IRON ORE AGREEMENTS LEGISLATION AMENDMENT BILL (NO. 2) 2010

Introduction and First Reading

Bill introduced, on motion by **Mr C.J. Barnett (Minister for State Development)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR C.J. BARNETT (Cottesloe — Minister for State Development) [11.10 am]: I move —

That the bill be now read a second time.

The purpose of this bill is to authorise 11 variation agreements to amend the iron ore state agreements held by BHP Billiton and Rio Tinto, and their various joint venture partners, in order to enable the integration of infrastructure between these agreements. BHP Billiton and Rio Tinto are two of the most significant contributors to the state's economy, directly employing over 17 000 people and contributing over $29 billion to the economy each year. Their combined royalty contribution to the state is expected to reach $1.5 billion this year, which is equal to 45 per cent of the state's total royalties income. The main purpose of these amendments is to give the companies the flexibility to improve their efficiency and facilitate expansions of their operation, with further flow-on benefits for the people of Western Australia.

By way of background, on 5 June 2009 BHP Billiton and Rio Tinto signed a core principles agreement to establish a production joint venture covering the entirety of both companies' Western Australian iron ore assets. This resulted in the companies signing definitive agreements on 5 December 2009. To achieve the efficiencies of the integration proposal, the companies required the cooperation of the state government to amend their respective state agreements. Accordingly, a non-binding heads of agreement between the state, BHP Billiton and Rio Tinto was signed on 21 June 2010. The heads of agreement set out a series of principles and agreed actions to allow the companies to integrate their iron ore operations in Western Australia, should they choose to do so in the future, notwithstanding whether the companies were able to conclude the joint venture proposal.

In recognition of the value that these changes will deliver to the companies, BHP Billiton and Rio Tinto have agreed to make a one-off payment of $350 million to consolidated state revenue upon the variations to the state agreements receiving royal assent. These moneys will assist in the funding of the new children's hospital in Perth. The state's sign-off to the heads of agreement was in the context of negotiations over the government's intention to remove the historic royalty concession for fine iron ore and beneficiated ore that has been enjoyed by these two companies under several of their state agreements since the early days of the iron ore industry in the Pilbara. The removal of the concessional royalty rates was achieved through the passage through this Parliament of the Iron Ore Agreements Legislation Amendment Act 2010, which received royal assent on 26 August 2010. Because the act applied retrospectively to all iron ore production by these companies from 1 July 2010, royalty returns since that date will be calculated on the rates currently established under the Mining Act 1978.

On 3 November 2010 the state was made aware, through a letter from BHP Billiton Iron Ore Pty Ltd, that the definition of cut-off screen size for lump ore and fine ore produced under the Iron Ore (Marillana Creek) Agreement 1991 for the calculation of royalties is different from the definition included in the Iron Ore Agreements Legislation Amendment Act 2010. This is due to the particular characteristics of the ore at the Marillana mine, which were taken into account in the original planning for the mining project. This oversight is being corrected as part of these legislative amendments.

It should be noted that the heads of agreement contemplated variations to 12 of the companies' iron ore state agreements. However, the state has been advised in recent days that the yet-to-be-developed project under the Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972 will no longer be included in this process, due to certain unresolved issues involving the non–Rio Tinto joint venturers. On 18 October 2010, the companies announced that they were no longer pursuing the production joint venture. They advised the government, however, that they still wanted to implement the heads of agreement. They advised that they still require the flexibility to integrate their Pilbara, or proximate area, iron ore operations in Western Australia within their respective corporate groups and, potentially, between the groups through commercial arrangements. Accordingly, the following 11 state agreements are to be varied: Iron Ore (Hamersley Range) Agreement 1963, Iron Ore (Hamersley Range) Agreement 1968 (Paraburdoo), Iron Ore (Robe River) Agreement 1964, Iron Ore (Mount Bruce) Agreement 1972, Iron Ore (Hope Downs) Agreement 1992, Iron Ore (Yandicoogina) Agreement 1996, Iron Ore (Mount Newman) Agreement 1964, Iron Ore (Mount Goldsworthy) Agreement 1964, Iron Ore (Goldsworthy–Nimingarra) Agreement 1972, Iron Ore (McCamey's Monster) Agreement 1972 and Iron Ore (Marillana Creek) Agreement 1991.

In addition to the amendments contemplated in the heads of agreement, at the request of the proponents, the Iron Ore (Hope Downs) Agreement 1992 will be amended to provide inclusion in that agreement of the Hope Downs area C—East Angelas—deposit, as was contemplated in the original agreement. A further amendment that is not contained in the heads of agreement involves the transfer of the Beasley River deposits from the Iron Ore (Hamersley Range) Agreement 1963 to the Iron Ore (Robe River) Agreement 1964. Amendments have been made to the Iron Ore (Robe River) Agreement 1964 to enable this transfer. This amendment was originally requested of the government by Hamersley Iron and the Robe River joint venturers in 2006, but was deferred pending the companies' agreement to the removal of concessional royalties from those agreements. That has now been achieved through the Iron Ore Agreements Legislation Amendment Act 2010.

Key integration aspects of the variation agreements include the following: the unrestricted ability for existing facilities and infrastructure held by an integration proponent—that is, the party or parties to one or more of the 11 agreements in question—to be used by other integration proponents; the ability for an integration proponent's existing infrastructure to be expanded for other integration proponents, or for new infrastructure to be built for other integration proponents and for connections between integration projects—however, certain restrictions apply to proposals for new ports and port facilities; and, the ability of the minister to decline to consider or approve an integration proposal if he deems the proposal to be out of scope, or he is reasonably satisfied that it is not in the public interest for the proposal to be approved. The minister also has the power to decline to approve initial project proposals that may be submitted, eventually, under the Mt Bruce state agreement, as well as proposals for area C under the Hope Downs state agreement. Other key integration aspects include the ability, with the minister's consent, for an integration proponent to extend its facilities and infrastructure to service a related entity iron ore mining project outside the state agreement areas. A "related entity" is defined as a company in which Rio Tinto Ltd or BHP Billiton Ltd, or these two companies in aggregate, hold, at 21 June 2010—or later, with the minister's approval—a direct or indirect shareholding, within the meaning of the commonwealth Corporations Act 2001, of at least 20 per cent. Another key integration aspect is the ability for ore mined outside the agreement areas on Mining Act tenure held by a related entity, alone or with others, or, with the minister's approval, from another agreement—other than one of the 11 integration agreements—or ore purchased "at the mine gate" from an independent third party to be able to be stockpiled, processed and blended on agreement land and transported using agreement facilities and infrastructure. Although each proponent is free to use the other's infrastructure and to allow other integration proponents to use its infrastructure, this requires ministerial notification, as does any change of use of this infrastructure. The variation agreements also give the ability for an integration proponent to obtain tenure for its operations over infrastructure constructed under one of the other 10 integration agreements where the minister is satisfied that such infrastructure is required by the integration proponent and no longer required for the other state agreement operations; and make various changes to the royalties provisions to enable the companies to make a first sale "at cost" to either a related or unrelated entity that could onsell the ore to a trader, an end user or another entity. This first sale "at cost" is a new concept to state agreements. Provisions have been incorporated to protect the state's royalty revenue base. Provision is made in the variation agreements for the minister to approve proposals, but not grant tenure, before native title processes have been completed. Previously, the minister would not consider proposals until native title issues were resolved. This measure is not intended to circumvent native title processes but will assist in expediting the state agreement approvals process when native title clearance is involved. The variation agreements provide for an integration proponent to receive and use electricity generated by another integration proponent, and for nominated integration proponents to be able to expand or construct new electricity generation facilities and transmission lines to supply electricity to other integration agreement projects and to mining operations held by related entities and, with the minister's approval, another government agreement that is not one of the 11 integration agreements. The integration companies have not been given the right to share water rights and related infrastructure. A clause has been added to enable the development of private railways, subject to the minister's prior approval, as there is no current provision in these agreements or other legislation that enables either new main lines or spur lines to be developed. These provisions are based on the approach used in the recent Railway (Roy Hill Infrastructure Pty Ltd) Agreement Bill 2010.

At the minister's discretion, the minister can permit the request of an integration proponent to increase the existing 777 square kilometre maximum area of the agreement mineral or mining lease or leases to 1 000 square kilometres. In the case of Rio Tinto, the minister can consider alternative investments or projects in lieu of all or some part of that company's remaining secondary processing obligations. A range of minor amendments have been included to modernise and standardise definitions, terms and procedures across all 11 state agreements. I now table a decision of the provisions of the bill for the consideration of members. I commend the bill to the house. This legislation will modernise the entire Pilbara ore industry after 50 years of operation.

[See paper 2872.]

Debate adjourned, on motion by **Mr D.A. Templeman**.