Western Australia Party and I will be supporting the bill.

Australia is hurting and because of that Western Australia is hurting. Just recently, the Australian Bureau of Statistics released its labour price index for the June quarter of 2020, which once again revealed plummeting wage growth across the entire country as the shutdowns take effect. WA's wage growth still stands at an anaemic 1.6 per cent, the worst in the entire country. The very last thing we need in WA is a COVID-19 outbreak, because that would put the entire state on life support, if it is not already. The very last thing we need is politicking that bankrupts this state. Although I have some appreciation of Mr Palmer's concerns, he has chosen the worst action at the worst time. WA cannot afford this and, frankly, it would be unfair if the billionaire were to bankrupt the state because he did not get his way. WA needs to keep itself afloat economically. That money would be better suited in the hands of Western Australians rather than a mining elitist billionaire.

The ACTING PRESIDENT (Hon Martin Aldridge): I give the call to Hon Robin Chapple.

HON ROBIN CHAPPLE (Mining and Pastoral) [3.42 pm]: Thank you, Mr Acting President.

The ACTING PRESIDENT: Hon Robin Chapple, could you confirm whether you are the lead speaker for your party?

Hon ROBIN CHAPPLE: Yes, I am.

The ACTING PRESIDENT: Thank you.

Hon ROBIN CHAPPLE: Many comments have been made around the chamber and I do not really want to go over them. There have been some very valid contributions so far. Quite clearly, we are faced with a very unusual situation that my colleagues and I would not normally entertain. Having said that, there are issues afoot that need our undivided attention. I will bring some lighthearted relief to the debate by reflecting on what happened in 2002. I will move to that shortly.

Quite clearly, a number of litigation risks are associated with the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. We will be able to tease those out during Committee of the Whole and clarify how tight the controls are. One of the reasons for the covert way this legislation was introduced was the need to stop litigation pre the passing of the bill, which was a possibility. There is also the potential for using free trade agreements. As members know, Clive Palmer has moved his corporation from New Zealand to Singapore to avail himself of free trade aspects and, in that regard, we are concerned that that might be a process. I am advised by the briefing people from the State Solicitor's Office and Clayton Utz that they have looked at that potential and have looked at ways to deal with that in this legislation. We will deal with more of that later during Committee of the Whole.

I want to go into a bit of history. I think Mr Palmer has been operating in this state since 1986 when he acquired tenements from Hanna Mining, which was way before he entered into the potential for a state agreement act with the state. He was acting fairly randomly at that stage, too, because on a number of occasions he tried to set up different mining operations with his Cape Preston deposit. He did not really understand how the Mining Act 1978 worked. Instead of making an application for a development through a state agreement act, he took out a mining lease over the whole of the Burrup Peninsula. The lease was not granted, but his intention was to set up a giant factory on the Burrup Peninsula to get the magnetite from the Cape Preston area, slurry it with water, build a pipeline up to the Burrup and dry it out and beneficiate the magnetite there for shipping from the Burrup Peninsula. I was around when he tried to do that and given that the Burrup Peninsula is rather special as far as I am concerned, I had a fair bit of involvement in trying to stop him, as members can imagine. He has played around in this area for quite a long time and made a number of proposals; in fact, he advertised in the newspaper a number of proposals for exactly the same project in a number of different locations. They were exactly the same project, but he had the idea of hedging his bets—"I'll try one here, try one there and try one there"—but it was actually the same project. His proposals were submitted to the Environmental Protection Authority. We raised this back in 2002 when we were dealing with the legislation, which, I think, honourable Leader of the House, was before my sabbatical. I was in charge of the legislation at the time. In February 2001, Channel Nine conducted an interview with Mr Palmer about his Austeel Mill project and Mineralogy to determine where the money was for all his developments. During the interview, Mr Palmer could not identify where the money was. He said that it was there and then it was not there and that it was somewhere else. We brought that to the debate in 2002. He trotted out a number of commitments as if he had the capital. Those commitments were from a variety of corporations and banks around the world and from different companies, many of which he owned. He was getting commitments from companies that he owned that they would fund his project should he get a state agreement act. It was bizarre. He was asked by the reporter, if he was doing this, how much money his company, Mineralogy, had put into any of these developments, and he replied with a laugh, "Well, that is confidential, Michael." The interview very much went along that line of trying to find out where the money was. A company in Singapore called Marubeni, which was a shipping group, was supposed to have the money, and that ended up being owned by Mr Palmer as well, so it did not have the money either. This interview went on for quite some length. I read that interview into *Hansard*, and it is a very telling bit of information.

We went on to debate the 2002 state agreement act. At that time, I was very, very concerned about the due diligence of the state in entering into a state agreement act with a proponent who did not seem to have the money. Austeel was a company supposedly party to the deal, and there was Balmoral Iron Pty Ltd, Bellswater Pty Ltd, Brunei Steel Pty Ltd, International Minerals Pty Ltd and Korean Steel Pty Ltd. As has already been said, Hon Colin Barnett was quizzical about why these companies had the same address as Mineralogy. They were basically going to be partners to the development, but they were all Clive Palmer or his wife. It was mentioned in this chamber by Hon John Fischer that it was thought that those companies were subsidiaries, but, no, they were individual structures set up to give some credibility to the idea that many corporations were coming together to develop the proposal. In fact, the companies involved in Mineralogy were companies called Closeridge Pty Ltd, Fidelis Nominees and Eskglade, which were the shareholders in the development, and they were actually all owned by either Mr Palmer or his wife, Sue Palmer. We went on with the debate.

On 18 October 1994, here in the house, my colleague Jim Scott raised questions about the companies' validity and strength. There were different developments. There were going to be 23 million tonnes per annum at Balmoral, a gas-fired power station somewhere else and a 440-megawatt power station at Cape Preston. On the same day as

all this was coming out, there was going to be an iron ore mine at Bilanoo that would use exactly the same figure of 23 million tonnes coming out of Balmoral. I would love to use some unparliamentary words at this point, but it was a cluster something or other! I would think that if a government was going to enter into a state agreement act with a corporation that did not seem to know what it was doing and had no money that could be shown, something would have been done about it.

As members know, and as the honourable Leader of the Opposition has said, we do not like state agreement acts—yes! We do not like them because we end up with a situation like this. All state agreement acts should always be investigated thoroughly by this chamber at their inception. In that regard, I want to turn to a bit of very interesting information. I have heard several people here today say that maybe we need to review state agreement acts before they come in. On Wednesday, 30 May 2001, in this chamber, Hon Kim Chance, Leader of the House, moved that standing order 230 be amended. This amendment, under new paragraph (ca), stated —

> A bill that has a schedule containing the text of an agreement to which the State is a party that, upon its enactment, would ratify and give statutory effect to that agreement stands referred to the *Environment and Public Affairs Committee* when debate is adjourned under paragraph (a);

This meant that all state agreement acts would be referred to a committee—in this case the Environment and Public Affairs Committee. I think there were some ideas about where it should go. This was moved by the Australian Labor Party and supported by the Liberal Party. On 6 August 2002, the Governor prorogued Parliament, pursuant to section 3 of the Constitution Act 1889. The effect of that prorogation was that Parliament commenced a new session on 14 August 2002, and all existing business before the Council was removed from the notice paper. I have the notice paper from 14 August 2002. The proposals never came to light again, which was a real shame, because if we had done that, it would have meant that the Mineralogy state agreement would have gone off to a committee and maybe we would not be here today.

Hon Colin Tincknell: Twenty years ago?

Hon ROBIN CHAPPLE: It was 20 years ago, absolutely. In a debate, I think Hon Norman Moore blamed us for introducing that amendment to the standing orders, but it was actually Hon Kim Chance, and I have that standing order here.

Having been here for a while gives me some insight into why we should never basically allow state agreement acts to progress through this place without some due diligence. They are our resources, the state's resources, and we need to be mindful that those resources are used for the benefit of the state and that state agreement acts are dealt with by a committee. I note that after the Keating report, the position of Hon Kim Chance, the then Leader of the House, was that maybe we did not need any further state agreement acts and that maybe they just needed to be agreements rather than ratified through the house. The ratification through the house provides a bit of a problem, and that is where we are today. There were some interesting comments about that when we sought to refer that bill, the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Bill 2002, to a standing committee. I moved —

> That Order of the Day No 13 be discharged and the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Bill be referred to the Standing Committee on Environment and Public Affairs for consideration and report.

I did that on 12 September 2002, and I have to say that as usual there was great division in this place. We were joined by our good friends One Nation in that. It was One Nation and the Greens standing up for sensibleness.

Hon Peter Collier: Why did you change your mind today?

Hon ROBIN CHAPPLE: Sorry?

The ACTING PRESIDENT: Members! This is not a discussion. You have the call, Hon Robin Chapple. Direct your comments to the Chair, thank you.

Hon ROBIN CHAPPLE: I will do, Mr Acting President.

But, actually, the interjection gives me some ability to respond. This is not a state agreement act in the terms that we would normally have concern about. This is an amendment to a state agreement act that should never have occurred in our view, so we are standing here in support of the government on the basis that it was a mess and it needs to be fixed. I do not like to see this state held to ransom by somebody who has more money than sense. In that regard, that is why we are here today, supporting the government's position.

There were some interesting comments in that debate. Hon Ken Travers was in charge of the passage of the legislation at that time; he said —

> The crux of why the Bill should not be referred is because it is a very small Bill with only five clauses.

That is the problem. The house only ever sees and discusses the state agreement bill, which is always only four or five clauses. We see the intent of it, because that is attached, but we cannot modify that or question it, and we have no oversight of it. The issue for us has always been that there has to be some ability to make sure, on behalf of the community and the state in general, that we are entering into agreements with the right people, at the right time, for the right reasons. The problem has always been that the Department of State Development—or the Department of Resource Development, as it was formerly known—has the ear of the Premier of the day, who is invariably in charge of the department. It was very interesting back in 2002 because the Department of State Development could not even be brought before the estimates committee because it was not then constituted as a department. That body had at that time 103 staff advising the Premier: "We've got this project going here; we've got this project going there." I think there were eight projects going on at the Burrup Peninsula, because the Department of State Development said that they would go there. The government spent $180 million building an infrastructure corridor that nobody has used, because State Development provided it with the information—"We're here for the state".

When the Department of State Development eventually was allowed to come before the estimates committee—this is really telling—one of the first questions I asked was, "Your job is to encourage industry and development in the state?" They replied, "Yes." I then asked, "Have you ever encouraged or brought industry to the state?" There was a big, long pause, and then they said, "No." We just waited for people to roll up—103 staff—and then helped them through the process. This entity suddenly had the ear of the Premier, whomever it might have been in whichever political period, and was able to promote developments, and that was the case with Palmer. He went to the Department of State Development and said, "I want a state agreement act", and the department, without any due diligence, went back to the Premier of the day and said, "We've got another state agreement for you, mate; sorry, Premier." Everyone got excited and they sent it up to this house. We asked for a bit of due diligence but it did not occur, so we are here today, literally 20 years later, dealing with a cluster.

I have received some very good briefings in this process and I will leave a lot of my questions to the Committee of the Whole. I am fairly confident about the legislation after the briefings I have had. I note that there have been 13 drafts of this bill and that Clayton Utz has operated as a black hat in this process, which means that it has the job to, in essence, assume that Mr Palmer's lawyers have the intent to tear down the legislation. I think the 13 drafts have arisen because chinks were found in the armour, and they needed to be fixed up. I am fairly confident that Clayton Utz has done its best, but I make it clear that this will not stop Mr Palmer. He will litigate. If we had Fort Knox, he would still litigate. The key issue for us is: are we going to be successful in actually stopping his advances on the state budget and on the finances of the state? I hope so. I have to rely fairly heavily on the advice that has been provided by the State Solicitor. Hopefully, other members of the house and I will be able to tease out some of the issues to ensure that, as best we can, we protect the state into the future. It is not my money; it might be my kids' money and it might be the state's money. Any benefit we get out of royalties, if Mr Palmer is successful, would turn us into a fiscal basket case. Thank you.

HON NICK GOIRAN (South Metropolitan) [4.05 pm]: I rise to contribute to the second reading debate on the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. I am grateful to the members who have had the opportunity to speak before me this afternoon because, if nothing else, it has given me an opportunity to prepare some of my questions for the Committee of the Whole House. It is entirely unsatisfactory for a member to have to try to do that while trying to pay attention to the debate, but those are the conditions that the McGowan government requires us to operate under. That is, in a sense, entirely unconventional, but, nevertheless, that is what is required of us at this time.

The most important question for members to consider at this time is not so much about their views on Clive Palmer. The most important question that members need to consider at the moment is not necessarily even whether they are in agreement with the intent or the motivation behind the bill before us. The most important question for Legislative Councillors to ask themselves at the moment is: will the bill currently before us be effective? If it is not going to be effective, this is entirely a waste of time. I very much suspect that that is precisely the situation we find ourselves in. The Leader of the House will, in due course, have wasted an entire day of sittings for the people of Western Australia.

As I indicated earlier today, the bill that the Leader of the House wants us to agree to is apparently so meek and fragile that any sort of delay whatsoever is considered to be a risk. For the reasons I outlined earlier today, we know what a joke that actually is, given that the Leader of the House preferred for us to deal with non-government business and have lunch earlier today; who knows what other breaks might transpire over the course of the day. That is the level of urgency of this bill, notwithstanding the fact that the Leader of the House and the government pleaded with us to make sure the bill was dealt with today. That is how fragile the document before us at the moment is. One wonders what confidence we can have that the bill before us will actually be effective.

I distance myself entirely from the government's motivation for this legislation, which I think is best described by comments made by the Attorney General of Western Australia along the lines of, "This is a complicated game of legal chess." I distance myself from those inappropriate remarks by the Attorney General, who is supposed to be

the chief law officer in Western Australia, because it is not appropriate for any government—that is, the executive, one of the three arms—to utilise Parliament for what the Attorney General has described as a complicated game of legal chess. Nevertheless, that is the approach and motivation of the Attorney General, and that has the full support of the Leader of the House in this place, who is responsible for the bill that is before us.

This is all the more interesting given that only yesterday, a significant majority of members of this place indicated in effect that they have no confidence in the Attorney General of Western Australia. A significant majority of members of this place said that we note "his repeated failure to provide full, frank and reliable information to the Parliament." What confidence can we therefore have, in those circumstances, that this fragile piece of legislation before us has any prospect of being effective?

The questions and issues that should be considered by responsible lawmakers at this time include whether the passage of the bill in an unamended form might create a risk to the state, and, indeed, whether the passage of the bill might represent a sovereign risk. Some members have already spoken about that, and the Leader of the House has given her view in the second reading speech, which I will touch on in due course. In addition, members ought to consider whether the passage of the bill before us is consistent with the state acting as a model litigant, and, most importantly, whether this fragile bill before us will be able to withstand a chapter III constitutional challenge.

I would like to spend some time going through some of the matters that the Leader of the House drew to our attention earlier today when she introduced the bill and gave her second reading speech. In normal circumstances, members would have a full calendar week to consider these matters, but of course we have been given a matter of a few hours. The first thing that I found of particular interest in the speech given by the Leader of the House is that the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Bill 2002 came into operation on 25 September 2002. I have not had the time to do a word search on how many times the Leader of the House has been obsessed with mentioning the name Colin Barnett, but I did note that there was no mention in her speech of who was the Premier in 2002 who brought this entire agreement act into existence. I wonder whose great idea it was to enter into an agreement with Mr Palmer in the first place. The Leader of the House may answer that question in her reply; otherwise, we may need to repeat that question in the debate at clause 1. I suspect, on past form, that it will be the latter.

I note the remark by the Leader of the House in the second reading speech —

> Notwithstanding the standard practice of consultation undertaken between every other state agreement proponent and the state in relation to project proposals, Mr Palmer, Mineralogy and International Minerals chose not to adopt a consultative or cooperative approach.

In this respect, I thank the Leader of the House for drawing that to our attention. That is consistent with information that I received at a briefing earlier today, at about quarter past 10, noting that the time now is almost quarter past four. If what the Leader of the House has said, and what I was also told in the briefing, is indeed true, that is plainly an act of bad faith by Mr Palmer. It is absolutely unacceptable. All members should condemn that type of approach. It is entirely inconsistent with the spirit in which state agreements should be conducted. In many respects, what is happening today is in large part due to the bad faith approach taken by Mr Palmer. However, that does not justify the state, which is supposed to be a model litigant, also acting in bad faith, which is precisely what is occurring at this time.

I note that later in the second reading speech, the Leader of the House refers to Mr McHugh. The person to whom the Leader of the House refers in her speech is the arbitrator who is handling the matter at the present time, and who handled an earlier arbitration award that I understand was dated 20 May 2014. The Leader of the House stated —

> Mr McHugh found in favour of Mineralogy and International Minerals, declaring that while the BSIOP was a defective proposal, it was nonetheless a proposal that had to be considered by the minister in accordance with the terms of the state agreement; that is, the minister had no ability to simply treat the proposal as invalid.

Debate interrupted, pursuant to standing orders.

[Continued on page 4915.]

Sitting suspended from 4.15 to 4.30 pm