

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

Second Reading

Resumed from an earlier stage of the sitting.

HON ROBIN CHAPPLE (Mining and Pastoral) [3.05 pm]: Members have raised in this debate the issue of the desalination plant and the amount of water that is coming out of the areas under two separate agreements with the two corporations. The issue of water licences and water consumption was deliberately not considered a synergistic matter within the Iron Ore (Hamersley Range) Agreement Act or any of the BHP Billiton agreements. People have been cognisant about the water problems in the area for many years. The need for a desalination plant in the area was first raised in 1974 under chapter 5 of “The Pilbara Study: Report on the Industrial Development of the Pilbara” headed “water and services”. We were looking at the issue of desalination plants because of the lack of water in 1974. It might interest the house to know about and grasp the concept of approximately how much water is being taken out of the Pilbara. On Tuesday, 9 November I asked a question in this place relating to the figures that were established in 2007 when the mining industry took out of the Pilbara about 127 gegalitres of water per year. The answer that I got to my question indicates that the figure is closer to 200 gegalitres today. As members know, we are already building a new desalination plant. To give members an idea of the amount and volume of water involved, that amount of water would fill a trench that was one metre deep and one metre wide that stretched halfway to the moon. It is a phenomenal amount of water and there is virtually no control over that water under the current state agreement acts because the licences and agreements are commercial-in-confidence. This legislation was an opportunity to bring them in as a synergistic component to enable the consumption and allocation of water to be looked at. In that regard, it is important for me to identify the issues on that matter.

Hon Max Trenorden raised by interjection the notion of the synergies of rail infrastructure and rail use. That issue was considered in the Pilbara 21 study, and on page 28 of that study, reference is made to the need for integration of rail and port infrastructure in the iron ore developments, because those involved in the Pilbara 21 study saw that without that integration there would be an ad hoc number of rail lines in the area. It is very important to note the really pertinent statements made in the Pilbara region economic development overview contained in that Pilbara 21 study about the synergies that needed to be created. Part of the reason for raising that at this time is that, in a briefing on another matter on rail, I became aware that it is possible that we will see dual tracking used by many of the rail lines in the Pilbara. Having worked in rail, I know that BHP had plans for dual tracking, and we now know that FMG has plans for dual tracking. However, unless we can get some infrastructure sharing and synergies, we are stopping iron ore getting to the ports, because we are restricting up and down movements to single lines. In essence, three lines currently go to Port Hedland, and they are all being used individualistically by the various corporations. If they were amalgamated, we could have a train going all the way down and a train going all the way back, increasing capacity some tenfold over that which we currently have. If we allow this anti-competitive process to lock out third parties, we are going to see more rail line being built at a huge cost to the corporations of approximately \$1.5 million for each kilometre of rail. That will be constructed for no net benefit other than the fact that the corporations are being sheer bloody-minded in the way that they are refusing to negotiate with each other. As I say, it is my view that at one level the amalgamation of Rio Tinto and BHP Billiton’s infrastructure is good, but I do not think it is being done for good; I think it is being done to strengthen their position in an anti-competitive way over all the new juniors that are coming on board. Page 30 of the Pilbara 21 economic development report reads —

The major iron ore Agreements contain provisions relating to the sharing of rail infrastructures. These provisions generally require that a third party should be allowed access to the railway system for a price which reflects the true cost of the rail system.

[Quorum formed.]

Hon ROBIN CHAPPLE: The Pilbara 21 report continues —

This principle needed to be expanded when a third party operator sought to gain access to the Mt Newman railway system in the late 1980’s. This led to the negotiation of an “Iron Ore Transport Agreement” between the State Government and Mt Newman Mining Joint Venturers. This agreement —

We must remember this is historical —

will serve as a useful starting point when future third parties wish to gain access to one of the existing railway systems.

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Unfortunately, we found out afterwards that the company that was involved in this access was eventually denied access to the rail lines because the other company was able to show that it had primacy over the rail line and that it needed to ship its ore, so it led to the corporation being involved in that agreement as going into, in essence, liquidation and BHP Billiton buying out the interests. Therefore, we need to be very, very careful that this agreement that we are entering into does not facilitate the two corporations being able to identify that they are taking up excess capacity and thereby indeed prohibit or preclude other developing iron ore miners getting access to their line. A lot of these small miners will not get their mines up and running unless they can actually have access to the rail. The report continues —

When interpreting and enforcing the rail sharing provisions, the Government must strive to achieve a reasonable balance between the need to provide for the efficient and competitive extraction of the iron ore resources, and minimal interference with the existing private enterprise rail operations which are amongst the most efficient in the world.

Therefore, it has continued as a significant issue from 1974 right through to the Pilbara 21 report by Mr Larry Graham, but I do not see anything, believe it or not, within this current legislation that deals with those issues.

Hon Max Trenorden: His solution was to get rid of agreement acts.

Hon ROBIN CHAPPLE: Absolutely, and I will come to that in a minute because the position that we have always taken on state agreement acts is that, in fact, they do not serve the interests of the state; they serve the interests of the corporations, they have no public test and they have no review. Indeed, when agreement acts are entered into or modified, because the agreement act is between the state and the party, the public very seldom knows what those amendments or the agreements are. There is no ability for third parties, other mining companies or a range of people to be involved in the process.

Hon Max Trenorden: Originally, the purpose for agreement acts was bankable agreements, wasn't it?

Hon ROBIN CHAPPLE: Yes.

Hon Max Trenorden: So the question becomes: Have they run their race? Do you still need a bankable agreement?

Hon ROBIN CHAPPLE: I would suggest that the juniors do and they are the companies that cannot get access to the lines, whereas the majors that have the state agreement acts have readily available cash, as we are well aware. Anyway —

Hon Ken Travers: We will never see another major state agreement act as a result of the passage of this bill is my view.

Hon ROBIN CHAPPLE: I think the member is most probably absolutely dead right because it sets up —

Hon Ken Travers: They don't need it any more.

Hon ROBIN CHAPPLE: No, and we have actually got to a situation in which the minister of the day is going to be “somebody who is involved in the decision-making process before any matters go to any other agencies”. We know that the minister of the day in most cases these days is the Premier—it has been in the past and it is now—so we can imagine the Premier having signed off on a principal arrangement with the mining corporations then going into cabinet and the environment minister, water minister or the mining minister, for example, saying, “I don't agree with you” and have the Premier sort of say, “Well, I'm holding sway here, fellas. I've already done the deed; you're going to actually have to cop the flak.”

Hon Norman Moore: It's just another demonstration of the fact that you know nothing about how government works. Maybe if you want to run the country, you should get yourself elected to government.

Hon ROBIN CHAPPLE: We are trying.

The key issue here is that I do not think the competitive structures of the bill are valid. It is also important to note that we have yet to establish the further net benefit to this state above the \$350 million that has been provided to government to facilitate the passage of this legislation. It has been indicated that there will be some adjustments to the state agreement acts relating to the royalty provisions. We note that there are some amendments to the Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972, the Iron Ore (Hope Downs) Agreement Act 1992, the Iron Ore (Marillana Creek) Agreement Act 1991, the Iron Ore (Robe River) Agreement Act 1964 and the Iron Ore (Mount Bruce) Agreement Act 1972 to vary royalty provisions. It will be very interesting to note in the minister's reply or, indeed, in committee whether those amendments will result in any net benefit or extra income stream into general revenue.

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Under some of the clauses in the royalty rates a new rate is determined for the definition of “all other ores”. I hope that the minister will be able to identify whether “all other ores” are lump, fines, beneficiated or whatever. We might find that there might be a potential for a royalty return that we are not aware of at the moment.

Hon Max Trenorden: Like a geothermal industry.

Hon ROBIN CHAPPLE: I do not think it would go as far as that but that is what we want to find out.

There are a number of aspects to what we face today that would indicate that we need a greater review of this legislation, notwithstanding the thousands of pages of legislation that are before us and notwithstanding the fact that I am of the view that it most probably breaches national competition policy and it might have a significant impact on international agreements. It is my belief that because of its complexity and size, the fact that we are rushing it through and a range of issues that I do not think can be properly addressed by a committee of the whole, this bill should be discharged and referred to a standing committee.

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

Hon ROBIN CHAPPLE: — without notice: I move —

That the Iron Ore Agreements Legislation Amendment Bill (No. 2) 2010 be discharged and referred to the Standing Committee on Legislation for consideration and that it report not later than Tuesday, 15 February 2011.

By way of explanation, 15 February 2011 is our first day back in this chamber.

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [3.24 pm]: The government does not support the proposal in the motion moved by Hon Robin Chapple to refer this bill to a committee. Let me just make two points very quickly.

We have a tradition or a convention in this chamber that legislation should sit for at least a week on the notice paper before it is debated. The reason why we are in this place today instead of last Tuesday is so that members would have a chance to read through the legislation. I acknowledge that the legislation is complicated; however, it is not as complicated as the suggestion that the legislation having 800 pages makes it a complication. Significant parts of the 800 pages are a repetition of other parts of the legislation. It is not, therefore, as complex as suggested just because it happens to have 800 pages.

The second point I want to make is that I will happily sit in the chamber in the Committee of the Whole House and go through every clause and every state agreement that is contained in this bill until the chamber has had a chance to consider each clause. I think that is about the same as referring the legislation to a committee. Indeed, members will be able to get a response immediately from the minister responsible on each clause we deal with, which is what happens in this place during the committee stage of a bill.

Hon Robin Chapple just wants to delay this legislation for the sake of delay because he does not support state agreement acts full stop; and so, he is always trying to stop things from happening. If that is what he wants to do, that is his business, and I do not argue with that. However, it is the government’s view that there are some pressing issues in respect to Rio Tinto and its Cape Lambert operations. It has indeed requested the government to seek to have the legislation passed as soon as possible to facilitate some extra work being done at Cape Lambert. Just briefly on that, there is a state agreement act which covers Cape Lambert and which relates to the Robe River state agreement act. The company wants to carry out activities on the Robe River state agreement act territory—if I can put it that way—but in relation to a Hamersley Iron state agreement act. The advice from the State Solicitor’s Office is that the company cannot do that unless this bill or some alternative legislation is passed to allow that to happen. Therefore, the reason we are seeking to deal with this bill now is to enable that process to commence and for the government and the community to benefit more quickly from the outcomes that will be achieved by virtue of Rio’s extra work at Cape Lambert; taking into account that that is one port that will experience significant growth as this integration process continues and, indeed, as other companies want to access ports in the general vicinity of Cape Lambert. In my view, any delay to that is unnecessary when the chamber can deal with this bill in the Committee of the Whole, as it has shown in the past it is capable of dealing with; therefore, there is no need to refer the bill to a committee. Let us just get on with it, and I will be happy to answer all the questions that have been raised by members as we go through.

HON JON FORD (Mining and Pastoral) [3.28 pm]: I have listened with interest to Hon Robin Chapple’s proposition in his motion and the response by the Leader of the House, and I will make some commentary.

Although there are many parts of the agreements that are repetitive, there are some complexities that have been raised to date, and we have a lot more to go through that need to be dealt with. Those concerns are in regard to competition, the accusation that the legislation is anti-competitive or has a danger of —

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Hon Norman Moore: I am happy to respond to this when I respond to the second reading debate. Most of your concerns are about what is not in the bill, not what is in it, and that is what we can deal with in the house.

Hon JON FORD: And, within the agreements, aspects that have not been dealt with in this bill, as the minister points out; why they have not been dealt with; and whether that is an oversight. I therefore have some empathy for the proposition by Hon Robin Chapple. I took that empathetic view to Hon Eric Ripper, the leader of the Labor Party, and argued it quite strongly. This information, kindly supplied by the Department of State Development, refers to the Iron Ore (Hamersley Range) Agreement Act 1963 as varied and shows what will be removed, what will be left in, and what will be added, so it is a marked-up bill. We talked about modernisation of the agreements. Yet clause 10(2)(1) on page 36 of the Iron Ore (Hamersley Range) Agreement Act, under the heading “*Rent for mineral lease*”, reads in part —

by way of rent for the mineral lease pay to the State annually in advance a sum equal to three shillings and sixpence (3/6d) per acre of the area;

Further on under subparagraph (i) it reads —

is not more than one hundred (100) square miles the annual rent shall be two shillings (2/-d) per acre;

Hon Adele Farina: What is that in today’s currency?

Hon JON FORD: I do not know. As was explained to me, part of the modernisation has been occurring under the Mining Act that we —

Several members interjected.

Hon JON FORD: It is two shillings per acre. When we talk about modernising the agreement so that a tenement is under agreement and the powers given to the minister can expand this from 770 square kilometres to 1 000 square kilometres, it will be interesting to see what that calculates to. On the one hand we talk about modernisation and on the other hand we deal with nothing, so I can understand why members might want to see this bill considered by a committee. That in itself raises issues that could put some doubt into a reasonable person’s mind about whether there is something fundamentally flawed with what has been agreed to. Here we have another opportunity to modernise an agreement, but all we have done is add a few little bits and take out a few other bits without looking at it in its entirety. We are taking a big risk that does not offer the likelihood of benefit to the people of Western Australia. I have empathy with Hon Robin Chapple’s proposal. As I said —

Several members interjected.

The DEPUTY PRESIDENT (Hon Michael Mischin): Order, members!

Point of Order

Hon ED DERMER: I am endeavouring to hear the speaker on his feet. I can understand why there are interjections but when people start to give speeches from their seat, I think that is particularly unruly. And I would be grateful, Mr Deputy President, if you would ask all members to allow the speaker on his feet to proceed uninterrupted.

Hon Norman Moore: You’ve never done that, have you?

The DEPUTY CHAIRMAN: Order! I have already called the house to order. Hon Jon Ford has the floor.

Debate Resumed

Hon JON FORD: Thank you, Mr Deputy President. Here, within the agreements—it is not just this agreement—reference is made to pounds, shillings and pence. In one area it refers to square miles, but as part of the modernisation we are talking about square kilometres. However, unlike the Premier and his commitment in writing to local government that he would deal with the issue of local government ratings affirmatively but then walked away from that commitment, the leader of the Labor Party —

Point of Order

Hon NORMAN MOORE: I draw your attention to standing order 100, which refers to unnecessary repetition. We had at least four goes on local government rating from the member during his second reading contribution. This is a motion to send the Iron Ore Agreements Legislation Amendment Bill (No. 2) 2010 to a committee; I would have thought that the member might direct his attention to what the motion is actually about, rather than re-treading, for the fifth time, what he said in his second reading contribution.

Hon Ken Travers: It’s not tedious repetition because it’s a new motion.

Hon NORMAN MOORE: And it’s not relevant—read it!

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Hon Adele Farina: Yes, it is.

The DEPUTY PRESIDENT (Hon Michael Mischin): Order, members! I remind members who wish to speak on this that it is a motion to refer the bill to a committee, and to confine their comments to matters relevant to that question and not to repeat argument that has been presented in the course of the second reading debate.

Debate Resumed

Hon JON FORD: I am not going to comment on the point of order; I accept what you say, Mr Deputy President.

I am providing a reason for the Labor Party's decision, which is that—as I was saying—unlike the Premier, when he gave his commitment to the local governments of Western Australia, the Leader of the Opposition, Eric Ripper, MLA, is true to his word. Even though the position was misrepresented last week, he gave his word that this bill would pass through this house during one sitting—today—and that is what will happen. The Leader of the House referred to it taking as long as it takes for us to go through this bill; that is what we intend to do, and I said that at the start. Unfortunately, Hon Robin Chapple, we cannot support the motion because we have committed to the passage of this bill and we stick by that commitment.

HON MAX TRENORDEN (Agricultural) [3.36 pm]: For pretty basic reasons, the National Party will not be supporting the motion. Many of us are pretty upset about the process that is occurring today, but commitments have been directly given to industry. Whether those commitments are reasonable or unreasonable is not the question; they have been made.

Hon Robin Chapple: We were not asked about them.

Hon MAX TRENORDEN: Neither were we, but those industry people have come to us and asked us to ensure that we will act on those commitments. Although I have some empathy with some of the arguments that have been put forward, the National Party will not be supporting Hon Robin Chapple's motion.

The DEPUTY PRESIDENT: Hon Robin Chapple does not have the right of reply; this is a procedural motion.

Hon ROBIN CHAPPLE: Can I clarify that? I thought I had the right to speak again.

The DEPUTY PRESIDENT: No; you have spoken.

Point of Order

Hon JON FORD: Mr Deputy President, in regards to your ruling, or instruction, could you point to the standing order that states that the honourable member does not have the right of reply? We are moving away from what we are talking about in substance now, but my recollection of the practice of the house is that the member moving a referral motion—as with other motions—gets a right of reply. This is very important. If Mr Deputy President does not feel comfortable with making that ruling, I am quite happy to accept a ruling from the President at a later stage that will clarify the position, because it is very important to the house.

Ruling by Deputy President

The DEPUTY PRESIDENT (Hon Michael Mischin): Members, we have before the house a motion moved without notice by Hon Robin Chapple that the Iron Ore Agreements Legislation Amendment Bill (No. 2) 2010 be discharged and referred to the Standing Committee on Legislation for consideration and that it report not later than Tuesday, 15 February 2011. Hon Robin Chapple spoke to that motion and, after speeches by other members in support of or against that motion, has sought to reply. The question is whether Hon Robin Chapple has a right of reply. I refer to standing order 89 of the standing orders of the Legislative Council, which reads —

A reply shall be allowed to a Member who has made a substantive motion to the Council, or moved any reading of a Bill, but not to a Member who has moved an amendment or the previous question.

The question is whether the motion before the house to refer the bill to a committee is a substantive motion. I have had referred to me a ruling of this house on 31 October 2006. The subject matter at that time was the Betting and Racing Legislation Amendment Bill 2006 and the motion before the house was to refer the bill to a committee. The motion was moved by Hon Barry House, as he then was. The Deputy President who was seized of the matter and made a ruling on the issue was Hon Ken Travers. He ruled at first instance that it was a procedural motion and he was unsure as to whether the honourable member had a right of reply. He left the chair for a few minutes to seek further advice on the matter. Proceedings were suspended for seven minutes. Upon his return, the deputy president, as Hon Ken Travers was at the time, advised that he had considered the issue and, in his view, the member had moved a procedural motion and only substantive motions have a right of reply, and so he put the question to the house. Consistent with that ruling, I will put the question. Hon Robin Chapple does not have a right of reply in accordance with standing order 89.

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Point of Order

Hon JON FORD: Notwithstanding what the Deputy President has said, my memory seems to be that in more recent times —

The DEPUTY PRESIDENT: Is this a point of order?

Hon JON FORD: Yes, it is a point of order.

In more recent times there has been a different practice in this house in regards to having a right of reply. It seems to me that in recent times these types of motions have been seen as substantive and therefore the member is given a right of reply. In the interests of clarifying this point now, if that is your ruling, Mr Deputy President, I move to object to it and would like the house to make a decision on it.

Hon KEN TRAVERS: Mr Deputy President, to assist you in determining the custom and practice of the house in more recent times since the temporary orders have been in place, you will note that on 12 October a motion was moved by Hon Jon Ford to refer the Railway (Roy Hill Infrastructure Pty Ltd) Agreement Bill 2010 to a committee. It appears to me that on that occasion, Hon Jon Ford was granted a right of reply.

The DEPUTY PRESIDENT (Hon Michael Mischin): In that respect, I do not know whether the point was taken as a point of order.

Hon Ken Travers: But it is a custom and practice of the house that has developed since.

The DEPUTY PRESIDENT: That might be right, but I have worked on my understanding of the standing orders and the precedent that has been set. If any objection is to be taken to that decision, members have an entitlement to do that under standing order 108. I do not propose to enter into a debate about my ruling, it having been made.

Hon SUE ELLERY: Mr Deputy President, this is an important matter and there appears to be a discrepancy between the ruling in 2006 that you referred to and the most recent event in October 2010. I wonder whether you might consider leaving the chair until the ringing of the bells, perhaps to consult with the President, so that we get this right and that we are in fact not setting ourselves inconsistent practices.

Hon NORMAN MOORE: On the same point of order, standing order 289 relates to an objection to a decision of the Chairman. Hon Jon Ford has made an objection. My reading of that standing order is that the President would now come and make a ruling. However, I also make the point that this issue should not consume vast amounts of time today by arguing about standing orders when there are other things to do. It is a matter that could perhaps be referred to the committee that is currently looking at the standing orders to ultimately look at.

Hon JON FORD: Further to the point of order, as I offered originally when I raised this matter, I think that the Leader of the House is right; it can simply be dealt with by the consideration of the President and a ruling brought back to the house at a later time. It does not need to take up any more time of the house.

The DEPUTY PRESIDENT: Members, given the claim that there is a conflict between precedents and the nature of the issue, I propose to leave the chair and consult with the President. I will leave the chair until the ringing of the bells.

Sitting suspended from 3.54 to 4.15 pm

Ruling by President

THE PRESIDENT (Hon Barry House): Members, Hon Robin Chapple moved a motion to refer the Iron Ore Agreements Legislation Amendment Bill (No. 2) 2010 to the Standing Committee on Legislation. Debate ensued on that matter, and Hon Robin Chapple sought right of reply during that debate. It was denied after discussion at the chair between the Deputy President (Hon Michael Mischin) and the Clerk. Hon Jon Ford then took a point of order to clarify the situation. After a couple of minutes the Deputy President gave the ruling that, based on standing order 89 and written precedents, Hon Robin Chapple did not have right of reply. This ruling is correct and is further backed up by some information I have from *Odgers' Australian Senate Practice*, eleventh edition, 2004. In respect of right of reply, it states on page 215 —

A senator who has moved a substantive motion may speak in reply, and this reply closes the debate (SO 192). There is no right of reply in relation to a procedural motion or in relation to an amendment.

Extract from *Hansard*
[COUNCIL - Thursday, 2 December 2010]
p9784b-9828a

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Hon Ljiljanna Ravlich; Hon Wendy Duncan; Hon Ken Travers; Deputy Chairman; Hon Dr Sally Talbot

The point was made about other instances in recent times in which this may not have been the case; I do not deny that they may have happened, but they should not have, and such instances do not follow our standing orders. They are inconsistent with our standing orders and established formal practice. Therefore, I rule that there is no point of order and I resume the debate by immediately putting the question that Hon Robin Chapple's motion be agreed to.

Debate Resumed

Question put and a division taken with the following result —

Ayes (2)

Hon Robin Chapple

Hon Alison Xamon (*Teller*)

Noes (27)

Hon Liz Behjat
Hon Matt Benson-Lidholm
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Ed Dermer
Hon Kate Doust

Hon Wendy Duncan
Hon Sue Ellery
Hon Brian Ellis
Hon Adele Farina
Hon Jon Ford
Hon Philip Gardiner
Hon Nick Goiran

Hon Nigel Hallett
Hon Alyssa Hayden
Hon Col Holt
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton
Hon Simon O'Brien

Hon Ljiljanna Ravlich
Hon Linda Savage
Hon Sally Talbot
Hon Ken Travers
Hon Max Trenorden
Hon Ken Baston (*Teller*)

Pairs

Hon Giz Watson
Hon Lynn MacLaren

Hon Robyn McSweeney
Hon Helen Bullock

Question thus negatived.

Second Reading Resumed

HON LJILJANNA RAVLICH (East Metropolitan) [4.22 pm]: I welcome the opportunity to make some comments on the Iron Ore Agreements Legislation Amendment Bill (No. 2) 2010. I know that some people would like this debate to be wound up fairly quickly. Whilst I do not want to take up too much time, I want to put on the public record my concerns with the legislation. The most obvious concern I have is that this bill has supposedly come into this place so that it can modernise a number of agreement acts. My learned colleague Hon Jon Ford has informed the house that the legislation before us today talks about pounds, shillings and pence. This may be a case of going back to the future—I do not know—but it certainly indicates to me that, at the very least, there has been a rush to get this legislation through the legislative processes.

Hon Adele Farina interjected.

Hon LJILJANNA RAVLICH: We will possibly have to move an amendment. We surely cannot allow something like that to get through this place, because it might reflect badly on all of us. In the event that we need to make amendments to the bill, the other place may possibly have to come back to deal with them.

The purpose of the bill is to authorise no less than 11 variation agreements to amend the iron ore state agreement held by BHP Billiton and Rio Tinto and their various joint partners to enable the integration of infrastructure between these agreements. The main purpose of the amendments is to give the companies the flexibility to improve their efficiency and to facilitate expansion of their operations with further flow-on benefits to the people of Western Australia. On the face of it, there is certainly economic benefit to Rio Tinto and BHP; there is no doubt about that. There is quite substantial economic benefit and there will no doubt be some increase in their market share in global terms and in terms of Australia. The economic benefits will also flow through to the shareholders of BHP and Rio Tinto; many of them will be Australian shareholders, but many of them will be institutional shareholders and many of them will be international shareholders and so on and so forth. Nevertheless, there will be benefits there. However, as a representative of the Western Australian people, I have to ask: what is in this for Western Australians, in particular for Western Australians who are perhaps not shareholders and for Western Australian workers? I will explore some of those issues a little further down the track.

I will quickly go through the history of this because back in June 2009 Rio Tinto and BHP Billiton announced a Western Australian iron ore production joint venture. The idea that the two companies would merge was put out in the public arena. A number of synergies were to result from this joint venture, including combining adjacent mines into single operations and reducing costs through shorter rail hauls and the more efficient allocation of

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port capacity. It has to be said that this legislation is very, very reflective of or similar to what was going to be achieved through a formal joint-venture arrangement; however, I will get to that detail a little later. The companies were also going to achieve substantial synergies by optimising future growth opportunities through the development of consolidated larger and more capital efficient expansion projects, and through combining the management, procurement and general overhead activities into a single entity. That all sounded really good and the markets went into a frenzy. There was a lot of excitement around the place and so on and so forth; however, there were some concerns. There were concerns about the concentration of power and whether the proposal was in the national interest. There were concerns about international competitiveness and whether the proposed joint venture would breach international competition laws. By 15 October, Germany had blocked the BHP Billiton–Rio Tinto Pilbara iron ore joint venture. This obviously signalled the end to the \$US116 billion production joint venture between Rio Tinto and BHP. I refer to an article in *The Australian* online written by Alex MacDonald, Gina Chon and Jan Hromadko. It is dated 15 October 2010 and states that the fact that the German move to block the BHP–Rio Tinto Pilbara iron ore joint venture —

... effectively kills an effort to create the world’s largest producer of iron ore.

Separately, a person familiar with the EU’s antitrust review of the joint venture said the European Commission plans to send a letter of objections to both mining companies in the next week or two.

In a statement, Germany’s Federal Cartel Office said it has informed the two mining giants that it doesn’t plan to approve the venture in West Australia.

Another person familiar with the matter said the position of German antitrust authorities means the end to the joint venture. Germany’s decision will be incorporated into the European Commission’s final ruling, as the two regulators have been working together closely.

It goes on to say that —

In the meantime, the company’s will try to find a way to maintain a relationship and still take advantage of at least some of the benefits a joint venture would have offered, the person familiar with the matter said. It would be structured in a way that the companies wouldn’t have to go through European regulators ...

That is very interesting. We see an interesting structure in the legislation before us.

The two mining titans had said the combined company would create savings of more than \$US10 billion by allowing them to streamline their infrastructure and investments in the Pilbara region of Western Australia in order to produce more iron ore at a faster pace.

I will ask the Minister for Mines and Petroleum whether that \$US10 billion would be saved annually or over the life of the agreements before us. It seems to me that in view of the fact that Germany said no and that supporting a formal joint venture was seen as problematic, the government has done exactly what one might have expected; that is, this legislation has been structured in such a way that the companies will not have to go through European regulators but will probably achieve the same practical outcomes through this legislation as the companies might have through a formal joint venture, which they were not allowed to proceed with because the Germans said no. I want some clarification on that from the minister when he gets on his feet.

I suspect that since the decision was made and it was announced on 4 November that the BHP Billiton and Rio Tinto iron ore joint venture project would be formally scrapped, Rio Tinto and BHP have said to the government, “We want to achieve these policy outcomes. We cannot get the agreement of Germany, the international community and all the various organisations that are represented at that level, and we need you to put through legislation.” I was interested to hear from Hon Robin Chapple because he made the point that BHP and Rio Tinto were involved in drafting this legislation. That would be an interesting point of clarification and I wonder whether the minister is able to advise members whether that was the case; since when do mining companies draft their own legislation to put into this place? I very much want to hear from the minister on whether Rio Tinto and BHP were directly involved in the drafting of this legislation. I ask the house: how is it that two mining companies can say to the government that they will give the government a one-off \$350 million payment once the legislation that the companies have drafted is put through the Parliament by the government and assented to by the Governor? That is in the second reading speech. Unless I am very much mistaken, that is pretty much what has gone on.

Hon Norman Moore: The government drafted the legislation. I am telling you that that is what happened.

Hon LJILJANNA RAVLICH: Is the Leader of the House telling me that he will take responsibility for the legislation referring to pounds, shillings and pence?

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Hon Norman Moore: It was not intended to modernise all the state agreement acts; it was intended to legislate to provide for the new agreement, and that is it. I am saying that the government drafted the bills.

Hon LJILJANNA RAVLICH: Is the Leader of the House telling me that Rio Tinto and BHP Billiton had no involvement in the drafting of these bills?

Hon Norman Moore: Of course we discussed it with them; it is a joint agreement. We have a heads of agreement that is being implemented by this legislation, but the drafting was done by the government.

Hon LJILJANNA RAVLICH: Mr Moore does not know what other people appear to know. I have to say that the Leader of the House does not sound very convincing at all.

Hon Norman Moore: The government drafted the legislation—full stop. Is that certain enough for you?

Hon LJILJANNA RAVLICH: The government drafted the legislation. That is not what Hon Robin Chapple heard.

Hon Robin Chapple: No, it is not.

Hon LJILJANNA RAVLICH: It is not what a lot of people have heard.

Hon Norman Moore: Hon Robin Chapple would be a great source for very good information!

Hon LJILJANNA RAVLICH: He is. He is a much better source for very good information than the Leader of the House.

Hon Norman Moore: Obviously he was involved in the negotiations. He will take over your party, if you are not careful.

The PRESIDENT: Order! We cannot have either interjections or two members on their feet at the same time trying to speak over the top of each other. Hon Ljiljanna Ravlich will direct her comments to the Chair. I will not interject on her.

Hon LJILJANNA RAVLICH: I know you will not, Mr President; you are very good.

That is a very reasonable question for me to ask, and I will put on the public record that I am not convinced and certainly my learned colleague Hon Robin Chapple has heard otherwise.

Hon Norman Moore: Are you saying that I am lying?

Hon LJILJANNA RAVLICH: No, I am not saying that the Leader of the House is lying. I am just saying that people have a very different point of view from that of the Leader of the House.

Hon Norman Moore: As I said, Hon Robin Chapple would be a great source of information! I am talking to the state solicitors who actually did the job.

Hon LJILJANNA RAVLICH: A lot of people have a different point of view from that of the Leader of the House. I know that the government has had budgetary difficulties—“challenges” we might call them. We know that in the last financial year it manufactured a surplus of some \$85 million, or whatever it was, and that there has been some improvement in the mining activity and we are up to about the \$850 million mark. However, the government has a swag of things that it promised at the last election, most of which have not been delivered. The opinion piece in today’s *The West Australian* says that the government cannot lay claim to things like the waterfront development and the new theatre because they were Labor initiatives. The commentators were asking exactly what the government has done. Clearly the government has done very little and certainly it has not done enough. When so many initiatives, particularly infrastructure initiatives, have been committed to and so little money is coming into the government coffers, a \$350 million payment into the consolidated fund looks very attractive and certainly would deliver the new children’s hospital. However, quite frankly, a one-off payment of \$350 million is an absolute drop in the ocean if the total amount as a result of the amendments to the resources agreements is \$10 billion in projected benefits. On what basis was that \$350 million determined? My learned friend Hon Jon Ford rightly asked whether the government undertook a cost–benefit analysis. Clearly, the government had not undertaken a cost–benefit analysis. I am asking Minister Moore on what basis the \$350 million was determined. I want to know, as I am sure the Western Australian public will want to know, whether Rio Tinto and BHP Billiton went to either the Leader of the House or the Premier and proposed to give the government \$350 million in exchange for the government shoving this legislation through this place for Rio Tinto and BHP Billiton’s economic benefit. I do not know why Rio Tinto and BHP Billiton, in paying the government to push legislation through this place, would be treated differently from anybody else saying to the government, “I want this legislative change made and I am happy to kick in half a million dollars for you, minister, to do this, on behalf of me or my company.” Quite frankly, I do not understand what the difference is or where one draws that fine line. We need answers about how that \$350 million was determined. We need answers

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about who was approached by BHP Billiton and Rio Tinto over the payment of that \$350 million; and we need to understand what commitments the government gave to both Rio Tinto and BHP Billiton and what the government will deliver to them. They are very straightforward questions that need some answers.

As a former local government minister—this is also one of the great things about having gone through so many ministries in my time—I know a bit about everything. One of the challenges I faced, as every other local government minister has faced, is the whole issue of rating, which has been touched upon by my colleagues. When we look at what is happening throughout regional and rural Western Australia, we find that local government authorities simply do not have enough funds from their rates revenue to be able to make the investments in local infrastructure that are desperately required, and they have been asking for a much fairer go on this whole question of rating. In fact, in 2009 the Premier made a commitment to the WA Local Government Association that he would implement a policy to remove rates concession clauses from future state agreements. However, it now appears that those clauses have not been deleted. One of the arguments has been that the only way to change a state agreement is by opening up the agreement and renegotiating it. A number of the 11 agreements that we are amending today came into effect more than 50 years ago—1953, 1964, 1968 and so on. Obviously, there are provisions in those agreements that are quite favourable—in fact, very favourable—to mining companies, because one of the things that the government of Western Australia wanted at that time was development throughout the Pilbara and the north west, so, of course, the agreements were about trying to encourage mining companies to get involved in mining operations; and, naturally, they did. The concessions to mining companies were very generous. Why would a mining company that has generous concessions attached to its state agreement want that state agreement opened up through some sort of agreement with government, knowing that it would probably have more conditions or a higher rate of royalty imposed on it? It has historically been almost impossible to get these agreements opened up and negotiated with the concurrent support of both parties so as to get mining companies to pay a fairer share to government. Certainly, when I was Minister for Local Government that was an issue we looked at very carefully and we did not think that mining companies paid their fair share in rates to local government authorities. I have to say that it is really disappointing that although we have 11 different agreements and therefore 11 opportunities to actually put in practice what the Premier publicly stated in December 2009—namely, implement a policy to remove rate concession clauses from future state agreements—the government has missed that opportunity and once again local government authorities will have to bear the burden of additional pressure on their local government infrastructure as mining operations continue to grow with little or no additional support from the mining companies.

I turn to another matter that is very dear to my heart and goes to the whole issue of what we will get from the legislation—that is, what do Western Australians get out of mining companies? There is no doubt that employment is a benefit. There is no doubt that many industries right across the economy provide goods and services to the mining sector directly, so we get jobs. People's incomes that are earned from mining companies all go into the local circular flow and, of course, we only have to look at the last boom to see the benefits of a mining boom. In fact, in September 2008 people could barely move in Parliament House's front foyer because there were that many developers and people who wanted to meet with ministers and who wanted to undertake development initiatives that were about growing this state. We have not seen anything like that since and I do not think that we will see anything like that for a while still. We rightly should be able to expect to get jobs, but increasingly there are issues about what is happening to Western Australian jobs and the lack of protection for Western Australian jobs and Western Australian industry in state agreements. This legislation is an opportunity: 11 agreements are being amended, yet nothing in these agreements deals with the whole question of local content. There is nothing in the agreements that will protect Western Australian jobs for Western Australians and there is nothing to protect Western Australian industry.

Once again, the Premier is very, very big on talking up jobs for Western Australians, but when we drill down we know that there is a huge problem. We have been hearing for the best part of two years that there is a huge problem in the area of design and engineering work. People do not have to be rocket scientists to know that; they can go to the Kwinana strip, once a thriving place of economic activity that is pretty much dead now. I must say that people should be concerned. In April 2010 the Australian Steel Institute made a submission to the National Resources Sector Employment Taskforce. A whole range of companies are members of the Australian Steel Institute and are involved in the manufacture, distribution, fabrication, design, detailing, education, surface protection and construction of steel, as well as suppliers of goods and services to the steel industry. The Australian Steel Institute has a few major concerns, and I want to spend a bit of time on each of them. The first concern relates to imported fabricated steel and the impact on skilled employment in Australia. Its submission states —

The Australian Steel Institute and its members are extremely concerned about the amount of imported fabricated steel on both resource and infrastructure projects. Whilst the resources sector has been strong, the trend towards imported modular construction for key components of these projects has

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meant that local industry has been excluded from significant participation. Many of our Manufacturers and Fabricators are now running their companies at substantially lower production and employment levels compared to recent years, with employment levels the lowest seen in 18 years.

Later I will read a letter from a constituent who wrote to me about this exact point. The Australian Steel Institute's submission continues —

Companies such as Pacific Industrial, based in Perth, had 200 trade persons and 45 apprentices 12 months ago and are currently only now employing 80 trade persons and 9 apprentices. This trend is the same for many WA fabricators as seen in the figures below, and is typical of the situation in others states. Some of these companies have invested heavily in larger facilities and capital equipment to increase their capability and capacity, only to see their market eroded due to imported fabricated steel.

I want to put on the public record the number of tradespersons and apprentices that a number of companies had in 2008 and, in comparison, the number of tradespersons and apprentices they currently have, because the figures are very telling. In 2008 Pacific Industrial had 200 tradespersons and 45 apprentices. It currently has 80 tradespersons and nine apprentices. In 2008 Park Engineers had 75 tradespersons and five apprentices. It currently has 58 tradespersons and three apprentices. In 2008 Fremantle Steel Fabrication had 140 tradespersons and 15 apprentices. It currently has 90 tradespersons and it still has only 15 apprentices. In 2008 Ausclad Group of Companies had 240 tradespersons and 48 apprentices. It currently has 85 tradespersons—I would not want it to be my business—and eight apprentices. The Minister for Training and Workforce Development wonders why he has a problem. He would not have any idea what is going on. In 2008 United Group Resources had 100 tradespersons and 20 apprentices. Currently it has 65 tradespersons and six apprentices. In 2008 JV Engineering had 70 tradespersons and five apprentices and it currently has 30 tradespersons and one apprentice. The total number of tradespersons employed by all those companies in 2008 was 825 and they had 138 apprentices. Those companies currently have a total of 408 tradespersons, which is down by about 55 per cent, and 42 apprentices, about a 70 per cent drop. This is what is happening to our industries, our workers and our families. This has been replicated all around the state. This is, therefore, a major problem, and it is a problem that this government is choosing to do nothing about.

The second issue is the under-utilisation of the steel fabrication sector. The submission continues —

Further evidence of the underutilization of the Steel Fabrication sector and, especially in WA, is demonstrated in the tables below.

Mr President, I will seek leave to have the tables incorporated into *Hansard*. Do I do that now or when I finish my speech?

The PRESIDENT: The member can do it now, if she wishes. She must seek leave to do it, but she can do it at the end of her speech.

Hon LJILJANNA RAVLICH: All right. I will do it at the end.

The PRESIDENT: But she would need to clearly explain what it is all about.

Hon LJILJANNA RAVLICH: This is about the under-utilisation of the steel fabrication sector in Western Australia. I would like to have some statistical data included in the public record, but I do not want to spend the next 12 minutes reading through the graphs because then I will be unable to say the things I want to say.

Hon Norman Moore: That's a pretty hard choice!

Hon LJILJANNA RAVLICH: Ha, ha! The Leader of the House is not going to catch me out like that!

Hon Norman Moore: How many pages are there?

Hon LJILJANNA RAVLICH: There are only three graphs.

Hon Norman Moore: Okay.

Hon LJILJANNA RAVLICH: All right.

That is a real issue because there is under-utilisation of the steel fabrication sector. The third issue that the sector has referred to in the submission is under the heading "Off-site or Off-shore — The lost opportunities". I have to say that that issue is particularly concerning when we see that local content is not protected and that most of the work in fact goes offshore. The sector is basically saying that many large projects sound as though they will be good and will deliver enormous benefits locally, but when one drills down, in fact, one sees that often, because there is no protection for local content to ensure that Western Australian workers and Western Australian companies are dealt with favourably in the contractual arrangements, the work goes offshore and Western Australian companies miss out. The sector therefore wants to be provided with the same opportunity that global suppliers have to compete for investment projects on an equal and transparent basis, including being given

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reasonable time in which to tender. They want the same opportunity afforded to other global supply chain partners to participate in all aspects of an investment project. Western Australian industry should have the same opportunity as industry in other parts of the world. However, when we drill down, there is no doubt that this problem is biting the local manufacturing, design and engineering industries hard.

Really, the point I am making is that nothing in these revised agreements provides any comfort whatsoever to Western Australian industry in terms of jobs. Without that protection, we are seeing the sector being reduced to a shadow of what it used to be. Then, as many of these operators or firms close down because they cannot compete, it gets to the point at which the work is sent offshore, because it is then argued that Western Australia does not have the capacity to do the work. We undermine the capacity of the manufacturing–engineering sector by making it too difficult and by not providing any protection for that sector. The work then goes offshore and, of course, the sector is hard hit and therefore more businesses close their doors. Then the government starts to argue that we do not have the local capacity, so there is no other option. I want to read something that came through to my office on Tuesday, 30 November from a Mr Geoff Osborne. It went to Minister Hames, and a range of ministers, including Minister Moore. It is headed, “S.O.S. Regarding Local Content In Engineering Work” and reads —

Attention Mr. Colin Barnett,

I own and run a small engineering drafting company in Perth called Universal Drafting that at its peak has employed up to 10 young draftsmen. We have been operating and growing steadily since 1995. In 2007 we were the picture of success having won projects for clients such as Alcoa, Rio Tinto, MPDJV and Laing O’Rourke to mention just a few.

All my staff have started with me as trainee draftsmen and I have continuously trained these young people in the art of drafting. Some of these trainees have left my office and they in turn have opened drafting companies that also train young people with the skills of engineering drafting. Some of my trainees are now fully qualified and have been with me for over ten years.

In 2008 we moved to larger premises with the intention of expanding our company with another two or three trainee draftsmen. The GFC put a dent in that plan but now that the economy is recovering, I would have expected that we could get back on track but this is not occurring. In fact our situation is dire.

The number of people I currently employ is eight. Three of these employees are on leave without pay because I can not supply enough work for them at the moment. I am unfortunately questioning whether I am able to continue employing these young guys or whether I have to let them go.

We are hearing over and over again from our steel fabricator clients that the work they have traditionally been winning is going overseas. I have even heard that one of the Perth steel fabricators has set up a fabrication division in China and one of our BER schools projects is being fabricated in China! That must be really stimulating our economy!

I know that the government’s official line on this topic is that we are bound by World Trade Organisation agreements, but I am also informed by our industry advisors that there is in fact a lot more that can be done. And that other first world countries similar to Australia have far better agreements and laws in place to support local content and protect local industry.

I will tell members what. The European Union will make sure it protects its industry and its workers. I am sure the Chinese make sure they protect their interests. What do the Chinese have? They have something like 40-plus per cent of steel manufacturing worldwide. The only country that does not seem to be protecting what it has and what it historically has had is Australia, in particular Western Australia. The letter continues -

...

The damage being done to our industry and in turn our state is huge. Our TAFE courses will not continue if the graduates have no real prospect of employment. Western Australia’s young employed draftsmen, engineers, boilermakers and all the associated support staff and satellite industry workers are in real danger of losing their jobs and I am in real danger of having to close down our operation if we can’t win work at viable rates. Once we lose this capacity, it will be near impossible for our state to pick this industry up again.

I would like some action from you our government to try to contain this emerging problem and to do it urgently.

This is not the first of this type of correspondence I have received in my office. It is, indeed, very, very concerning. These state agreement acts are lost opportunities. We have seen also other agreements entered into between this government and mining companies in which the detail is not known; for example, the Oakajee

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agreement. The Premier said in 2009 that Chinese companies will have the opportunity to be involved in that project through the provision of rail cars, fabricated structural steel engineering and services and financing, yet we do not know exactly how many rail cars we are talking about or the exact arrangements between this government and the Chinese government. That is once again an example of how the government has been very, very tardy. It has not stood up for Western Australian industries; nor has it stood up for Western Australian workers, and that will be to the detriment of the Western Australian economy.

At the end of the day, what needs to be done, and what this government would be doing if it was smart, is to spread the risk. The raw materials cannot just be sent out and processed somewhere else and then imported back in component parts; Western Australians need jobs and we need an engineering and manufacturing base. If there is some risk to those industries from the international market, we must have some level of sustainability within the domestic economy. Quite frankly, that this government can put 11 state agreements through this Parliament that do not recognise the importance of assessing the question of risk and do not do anything about viability of industry by making sure that there are local content provisions within those 11 state agreements is a sad reflection on this government. I think the Iron Ore Agreements Legislation Amendment Bill (No. 2) 2010, brought on by this government, is all about lost opportunities; it is all about the government doing, basically, what it is told to do by the major resources companies and not having the guts to stand up to them and at least question what the economic benefit and the real outcomes will be of what it is putting through this Parliament for the average Western Australian, particularly Western Australian workers. This legislation has raised many, many unanswered questions, and I hope that the minister's response will address at least some of them. Although we will be supporting the legislation, it does not mean that we do not have some serious concerns about what this government is doing in this case.

The PRESIDENT: Before you resume your seat, did you want to do something with some documents you have?

Hon LJILJANNA RAVLICH: Yes, I do. I seek leave to table the page with the three graphs on it and have them incorporated into *Hansard*.

The PRESIDENT: The member seeks leave to have a few pages of documents containing graphs tabled, and to have the three graphs incorporated into *Hansard*.

Hon LJILJANNA RAVLICH: Just the three graphs and the text under 2.

Leave granted. [See paper 2901.]

The following material was incorporated —

2. Underutilized Steel Fabrication Sector:

Further evidence of the underutilization of the Steel Fabrication sector and, especially in WA, is demonstrated in the tables below. These figures have been sourced and compiled by an independent consultant. These figures show that WA companies have done less than 10% of the potential work available and that their businesses are running at 18.2% of their potential this financial year.

Steel Fabrication Work in WA		2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
Structural	Hours	1,250,500	2,900,560	1,260,500	7,500,550	9,950,040
Plate	Hours	1,225,050	695,520	910,250	2,490,500	2,950,500
PIPING	Hours	252,250	1,550,230	262,420	3,958,410	8,758,462
Miscellaneous	Hours	1,250,000	1,250,000	1,250,000	1,250,000	1,250,000
Total		3,977,800	6,396,310	3,683,170	15,199,450	22,909,002

WA Fabrication Carried out Overseas		2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
Structural	Hours	28,025	2,542,530	280,254	6,568,870	9,825,898
Plate	Hours	272,589	452,236	508,564	1,725,640	2,658,745
PIPING	Hours	16,589	1,425,658	36,258	3,658,972	8,358,756
Miscellaneous	Hours	-	100,000	150,000	200,000	350,000

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Total		317,203	4,520,424	975,076	12,154,482	20,993,199
Percentage of Fabrication carried out overseas		8%	71%	26%	80%	92%

Fabrication Work Carried out in WA						
Structural	Hours	1,222,475	358,030	980,246	930,680	324,342
Plate	Hours	952,461	243,284	401,686	764,860	291,755
Piping	Hours	235,661	124,572	226,162	299,438	399,706
Miscellaneous	Hours	1,250,000	1,150,000	1,100,000	1,050,000	900,000
Total		3,660,597	1,875,886	2,708,094	3,044,978	1,915,803
Percentage of Fabrication carried in WA		92%	29%	74%	20%	8%

Source: Independent Industry Source

The PRESIDENT: I give the call to Hon Wendy Duncan.

Point of Order

Hon KEN TRAVERS: I just rise on a point of order. I seek your indulgence and I am seeking to get an understanding from you as to how you intend to proceed with today's sitting. I note that the motion that was moved last Thursday was to suspend standing and temporary orders, but I also note, from your ruling this morning, that that did not suspend the operation of formal business of the house. I am just seeking your guidance as to whether or not we will go, at 5.20 pm, to members' statements. If that is the case, I would have thought that the Leader of the House would want to move a motion to suspend that part of the sessional and standing orders as well. My reading of the way in which you have interpreted it this morning, with respect to the application of formal business, is that the motion that was moved last Thursday will not have suspended anything unless it was specifically mentioned in the motion.

The PRESIDENT: I will refresh my memory of the motion, but I recall that the motion was to deal with these two specific pieces of legislation through all stages. I interpreted that as meaning that the house would sit until that had been dealt with.

Hon Norman Moore: That was the only business.

The PRESIDENT: That was the only business of the house.

Hon KEN TRAVERS: And because we had formal business, that is why I am seeking that ruling as to what —

Hon Norman Moore: That was just an indulgence of Mr President.

Hon KEN TRAVERS: I am not complaining about that. I just want to make sure that we do not get to 5.20 pm and have a problem.

The PRESIDENT: It was prefaced by the fact that it was a suspension of standing and temporary orders. So it comes under the suspension of the temporary orders, which normally would mean that at 5.20 pm, I would be seeking members' statements. I assure the member that I will not be seeking members' statements at 5.20 pm, and the debate will continue in accordance with the motion moved by the Leader of the House.

Debate Resumed

[Quorum formed.]

HON WENDY DUNCAN (Mining and Pastoral — Parliamentary Secretary) [5.10 pm]: The Nationals support the Iron Ore Agreements Legislation Amendment Bill (No. 2) 2010. The bill authorises 11 variation agreements to amend the iron ore state agreements held by BHP Billiton and Rio Tinto, and their various partners, in order to enable the integration of infrastructure between these agreements in a practical sense. The main purpose of these amendments is to give the companies the flexibility to improve their efficiency and facilitate the expansion of their operations, with flow-on benefits for the people of Western Australia, not only through the \$350 million that will be put towards building a new children's hospital, but also through the extra \$300 million a year in royalty revenue that will come to the state. BHP Billiton and Rio Tinto directly employ more than 17 000 people in Western Australia and contribute more than \$29 billion to the economy each year. Their combined royalty contribution this year will exceed \$1.5 billion. That is 45 per cent of Western Australia's total royalty income.

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In 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 in December 2009 in order to achieve the efficiencies of the integration proposal, and also to enable the companies to make better use of the ore that is available to them, to blend ore to meet specific market requirements, and to make their resources last longer and be used more efficiently over time. A non-binding heads of agreement was signed in June 2010 between the state and BHP Billiton and Rio Tinto. As we all know, the joint venture agreement did not go ahead. But these amendments to the state agreements will still enable these two companies to achieve the efficiencies described, and to integrate their iron ore operations and make agreements with other parties that may also have state agreements in place.

The key to this legislation is proposed new clause 10L, which through clause 20 of the twelfth schedule is to be inserted into the Iron Ore (Hamersley Range) Agreement Act 1963. That new clause will allow for third parties—that is, mining companies under the Mining Act 1978—to use infrastructure that falls under this agreement, with the prior approval of the minister. In a practical sense, this means that current parties to the state agreements that will be varied by this bill will be given the unrestricted ability to integrate their current infrastructure—that is, railways, roads et cetera—with that of parties to other state agreements, and also to build new connecting infrastructure. I will not go into a great deal of detail about the bill because we have heard at length from other members. Certainly what has been achieved here has been a negotiation between two private commercial organisations and the state government. What we are dealing with today is the outcome of those negotiations. They are not available for amendment. Obviously the state government has worked hard to get the best outcome for Western Australia. Many of the issues dealt with in this legislation are longstanding issues that go as far back as the 1960s.

The Nationals welcome this bill. It enables efficiencies to be gained and it enables the standardisation of royalty charges so that fines are now charged at the same royalty rate, giving extra benefits to the state. At the same time the Nationals feel that it is unfortunate that this bill was rushed into the house at the last minute. We were not aware of the urgency to have the bill passed, which meant that we really did not have the forewarning to enable ourselves to be briefed and to look deeply into the legislation. That is something that we have made known to the officers who briefed us this morning and to the government. Nevertheless, it does not detract from the fact that on the whole it is good legislation.

We certainly received correspondence from the Western Australian Local Government Association regarding the issue of rates concessions. Local government has been in the spotlight a lot over the past two years. There has been particular focus on the fact that a lot of remote local governments are very dependent on grant income. To be able to rate mining companies will certainly assist remote local governments in providing the services that are necessary in vast and remote areas where the population is small but the requirement for infrastructure is often large. We certainly look forward to further negotiations here. We were given an indication in our briefing this morning that the Premier will continue to work on that. I will be interested to hear from Minister Moore about what will be happening on that front. As Hon Ljiljanna Ravlich mentioned, it certainly is a matter that has been a bone of contention with local governments for a very long time. Hon Jon Ford mentioned that local governments find it difficult to plan infrastructure and expenditure when they are dependent on grant income rather than the regular and predictable flow that would come if local governments were able to get some rates from large mining enterprises.

The issue of water is another matter of interest and concern. Water is becoming an increasingly scarce and expensive commodity. There is evidence of good potable water being discharged into creeks, whereas in other places it is in short supply. We need to take a big-picture view of how we plan for these scarce resources in our state. We look forward to working closely with the major mining companies who are using these resources to make sure that the future of Western Australia is taken into account as these resources are utilised. We were given an assurance that these agreements do not give any additional rights to mining companies to take water. That is good news, but we need more than that. On Tuesday I was in Tom Price to witness the first biodiesel blast at Mt Tom Price. Biodiesel produced by the Ashburton Aboriginal Corporation has been used by Rio Tinto in its blasting operations. There are two parts to the project. Initially, the Ashburton Aboriginal Corporation was collecting used cooking oil from the various mining camps around the Pilbara and processing that oil into biodiesel. It was producing up to 5 000 litres a week. It has now signed an agreement with Rio to supply it with biodiesel for its blasting. In fact, it will not produce sufficient biodiesel, so the other part of this project that I had the honour of launching on Tuesday is that \$150 000 of royalties for regions money will go towards using the water from mine dewatering on planted moringa trees, the pods of which are used to produce biodiesel. That is part of the \$2.5 million royalties for regions Pilbara water program, which is looking for opportunities to use the water from mine dewatering. We congratulate the mining companies for their positive and active commitment to that project. Outside of these state agreements, good work is being done.

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There is concern about small miners and about stranded deposits, which the government needs to keep a close eye on. We need to make sure that the resources of the Pilbara are utilised efficiently. At the same time, we need to remember that those resources are expendable. While this activity is happening in the Pilbara, we need to keep an eye on the long-term future and sustainable development of those communities. We need long-term plans for the development of water and electricity services and towns to make sure that the great benefits that flow from the royalties and activity of the resources boom leave a legacy for the state that will sustain us after the resources are gone.

That concludes my remarks. I could say plenty more about this bill, but I know that all members are looking forward to returning to their electorates and resuming the busy period for visiting schools and finalising the year's activities. To conclude, the Nationals support this bill.

HON KEN TRAVERS (North Metropolitan) [5.22 pm]: There is no doubt, and most members in the chamber would probably agree, that Western Australia is at the commencement of yet another boom in the minerals and resources economy. One could argue that we have just caught our breath after the global financial crisis and we are ready to go through a massive expansion, particularly in the Pilbara, but also across other parts of the state, over the coming years. The reality is that state governments can have a role in facilitating growth, but the boom that we experienced recently and the boom that it appears we are about to enter into are primarily driven by factors outside this state. In my view, the state government's role in circumstances such as these is to ensure that the people of Western Australia maximise their benefits out of the boom, the massive growth in the economy, and that we do not end up with a negative impact from a boom. If the government is not completely focused on these matters, it is very easy to end up with the opposite effect of what is expected. It is one of those classic counter-intuitive issues whereby it is thought that a boom will be good and cannot be bad for the economy, the state and the people of Western Australia, yet it can have the exact opposite effect. It can drive up the price of houses, it can drive up the price of goods and services, and it can drive up wages and improve conditions, which may be good for those who get the increased wages and improved conditions, but it also may have dramatic impacts on other sections of the economy, which have disappeared when those boom times conclude. We have seen that in the tourism industry in recent years. Many experienced tourism operators have been driven out of the business; the hotel market is still there because it has been picked up by the corporate sector, but others have missed out in that process.

When we consider legislation such as this, we need to ask what the Premier and his government have achieved for the people of Western Australia through the negotiations that have resulted in the Iron Ore Agreements Legislation Amendment Bill (No. 2) 2010. The renegotiation of the 11 state agreement acts provided significant leverage for the state government to facilitate the boom and to gain benefits for the rest of the Western Australian economy. There is no doubt that the mining companies are desperately keen to get on and maximise their profits, but what impact will that have on the rest of the economy? As mentioned by Hon Jon Ford, we were yesterday advised that there is a dredge waiting to go to work off the coast of Cape Lambert and that the passage of this legislation through the house will facilitate that; the company needs to get a couple of final approvals and then it will be off. It will do that because it can see that its profits can be maximised. We have to ask how we are maximising benefits for the state of Western Australia.

I want to look at four broad areas of benefit to the state. First, there is the question of whether we will financially benefit as a state. Members have been very quick to point out the \$350 million one-off payment, but there has not been so much mention made about the increase in royalties that will come about as a result of this bill. The increased royalties have already been passed in a separate piece of legislation, but they are clearly tied in to the negotiations that surrounded this legislation. Had that not been the case, we would have had a very serious situation of potential sovereign risk; the legislation that was brought into this house some time ago to change the royalty rates was significant. Fundamentally, we are getting the \$350 million, but the royalties are also sitting there.

I will talk about that in a bit more detail. Most of that money will ultimately be redistributed across the rest of the country, and because there is going to be such a significant benefit to the rest of the country, it provides an opportunity for the Premier to go to the commonwealth government and the other states to demand a renegotiation of the commonwealth-state financial agreement. That agreement was originally signed by Premier Court, when the current Premier was his deputy leader, with the then Liberal Prime Minister of Australia, John Howard. The payment of \$350 million provides a good opportunity to renegotiate that agreement. I will go through that in a bit more detail later on.

Secondly, we need to assess the deal and its impacts. Did the government do the necessary work to assess what impacts this deal would have on other parts of the economy? I highlight that this arrangement will have dramatic impacts on the south west of this state and on other sections of the Western Australian economy. We also need to

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look at whether opportunities other than the commonwealth–state financial arrangements have been missed. I also want to talk about whether the money that will be generated—including the \$350 million one-off payment and the additional royalties that are clearly linked to this payment—will be accounted for in the correct way as part of the state’s finances. We are treating the money as recurrent income, when it is really from the sale of the capital asset. Another issue that ties into that is whether it is capital or recurrent expenditure. If I get time, I will also make some more general comments about the process.

I will provide a bit of background to this legislation. It would be fair to say that this legislation will facilitate the further development of all current state agreement acts. It will allow new projects to proceed without recourse to Parliament, so long as those projects are connected to an existing state agreement act. It was interesting that when we debated the Roy Hill bill, the Leader of the House suggested that the failure to pass a state agreement act would have an impact on sovereign risk. I claimed that that was complete rubbish. I commented in the house on 12 October that —

If that were the case, the Leader of the House would be saying that we should get rid of the requirement to bring state agreement acts before Parliament to be ratified. He would be saying that we should change the act to say that if the government enters into a state agreement, it is considered ratified and comes into effect automatically.

For the purposes of the Pilbara and developments by Rio Tinto, BHP or any entity in which they hold 20 per cent, that is effectively what this bill will do. We will set up an arrangement that will allow that to occur without any further recourse to Parliament. It will be solely a decision of the executive. For example, so long as a railway line connects into an existing piece of state agreement act infrastructure or with infrastructure that is not even built but is provided for in one of the state agreement acts, there will be no requirement to come back to Parliament to have an act passed for the purpose of constructing that railway. That is something that has been in our legislation since about 1904, under section 96 of the Public Works Act. This is quite dramatic. The bill seeks to pass significant power to the executive into the future. The reality is that, in the past, governments signed off on these things. They would bring them into the Parliament and members of the opposition and even the back bench of the Parliament would ratify them whether they liked it or not. We could say that it was just a formality, but there was the capacity for a Parliament to knock back an agreement act if it thought it was not in the interests of the state. These bills will set up an arrangement for two companies to continue to do developments across the Pilbara so long as they link them into existing infrastructure within state agreements act. They will be able to do that purely with the approval of the executive and will no longer need to have any recourse to Parliament. Little did I know that what I suggested the Leader of the House was going to do he would do so soon by bringing legislation along those lines into the Parliament.

There has been lots of talk about these bills modernising the agreements. Members have made comments about the references to pounds, shillings and pence, but a lot of the older agreements —

Hon Norman Moore: It wasn’t the purpose of this exercise to modernise it.

Hon KEN TRAVERS: A lot of people have used that language in the briefings that I have received, Leader of the House.

Hon Norman Moore: I know, but it actually isn’t that.

Hon KEN TRAVERS: I am not suggesting that it was only government officers who used that language. A whole range of people have briefed me and other members of the opposition over the past couple of days and they have made reference to these bills being about modernising some of those old agreements.

Hon Norman Moore: Those aspects of the agreements that relate to this agreement, but it was not to go back to look at every reference to pounds, shillings and pence.

Hon KEN TRAVERS: No. I said I was not going to talk about the pounds, shillings and pence.

A lot of the modern agreements have a defined life. They provide a 21-year mining lease and then a renewal of that lease for another 21 years. The older ones have a permanency about them—they can go on forever and a day.

Hon Norman Moore: And cannot be changed without agreement.

Hon KEN TRAVERS: That might be correct, but there does not appear to have been an attempt to try to modernise that.

Hon Norman Moore: How do you know?

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Hon KEN TRAVERS: When I asked those questions in the briefings, I was advised that it was never raised as part of the agreement. The Leader of the House will get a right of reply. I welcome him telling us what was done in that area.

I want to turn more specifically to what happens with the money that will come out of this, whether it is the \$350 million one-off payment that will be paid to the state as a result of the passage of this legislation through the Parliament or the increased royalty money to be paid by both these companies to the state of Western Australia, which came before the Parliament some weeks ago. I remind members, if they have not had a look at it, that in early 2009 the Parliament's Standing Committee on Estimates and Financial Operations inquired into the royalties for regions policy. A very interesting briefing note about the royalties and the Commonwealth Grants Commission process was provided at that time by the Under Treasurer, Mr Marney. I will quote from that document that Mr Marney provided to the estimates and financial operations committee. It states —

The CGC process effectively ensures an equal per capita distribution among the States (and Territories) of all mining royalties (nationally) that would be raised from national average (i.e. "standard") royalty rates. A State 'keeps' any royalties that are attributable to it levying above standard royalty rates.

The document continues —

It is currently estimated that Western Australia effectively keeps 10% of its offshore petroleum royalties (mainly from the North West Shelf Project), reflecting our population share, and around 40% of its onshore mining royalties.

That was a surprise to me; I had often heard that we kept only 10 per cent of those onshore royalties. Mr Marney's document continues —

There are two reasons why Western Australia keeps 40% of its onshore mining royalties (rather than only 10% as in the case of offshore petroleum royalties).

Firstly, Western Australia is considered by the CGC to have above standard onshore mining royalty rates. Western Australia keeps all the 'above average' component of its royalty collections.

Secondly, Western Australia's loss to other States is partially offset by receiving its 10% population share of onshore royalties raised by other States (based on standard royalty rates).

The document then mentions that Western Australia is the only state to receive offshore royalty payments, and states that —

Altogether Western Australia ... keeps around 30% of its total offshore petroleum and onshore mining royalties, reflecting the average of the above figures (at times this proportion has been closer to 25%).

I raise this because it highlights that the money that is supposed to benefit the state of Western Australia as a result of the signing of this agreement will be of greater benefit to the rest of Australia than it will be to the state of Western Australia. Why is that the case? It is because of the deal done by the Court and Howard governments in the 1990s to implement the goods and services tax in this country. When I hear the Premier trying to argue that it is an issue of this current federal government's making, I say that that is absolute rubbish. It is absolute rubbish! This is a longstanding arrangement that was signed up to by the Court and Howard governments. Who was the deputy leader of the Liberal Party in the Court government? None other than the current Premier. He is the one who signed us up for this arrangement. The first point is that we will not get the benefits; the rest of the country will. In the past, Sir Charles Court, when negotiating for the North West Shelf, made sure that any agreement with the commonwealth ensured that the Western Australian economy would benefit because the rest of Australia was going to get such a great benefit from the North West Shelf. Interestingly, his son and Mr Barnett signed that away when they signed that commonwealth-state agreement in the 1990s. They signed it away! That is why 10 per cent of the offshore royalties is all that we now keep in Western Australia. Even though Sir Charles Court got that money for Western Australia, Richard Court and Colin Barnett lost that money for Western Australia. Therefore, that \$350 million gave the state of Western Australia a perfect opportunity to put some pressure on the federal system to get the governments on the other side of this country—let us be honest, Liberal or Labor—to renegotiate the arrangements with Western Australia. Was anything done? Did we hear a peep out of the Premier in seeking to do that before he signed off on this arrangement? We heard not a single word—not a single word! It makes me angry when I hear that same Premier trying to blame the state of commonwealth-state financial relations on anyone but himself and his former leader of the Liberal Party in this state, who signed up Western Australia to the deal.

This was the opportunity to get a better deal. The other 60 per cent of the royalty money that will come from BHP Billiton and Rio Tinto will flood across the border to the other states because of the deal that was done.

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This was the Premier's opportunity to try to amend the mistakes he made in the 1990s, yet not a single thing was done about it. I look forward to the government correcting that statement if it is not right. I have never seen a single statement from the government to say that it tried to use this process to get a better outcome in the commonwealth–state financial arrangements.

Hon Norman Moore: They are all queuing up to say they agree to give us more money.

Hon KEN TRAVERS: That is why the government must seize the opportunity when it presents itself. We cannot wait for them. The Leader of the House knows as well as I do that whether it is Julia Gillard or Tony Abbott, we will only get a better deal when we can demonstrate that the federal government will get a greater benefit if it comes to the negotiating table. As the Leader of the House said earlier, the only way to renegotiate a state agreement act is when the two parties agree to renegotiate it. I doubt whether Ted Baillieu will ask the Leader of the House to renegotiate the commonwealth–state financial arrangements and give more to Western Australia at the expense of Victoria.

Hon Norman Moore: Exactly right, and nor would his predecessor have done that, or any of them. You have no negotiating power whatsoever.

Hon KEN TRAVERS: That is why when we have leverage over the commonwealth and the states, we must use it. The government missed the opportunity to do that.

Hon Norman Moore: Tell us what leverage we had over the commonwealth.

Hon KEN TRAVERS: The Leader of the House was at the cabinet table as well as Colin Barnett. It is no wonder the Leader of the House is getting squeaky about this. The Leader of the House was at the cabinet table with Colin Barnett and they signed up to the original deal that put WA into this situation. I was not there and I doubt whether anyone else in this chamber was at the cabinet table either. I can understand why the Leader of the House is squealing. This applies as much to him as it does to the Premier. I wonder whether the Leader of the House went to the Premier and said that this was an opportunity to renegotiate with the other states.

Hon Norman Moore: You are just plain wrong, that is your problem.

Hon KEN TRAVERS: I am not wrong. I know that I am not wrong because the Leader of the House is squealing. I always know when I am right because the Leader of the House starts squealing.

Hon Norman Moore: I am not squealing. I am trying to get you to understand.

Hon KEN TRAVERS: The Leader of the House is trying to hide. I want to move on because I want to talk about a second matter.

Hon Norman Moore: You are also naive and stupid, if you ask me.

Hon KEN TRAVERS: Sticks and stones will break my bones but words will never hurt me. The Leader of the House can throw all the insults he likes while I point out his failures as a minister. I will not throw silly, childish remarks across the chamber but I will point out where the Leader of the House and his cabinet colleagues have failed the state miserably.

The second matter I will talk about tonight is the dramatic effect this bill will have across the Western Australian economy because of the facilitation of the massive ramp-up. Hon Jon Ford and I asked the government what it has done to assess the net benefit to Western Australia of signing this agreement and we were told that no work had been done to assess whether signing this agreement would have a net benefit for Western Australia. I think the only thing we were told, if my memory serves me correctly, is that it would accelerate the ramping up of the production of iron ore for sale. The government must ask itself whether that is a good thing. Firstly, is it good because we have limited resources? I will come to the issue of running out of iron ore later. Secondly, if we ramp-up production, what impact will that have on the rest of the economy? Yesterday the Minister for Transport announced very proudly that construction was to commence on the Karara railway. I do not know whether the Minister for Transport knows how many additional rail technical officers—drivers and other technical staff—will be required as a result of the Karara railway line, but I understand it is 58 additional railcar drivers. The massive ramping up of Rio Tinto and BHP's operations will require hundreds of additional technical staff. The Australasian Railway Association estimates there will be a shortage of 600 engineers, but I suspect that is a conservative estimate. At least 600 rail workers will be required to service the ramping up of BHP and Rio Tinto. We have to ask the question: where will those workers come from? Are BHP and Rio Tinto training officers to do this work? Are these companies using their existing infrastructure to upskill Western Australians to take these jobs?

Hon Ljiljanna Ravlich: No way.

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Hon KEN TRAVERS: No; absolutely right. BHP and Rio Tinto say they will go to the marketplace and use money to buy workers. Where will those workers come from? They will come from the east coast and the south west corner of this state.

To those people who care about the Agricultural Region and farmers who are doing it tough because they had a poor harvest this year, understand that next year, when those farmers go to put their grain on what is left of the rail network in the Wheatbelt, the cost of doing so will have gone up dramatically. In trying to maintain their workforce, grain companies will have to compete with BHP and Rio, who will be trying to buy their workers off them. That is great for the workforce, but it is a very poor outcome for Western Australia; it is an even worse outcome for those who use the rail system in the south west corner of this state. If we look at the economics of the labour costs involved in rail, we find that labour is still a significant component. Those workers in the south west of WA will be drawn to the Pilbara.

I have to pay credit to the Australian Railroad Group, which operates the railway system in the southern part of this state. ARG has been spending hundreds of thousands of dollars on putting people through 18-month traineeships. The difficulty for ARG is that as fast as it puts people through the traineeships, companies like BHP and Rio Tinto are going in there and poaching workers with offers of more money. When we ask BHP and Rio Tinto what they are doing about training workers they say, "Nothing." What is the government doing about it? Is the government trying to control these organisations that will damage the mining and agricultural industries in the south west of this state, and the rest of the state's economy, as a result of the dramatic movement of labour from the south west to the north west?

I would love to know whether the government has any plans to control the monsters that are BHP and Rio. When these companies have been asked to engage in a process with the rest of the industry, they have just said, "We do not care. We are going to use market forces." As part of the briefings for this bill I sought explanations from BHP and Rio; they could tell me how many workers would be needed and that they would be going out to the marketplace, but they could not demonstrate to me where they were providing training. I must say that BHP is the worst on this particular point. As I understand it, BHP has simply refused to engage with the rest of the industry in Western Australia, or Australia, to find the labour. As part of this agreement the government should have been demanding that BHP and Rio Tinto put some sort of graduate program in place through universities and the VET and TAFE systems, to ensure that a whole skilled workforce—not just drivers—was trained up for the rail operations. Mark my words, the end result of the passage of this bill will be a dramatic impact on the rest of the economy.

When those members in this house who represent the Agricultural Region start to have problems because they cannot get enough drivers out there for grain rail, do not come screaming back to us; those members should go and talk to their government and realise that it signed up to and passed a bill, which they agreed to. To the members on the other side of this chamber who represent the Agricultural Region: mark my words, this will have a dramatic impact on their region. It is not the greatest thing for the economy. Even today, the Chamber of Commerce and Industry of Western Australia said that the resources sector could lead to an exodus of skilled workers from other industries. It was talking about the health, education, retail and hospitality sectors all suffering in the south west of the state. Is that a good thing? The only benefit that the state government has told us this bill will facilitate is to accelerate the ramping up of production in these areas, which in turn will accelerate the poaching by these companies of staff from the rest of Australia. Is that a good thing for the economy overall? I suggest that it is not.

As I said to members, if they look at the figures, they will find that the number of workers who will be required as a result of BHP Billiton and Rio Tinto ramping up is quite scary. These companies claim that they are good corporate citizens, but the fact that they are not prepared to sit at the table and work with the rest of the industry to address these shortages is a scandal; and the fact that the government of this state is not prepared to push them or to force them to do that as part of the arrangements that were entered into for the purpose of the passage of this legislation is also a disgrace. In a couple of years, when Western Australians—the farmers and the people in Western Australia—are paying a lot more for everything around them, they should remember that it was because of the decision made by the Barnett government without any compensatory arrangement with these people.

The next issue I want to talk about in the time I have available relates to the view in Australia—I know I grew up with this view—that there are unlimited iron ore resources in the north west of the state, and that these resources will go on forever and ever and the supply will never end. As Hon Jon Ford pointed out, that view was formed at a time when production was around 50 million tonnes a year. In the year 2001, the quantity of iron ore being sold out of Western Australia was 158 million tonnes a year. By 2009–10 it was up to 396 million tonnes. Rio Tinto alone plans to increase production to 330 million tonnes, and we will see a not dissimilar amount from BHP Billiton. The passage of this legislation will facilitate that. That is why BHPB and Rio Tinto want this bill

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passed—it will facilitate that occurring quicker than ever. BHPB will do the same, as will all the other players across the state of Western Australia, including the juniors.

How much iron ore do we have? That is an interesting question. One can search to try to get the answer to that question, but there is no simple answer. I have seen arguments that it is 24 billion tonnes. I have some information from the Department of Mines and Petroleum that suggests we have 5 925 million tonnes in measured resources. That is the stuff that has been very closely proved up with all the testing at a very detailed level of assessment by the mining companies. Basically, it is the resource in the areas that they are currently mining, and they are confident they have that resource. Then we have the indicated reserves comprising 21 190 million tonnes. We also have the inferred reserves, which are 34 million tonnes, and then we have some probable and proven reserves at 1 500 million tonnes and 1 780 million tonnes respectively. In total, we have only 64 959 million tonnes of known reserves in Western Australia. I accept that I have seen another figure thrown about of 158 billion tonnes of lower grade ore and others. One of the things that we have seen in recent times is that the quality of the iron ore has lowered quite significantly, and we are now exporting lower-quality ore. Equally, one of the big problems with ore in the Pilbara is the level of phosphorous and alumina, which is increasing and creating a problem. The bottom line is that whereas before we had a vision that the resource would go on forever and a day, today it is fair to say that this resource will run out potentially within the lifetime of those of us in this chamber, and if not within our lifetime, very clearly within the lifetime of our children. I would suggest that with the ramping up that is occurring, we could be mining 1 000 million tonnes a year of the resource in Western Australia. Even if all those reserves that I mentioned earlier eventually are proved up and able to be mined and sold because they have the right grades and not too many impurities, that would give us another 64 years of this resource. It is not something that is infinitesimal and will go on forever and a day. That is something of which we need to be cognisant. As a result of doing the work on this bill, I was reminded of information that was put before the parliamentary committee that looked at royalties for regions funding. A public submission was made to that committee by Michael McLure from the University of Western Australia business school. He strongly argued that when we account for the income we receive from royalties, we should be treating it as the sale of a capital asset and not as recurrent income in the state government books. At the moment we record it as if there is no end to it; it is recorded as recurrent income to the state, although effectively we are selling a capital asset of the state. We sell it off and it is then redistributed through the commonwealth grants process to the other states, so the net impact of what we end up with is a diminution of this state's assets. Again, I would have thought that the government in Western Australia could put a very good argument that that is the case, so that the money that comes from royalties should not be incorporated into our recurrent expenditure; it should be listed as a sale of capital assets. I suspect if we went down that path that would again give us another opportunity to reopen negotiations with the east coast of Australia about the commonwealth-state agreements. I suspect that, as the Leader of the House says, we will not get their complete agreement and that they will probably want some of that to be reinvested in their own state as capital assets. However, at the very least if we are to pass this sort of legislation to facilitate the dramatic ramping up of the exploitation of these assets that are owned by the state, we need to look very seriously about how we account for it. I urge the government to seriously look at trying to establish exactly how much reserve we have left and whether we are properly accounting for it in the state's finances. As Michael McLure said in his submission to the Standing Committee on Estimates and Financial Operations —

Resource royalties may be considered a payment to the State in exchange for giving up title to a resource. As the title to a resource sold by the State was effectively owned by current and future generations, there is an obligation on the State to largely transform that royalty stream into publicly owned assets that will provide benefits for current and future generations.

That should be not only hard but also soft assets. We should use royalties to not only build infrastructure but also train Western Australians to take up those jobs that I talked about—to be the rail operations workers. We should ensure that that money is reinvested in the state. At the moment it is not; it is being subsumed into our recurrent expenditure and that, in my view, is causing a massive problem for the state. We are basically robbing future generations and it will be future generations that are not too far away; if not during our final years on this planet, certainly in our children's lifetime. We are taking their assets and the passage of the Iron Ore Agreements Legislation Amendment Bill (No. 2) 2010 will facilitate that.

I am not convinced that there will be a benefit to the state. The government was not able to demonstrate that it had done any assessment of whether this legislation will have a net benefit to the state. No modelling has been done by the government on whether facilitating the ramping up of the production in the Pilbara by BHP Billiton and Rio Tinto, which this legislation will facilitate, will actually be in either the short-term or long-term interests of this state. We know that it will have a dramatic impact on areas right across the state. I have given one example tonight—namely, that of the train operations and the impact it will have on the entire cost structure across the rest of the state.

Extract from Hansard

[COUNCIL - Thursday, 2 December 2010]

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Hon Robin Chapple; Hon Norman Moore; Hon Jon Ford; Deputy President; Hon Max Trenorden; President;
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Another issue that we need to recognise is that this is a finite asset. This resource will eventually run out so we need to treat it as an asset in our financial accounts and record it as such. I think this bill provided a great opportunity for the government to negotiate with the commonwealth about redefining these issues to get a better outcome for Western Australia, for Western Australian children, for future generations in Western Australia and for the nation as a whole. I accept that one of the only ways that we will get change in this area is—instead of just running with cheap lines about how it is all the Gillard government’s fault when it was actually a deal done by the Howard–Court–Barnett government—to realise that we must demonstrate to the rest of the country that we can get a better deal for everybody by renegotiating that commonwealth state agreement.

In the time that I have available, I just want to make a couple of final comments about the process I have mentioned. I accept the reality that state agreement acts are there to give us some time. In reality once the state has signed up to a state agreement act, it is very difficult for anybody to change it. Even though there is the technical process of passing the legislation through Parliament, it is unlikely that the option that is available to the Parliament to reject it will ever occur. It certainly will never occur whilst the government of the day has the majority in both houses of Parliament.

Sitting suspended from 6.00 to 7.00 pm

Hon KEN TRAVERS: As I was saying before the dinner break, the key issue is that we are seeking to pass a bill that has been imposed on us by government members in the lower house through what I think everyone in this chamber would accept is a shoddy process. The government cannot demonstrate that there will be a net benefit to the state from the passage of this legislation. When we asked in the briefings what the benefit would be, we were simply told that the legislation would accelerate the ramping up of production, which could not be done in the same time frame outside the state agreement act process, and that is why it is necessary. As I have said, the Under Treasurer made it very clear during committee processes that the financial benefits—the \$350 million one-off payment and any increase in royalties that may come about as a result of the agreements—will be redistributed throughout the country, and we have lost that opportunity. The government has not demonstrated that it is prepared to use any of its leverage to ensure that the signatories to these state agreements—BHP and Rio—will fulfil their obligations to the people of Western Australia by training enough personnel, even in the rail operations area, and not take trained personnel off other sections of the economy, which will damage other areas of the Western Australian economy. The reserves in the north west are declining. We continue to account for the income we get by selling those reserves as recurrent when they should be accounted for as capital.

The final things I want to point out about this legislation relate to the other missed opportunities. As I said earlier, there was an opportunity to renegotiate the commonwealth–state agreements, as Charlie Court did until they were sold out by Richard Court and Colin Barnett in the 1990s with Mr Howard, and as Geoff Gallop did over the Gorgon project, which involved income coming into Western Australia as a result of negotiations we had with the then federal government. We have missed the opportunity to use this renegotiation of the state agreement acts to enhance the possibility of a Pilbara grid. Clearly, not all members on the other side of the chamber would agree with that because they did not continue to progress it through Infrastructure Australia, but I know that people in Infrastructure Australia were very impressed with the proposal for a single electricity grid across the Pilbara connecting all the mine sites because it would have dramatically reduced greenhouse gases and it would have assisted some of those junior miners to get underway.

One of the long-cherished desires of all sides of politics in Western Australia is to improve access to rail lines in the Pilbara. The agreements that were put in place and that we are dealing with later tonight by way of an amendment relating to the Fortescue Metals Group put in place some great arrangements for rail access that will hopefully produce outcomes that allow smaller players to access the rail lines at a commercially reasonable and fair rate to both the owner of the railway service and the user of the railway service. The advice that we have received is that seeking to improve access arrangements on the BHP or Rio Tinto rail system were never part of the negotiations. We moved forward with the Fortescue Metals Group agreements, we moved back again with the Roy Hill agreement and we sat completely stationary on the negotiations with BHP Billiton and Rio Tinto that produced this legislation. That is, again, another missed opportunity, and we have missed the opportunity to assist the state and those junior players out there that have reserves of stranded assets.

We are told by BHP and Rio that there are slowly changing views within their organisations, and that they have entered into a memorandum of understanding with Atlas Iron. I hope that is correct. I hope we will see some changes and that we will get some haulage regimes. I accept that haulage is the most efficient way and probably the best outcome for transporting iron ore, but I accept that to get a decent and fair haulage regime there often has to be the potential for rail access to encourage companies to negotiate.

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I am very concerned, because we still have not made progress on rail access, that there is the potential for the major players in the Pilbara to lock out those smaller players and reduce their access to the port. We also know that one of the key issues in the Port Hedland area is about access to the port and about having berths and windows to move vessels in and out on the tide. As a result of the movement of those vessels, there is a capacity constraint on Port Hedland inner harbour, which has been fully allocated previously. I have noted that the government has already shifted around that allocation of movements. Members on the other side talk about sovereign risk, but previous governments have given people commitments on their allocations and then a new government has come in and shifted those allocations. That is a very dangerous process. There is land on the Burrup Peninsula that was allocated to particular companies for development by previous governments a long time ago and the companies were given reasonable time to progress those developments. Shifting those allocations would be very concerning to some of those smaller players, such as the North West Iron Ore Alliance, which has been granted access. One aspect that would have facilitated all of this legislation would have been an attempt to use these negotiations to get improved rail access. There is a view out there in the community that this government is pandering to the big players in the industry, and not assisting and giving a fair go to the other players in the industry. The government may say that it is only a perception, but it is the perception and it is something that we must be very careful about. The government needs to be very careful that it is neither a perception nor the reality that it is providing benefits to the big players and not providing the same opportunities to the smaller players. But that is probably a debate for another time. As I said, a long-cherished belief in Western Australia is to get downstream processing, which, again, has been missed with this bill.

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [7.08 pm] — in reply: I thank members who have made contributions to this debate. It has been a very interesting debate indeed. Members have raised a number of very important issues, and I will do my best to respond to the matters raised. But as a generalisation, most of the issues that have been raised in the debate so far have been about things that are not in the bill but which members have argued should be. That is fair enough; every member is entitled to his or her own opinion about what is important. But I think it is imperative for us as a house of Parliament to understand what this bill is all about. If we accept the arguments of members of the opposition, all the things that they think are wrong with the Pilbara and all the things that should be delivered to the Pilbara, and indeed to the state of Western Australia, would somehow or other be achieved under this new arrangement with BHP and Rio. The suggestion has been made that the government had very, very significant leverage over these two companies and, indeed, could have leveraged far more from the companies than it did. But that ignores the fact that the fundamental reason for the negotiations that began on these matters related to the concessional royalty arrangements that have applied ever since these agreements were put in place for iron ore fines. Ever since then, and as the value of fines has increased, governments have sought to make amendments to the state agreement act to provide for the state's capacity to charge the Mining Act rate for fines. The previous government, we are told, was seeking to achieve some amendments to the state agreement acts on this issue, bearing in mind that state agreement acts of the sort we are discussing—indeed, most state agreement acts—can be amended only by agreement by both parties. Until now, it has been impossible to convince BHP Billiton and Rio Tinto that they should pay more fines royalties. They did not have to because the government could not make them.

The Carpenter government entered into negotiations with the companies on the basis that they might do some integration down the track. The Carpenter government took the view—it was expressed again tonight—that some sort of deal had been reached with the companies concerning new mines and that they had reached agreement that any new mines coming on stream would pay their mining royalties for fines. That agreement was never consummated—it was never signed and it was never agreed to; it was the figment of somebody's imagination. It was never concluded because the companies simply did not want to give up a significant amount of royalty revenue to the state. What the Carpenter government was offering was not attractive enough to get them over the line.

When our government came into power it coincided with renewed efforts by BHP and Rio to amalgamate—to have a joint venture arrangement in the Pilbara. In order to achieve that—this is what the Carpenter government also knew—they needed amendments to their state agreement acts; not just two, but all the state agreement acts that come within the purview of BHP Billiton and Rio Tinto. As a result, some leverage became available to the state government to achieve something that the Carpenter government had been seeking to achieve but could not. When the two companies discussed their merger and recognised the need to get state government approval to amend their state agreement acts, discussions then took place between the government and the companies about what sort of agreements we could reach. That discussion took place while merger discussions were ongoing and being assessed by the various regulators around the world. When a decision was made by the two companies not to merge, they ceased negotiations with the state for a little while and then decided they would proceed with a deal with the state government to make some amendments to their state agreement acts to allow them to integrate their operations. That is what they were seeking from the government. In exchange, we were seeking from them

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an increase in their fines royalties, for not just new mines but for all their operations, and for that to be part of the arrangement. Indeed, on top of that, we also required a cash contribution to the state in recognition of the fact that we had made these concessions to them on their state agreement acts. We had a negotiated outcome, and the negotiations, which were conducted by the government and the companies, resulted first of all in the heads of agreement that was finalised in June this year. That heads of agreement was reached after significant discussions between the companies and the government, as I said. The heads of agreement, which was non-binding, set the boundaries within which the decision was made to subsequently amend the state agreement acts and to put in place the agreements bill that we are debating tonight. That particular heads of agreement was announced by the Premier at the time—I think it was 21 May, or June, if my memory serves me right—when an announcement was made that the government had reached in-principle agreement with the companies to increase the royalty rates for fines and for beneficiated ore, and that the companies would also provide a lump sum that would be used for the new children’s hospital, and there would be negotiation between the companies and the government to allow an integrated operation to take place in the Pilbara. That was all announced in June. So it was not new. Anyone who thinks that this bill is a surprise has not been following the process of this particular outcome. For all sorts of reasons, the negotiations took longer than they should have done. I will not go into those reasons, and I personally was not involved. But, eventually, an agreement was reached. That agreement translated into a bill, and that bill is now before this Parliament.

I acknowledge that this bill is being rushed at the end of the session, and I apologise for that. I have had discussions with the Leader of the Opposition surrounding the reasons for that. So I do regret the fact that we are here dealing with this bill now. However, this bill, and the following one that we will be debating tonight, are important pieces of legislation. As I explained in my earlier contribution on the motion to refer this bill to a committee, there is some urgency from the point of view of Rio and some work that it wants to do at Cape Lambert. The problem is that Cape Lambert comes under the Robe River agreement act, and the work that the company want to do relates to the Hamersley agreement act; therefore, the company’s legal advice is that it cannot do that work unless either this legislation is passed or there is other legislation in place to cover that problem. I believe we should go out of our way, if we can, to facilitate economic development in Western Australia. We have done that on many occasions. So I am not unhappy with seeking to achieve this outcome. There is also the issue of the \$350 million that the state will get. The sooner this bill is signed and receives assent, the sooner the state will get this money, which will then become the property of the taxpayers of Western Australia.

The point I am trying to make is that what we have before us is the result of a negotiated outcome between two companies and the state of Western Australia. If the Labor Party and the Greens think that they could have negotiated a better deal, all I can say is, “When you’re next in government, have another go. But if you could have done that, why didn’t you do it already?” So we were at a point in time at which this government was able to negotiate an outcome that I think is very favourable to the state of Western Australia. A lot of comments were made tonight about: What is in it for us? What is in it for the state of Western Australia? What is in it for the state of Western Australia is not just the \$350 million in cash, and not just the \$340 million, and growing, of extra royalties in the future from fines, but the extra payroll tax that we will get, the extra economic growth that we will get, the extra jobs that will be created, and the significant capital investment that we will get, plus the flow-on effects to local businesses and so on. Some of the comments made tonight suggested that that is not enough and that we should have put far more mandatory requirements into the agreements for local content and employment. That has not been the history of state agreement acts, including those entered into by the previous government. It has all been about best endeavours and it has all been about seeking to achieve an outcome that is economically acceptable to the companies and in the best interests of the state. It is very difficult. If it is the Labor Party’s view that we should have mandated a certain amount of local content, we should have mandated the employment programs, we should have mandated water supply issues, we should have mandated power supply and we should have mandated a range of other issues that were discussed, then it should say that is what should happen. The Labor Party should also say why it did not do that when it was in government. There has not been a situation in which that has been the case in the past.

The figures given to me for what is in it for the state suggest that the net benefit—when I say “net benefit”, that is after the grants commission has plundered our resources—of the variations to agreement acts is \$1.6 billion over the forward estimates. That is the net financial benefit, taking into account what the Commonwealth Grants Commission is all about.

Hon Jon Ford and Hon Ken Travers spent some time telling us that we should have also used this opportunity to go to the commonwealth, and to the other states, to say something along these lines: “We’re about to negotiate extra revenue from two major companies by way of getting rid of concessions on royalties for fines. We expect to raise another \$340 million a year, growing, in royalties from those companies. We do not think we should have to send any to you. We think we should be able to keep it all because we don’t think it’s fair that 70 per

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cent of our royalties goes to the other states. We think we should be able to keep it. Somehow or other we've got leverage with the commonwealth and other states to achieve that outcome." What leverage? The other states will say, "Hang on a minute—if you keep it, we don't get it!" The commonwealth does not care; it just wants to make sure that the grants commission does its job and everybody gets their fair share. I will come back to what the grants commission wants to do about other things in a minute. To change the way the grants commission operates requires, firstly, the commonwealth to agree, and, secondly, probably requires all the states to agree. The Labor Party did not do anything about changing the rules when it was in government because it cannot be done. I am not criticising the previous government for not doing it; it simply cannot be done. I will come back to the history of the grants commission in a minute, and GST, but to suggest that somehow or other this arrangement we are entering into with BHP and Rio Tinto gives us leverage over the commonwealth and the other states to keep all the royalties is just ridiculous. It just will not happen.

Hon Ken Travers: What I said is "negotiate a better deal".

Hon NORMAN MOORE: Nobody is going to give up anything they are getting now. In fact I remember going to a ministerial conference recently when we were talking about the mining tax. The Tasmanian minister, with a smile on his face, said, "We just love the way money is redistributed in Australia!" because there lies the net recipients of money from everywhere else. There is no way they are going to agree that the Commonwealth Grants Commission process not continue. If one thinks about it, it is probably a reasonably fair system, but it does not in any way recognise or pay credence to governments that actually want economic development to take place. It is a disincentive in a way to take political risks that governments sometimes take to encourage development. We have a state like Tasmania—where they sit under a tree and contemplate the meaning of life!—that does not worry about any economic development and knows that money is going to pour in from Western Australia where governments take risks on economic development. Tasmania is not going to say it wants to change that. The commonwealth is not going to say it wants to change that; it quite likes the way it works at the present time. There is no way in the world that this particular agreement gives us any leverage at all with the Commonwealth Grants Commission. I do not much like the way in which the money—it is not just royalties; it is all other sources of income—is currently distributed. In fact, I do not much like the way the Commonwealth Grants Commission operates, for the reason I just outlined. It takes away any incentive for states to raise their own revenue, because if they do they are penalised, and the states that do nothing are the beneficiaries. The nation needs to look at this process again, but if it requires the concurrence of all the states and the commonwealth, it just will not happen until such time as one party controls all the governments and they make a deal. The only way to change the GST arrangements is if all the states agree, and that was part of the deal when John Howard brought in the GST. The way that the funds are currently distributed by the Commonwealth Grants Commission is the same way the funds were distributed before the GST was brought in. This process of equalisation across the nation did not come in with the GST and subsequently; it was brought in before that. But when the GST was negotiated, it was felt that that could not be left hanging out to one side of all the other taxation and royalty arrangements across the nation; it needed to be included as well. In retrospect, from our point of view it would have been better to exclude it, but the other states that do not raise royalty revenue would have a completely different view. That is the reason it happened. If I were renegotiating the GST right now, I would exclude it from the Commonwealth Grants Commission considerations, but that is never going to happen because all the states are not going to agree; it is as simple as that. I do not know how one could possibly argue that this was an occasion on which leverage was available to get a change to the way that the Commonwealth Grants Commission operates. It just does not make any sense to me.

The main line of argument from members opposite was what they called missed opportunities. One would almost think that we could organise a second coming as part of this agreement, because we had so much leverage, but it was not of the magnitude that members opposite would suggest it was. We have reached an agreement with these companies for them to pay the state of Western Australia \$350 million in cash, which we are going to use for a hospital, and \$340 million in extra royalties, which will grow because there is growth in the output of these companies because of the removal of the concessions. In exchange for that, we have said that they can integrate their operations subject to, in virtually every instance, the approval of the minister. The suggestion has been made that allowing integration under certain circumstances will somehow ramp up the production of these companies. I do not think that is the case. The companies are already ramping up. BHP Billiton and Rio Tinto have announced, and have been announcing for longer than we have been the government, significant increases in their production. Indeed, I remember when the Labor Party was in office, there was talk about BHP going to 200 million tonnes and Rio going to 200 million tonnes. It was all being ramped up at that time. We did in fact have a boom when the Labor Party was in office because there was significant growth in the iron ore industry and significant growth in exploration for liquefied natural gas. There was a determination by these companies to meet the Chinese demand by significantly increasing their production. That will happen even if this bill does not go through. This bill probably does not mean extra production from these companies; it

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means a more efficient operation. When BHP and Rio sought to merge, it was all about efficiency of operations and how they could save money in their operations by working closely together. This bill will allow these companies to work together to share their infrastructure and give them the capacity to work with related entities—companies associated to the extent of 20 per cent ownership by BHP Billiton and Rio Tinto—in other parts of the Pilbara. By having the capacity to integrate their operations, they will achieve efficiencies that cannot be achieved now.

I also make another point: the current issue in respect of Cape Lambert relates to two Rio Tinto state agreement acts. The arrangement does not allow for the two agreement acts to be amalgamated or for issues relating to one to be used in relation to the other. Similarly, there may not be any integration between BHP and Rio and there may well be integration within each of those companies and the state agreement acts that they have. It is not out of the question that a lot of the integration will be within each company. It may well be that because these “monsters”, as they were described by Hon Ken Travers, are not merging. These “monsters” employ 17 000 Western Australians, many of whom probably vote for him and belong to the union that put him in Parliament. Although there is no merger, they will continue to be competitors, and that is a good thing; we were never filled with great enthusiasm about the merger in the first place. The fact that it has not gone ahead means that we will still have two companies competing with each other, and they will gain the benefits of the state agreement acts to allow them, where they think it is necessary and with the minister’s approval, to go through some integration processes. That is a good thing.

I will give members a simple example of how it is going to work. If the merger had gone ahead, the first project of the merged company would have been the development of Cape Lambert as a shared resource for both. However, because the merger is not going ahead, Rio will take on Cape Lambert and BHP will probably take on the Port Hedland outer harbour, so we will get two development programs instead of one. The competition is still there, and I think that is a very good outcome indeed.

The state agreement gives the minister the power to make a lot of decisions that would otherwise have been part of state agreement act variations coming to Parliament; and I acknowledge that. However, there may well be a range of proposals put up for integration plans over time that will probably not deserve the time of Parliament. The bills provide that the minister responsible for the legislation—in this case, the Minister for State Development—will have significant power to prevent things from happening or to approve things happening. There is reference to the “public interest”, which I will come back to in a minute. Parliament will not necessarily be involved in some of the changes that take place within some of the state agreement areas, and for that reason it is important that Parliament be aware of what is taking place. I spoke to the Premier this afternoon to follow up on a question asked by Hon Jon Ford, which was a fair question: how will Parliament know whether there are variations taking place or integrated proposals being implemented?

I should go back a step. With current state agreement acts, Parliament sees only the major variations. There have been plenty of minor variations over time that have not come to Parliament and we have never known about them. Indeed, I was quite surprised when looking at a state agreement act recently to find something in it that I did not know how it had even got there. I have suggested to the Premier, and he has agreed, that when a minister responsible for a relevant integration agreement—that is the subject of these bills—approves a major proposal, a purpose of which is the integrated use of works, installations or facilities, the minister will agree to inform Parliament by way of a statement of the decision. In other words, in line with what happens now with variations to state agreements, the minister will advise Parliament when he has approved a major proposal. That is probably not much different from what happens now because the general view over time has been that Parliament either accepts or rejects a state agreement variation, and to my knowledge is yet to reject one. It has been the view of Parliament that a negotiated agreement between governments and companies should not be subject to amendment by Parliament. Because the members of Parliament were not involved in the discussions that came to the agreement and were not aware of the argy-bargy and the give-and-take that created the agreement, it is therefore inappropriate for Parliament to amend an agreement. That is not to say that Parliament cannot amend an agreement—we had discussion about this last time. Parliament can amend an agreement if it wants to, but I do not think it would be a good move if it were to do so. Generally speaking, historically major amendments to state agreement acts and major variations have come to Parliament by way of a bill and have not been amended or rejected, and everybody knows about it. The reason for state agreement acts is so that everybody knows what these agreements are. If a proposal about the integration provision within these agreements was agreed to, the minister will inform Parliament of the decision. Like all other statements to Parliament, that is subject to debate if the house so decides. That might allay some of the members’ concerns about not knowing these things—and that is, I think, an important aspect to this.

Extract from *Hansard*

[COUNCIL - Thursday, 2 December 2010]

p9784b-9828a

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It is argued that somehow or other these bills are detrimental to the mid-caps and the small players in the industry. However, prior to this bill, all these state agreements—11 of which we are talking about today—related to what we can and cannot do in 11 different parts of the Pilbara. The agreements determine which port a company can use, which railway a mine can use, and outline what can or cannot be done with respect to each agreement. They are ring-fenced from all the others; that is, they are independent of each other.

Going back a step: if a company wants to set up a mining operation independently of BHP and Rio, it can do what “Twiggy” Forrest did—namely, get itself a state agreement act—or it can do what David Flanagan did with Atlas Iron; that is, create a mine and truck the ore out under the Mining Act. There are ways and means by which a person can get involved in the iron ore business; albeit we need to recognise that ever since the early 1960s only two companies ever wanted to mine iron ore in Western Australia. Because the price was flat for a very long time, those companies made hardly any money. Given the industrial disputations of the 1970s and 1980s and the poor profits both companies made for a very long time, nobody wanted to be in the iron ore business, which really took off only when the Chinese came into the market. The growth of BHP and Rio was assisted by the previous Labor government and its ramp-ups. I never heard anybody say they were going too fast and were going to ruin the rest of the state’s economy. I never hear that said at all. However, because the demand from China is such, there is now interest from other companies to get into the iron ore business—FMG is one and Roy Hill, which is a Hancock Prospecting–run project and for which we passed a state agreement act the other day—is another. That is, two major companies now want to get into the 50 million tonne or more business, but there are lots of other little companies that also want to get into that business. I am not referring to the Pilbara only, but to right across the state because, in conjunction with this demand from China, magnetite has emerged as a desirable product; in fact, magnetite is probably more desirable than hematite, particularly in its concentrated form, because it has lower impurities and a higher Fe, or iron, content. The demand for magnetite has changed the future of the iron ore business dramatically.

When someone said today that we would run out of iron ore, I got some figures about how much of it we have. Australian Mines Atlas, which estimates the amounts of mineral reserves for different countries, estimates that Western Australia has 27 000 billion tonnes of iron ore. That is a very significant resource indeed, that will last us well beyond our children’s lifetimes. BHP Billiton and Rio Tinto have a reserve of about 20 billion tonnes of proven iron ore. Let me put that in context. When Tom Price and Mt Newman opened, they had a 10-year lifespan, because they believed that that was all the iron ore there was. Every mine in the Pilbara has had a predicted 10-year lifespan but all of them have been operating for 50 years because they keep finding more and more iron ore. The Rhodes Ridge mine is not part of this legislation, but it is a very significant resource of, I think, 2.5 billion tonnes of very high-grade hematite. “Twiggy” Forrest found iron ore in very large quantities in parts of the Pilbara where no-one else was going because they did not think there was any there. Twiggy has a very interesting mining technique whereby the ore is scraped off and sent for analysis without having to blast and crush it, unlike the hematite that Rio Tinto and BHP mine. There are very large quantities of iron ore out there and more and more of it is being found all the time. I cannot believe how many companies tell me they have found another iron ore reserve somewhere. Cazaly Resources Ltd found an iron ore reserve south of Southern Cross that it wants to ship through Fremantle. North of Bullfinch is a mine at Mt Manning and north of there is an iron ore project at Cashmere Downs. We are finding iron ore throughout Western Australia. The Mid West is full of it. Anyone who thinks that we are running out of iron ore does not understand how much of it we have. There is a view that the current demand will peak—I do not know how many years down the track that will happen, but it will not be for a long time—and we will go back to the more usual days of the 1980s and 1990s when 35 million tonnes was the going rate for the whole time. We are not running out of iron ore.

That brings me back to the little operators. They can mine, as Atlas Iron Limited has, for example, by operating under the Mining Act. They get their leases that way and truck the iron ore to the port. The problem Atlas has, however, is that it cannot build a private railway line because, I am advised, in Western Australia a company cannot build a private railway line without having a state agreement act. We have argued about that before, including when we discussed Karara. The point was made at that time that that railway line links up with Western Australia’s public rail system and is therefore a legitimate Public Works Act railway line. All the other railway lines in the Pilbara are stand-alone railway lines that have nothing at all to do with Western Australia’s rail system. The view is that the small operators need a state agreement act to build a railway line. If Atlas wants to have its own railway line, it needs a state agreement act. Nothing will change under this bill. Those companies can still do that if they want to. However, this bill provides that if a related entity is a company in which BHP and/or Rio Tinto has a 20 per cent interest, and the company has an almost stranded deposit somewhere, under this arrangement the companies can provide a railway system or spur line to enable those stranded assets to be processed and produced through BHP and Rio Tinto, if they wish. On the other hand, a third party that is not a related entity that has a stranded asset could also, under this arrangement, do a deal with BHP and Rio to build a line to allow it to ship its ore out. It may well be that the third party says that it is at BHP and Rio’s mercy but

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the alternative is that the third party builds its own railway line, which in most cases would be significantly more expensive than taking advantage of what BHP or Rio could deliver. Therefore, I do not share the concerns for smaller companies that members have expressed. I think that this legislation may in fact give us the capacity to deal with stranded assets in a way that we cannot deal with them now. I think that is positive because when we start looking around the Pilbara, there are quite a lot of deposits that could in fact become stranded, which brings me to the question of rail access.

The argument was made that we should have changed the rail access arrangements in the state agreement acts. The deal taken when this agreement was entered into was that we should await the findings of the Australian Competition Tribunal in cases taken against BHP Billiton and Rio Tinto about access to their rail system. That had not been determined at that point, so the view was taken that we would leave the access arrangements as they are. What subsequently happened, of course, is that the competition tribunal's decision was that the Robe line from Pannawonica to Cape Lambert and the Goldsworthy line from Goldsworthy to Port Hedland are declared and they can be available for third party access. On the other hand, it determined that the two main lines—the main line to Tom Price from Dampier and the main line from Port Hedland to Newman—are not declared because they are fundamentally full; there is no room for anybody else to get on those lines. That is the current situation. No matter what members might want to do about third party access, if a rail line is full, there is no way that anybody else can get on it, probably physically in most cases. However, where there is capacity we should try to encourage haulage arrangements as opposed to rail access arrangements.

We discussed this again with the Roy Hill state agreement act. From the point of view of the company that is operating a railway system—not just a railway line but all the rolling stock, the signals and all the other communications arrangements along the track—it is better to cart somebody else's ore on its rolling stock as opposed to some other company coming in with its rolling stock, which may not be totally compatible with the existing system. BHP Billiton is now in the process of negotiating an outcome with Atlas Iron to use the Goldsworthy line to cart, I think, from the Pardoo deposit to Port Hedland. There is an issue in Port Hedland itself where the Goldsworthy line comes up to the Newman line, but they are looking at resolving that by having some sort of conveyance system that would take the ore to the port. Therefore, what has happened already since the competition tribunal's decision is that BHP and Atlas are negotiating an access agreement for the Goldsworthy line. I think Rio Tinto, on the other hand, is appealing against the Robe line decision, so we will wait to see what happens with that. It is probably a shame that we will finish up with a lot of railway lines in the Pilbara, but when we look at the infrastructure that is being built and the tonnages that the infrastructure needs to carry, it will generally be full. No company in this business will build vastly in excess of the capacity it needs. Why would they? Therefore, as these companies ramp up, they will improve the productivity and increase the capacity of their railway systems to meet their increased production.

They will not leave any excess capacity that I know of but, on the other hand, Goldsworthy has hardly been used and Robe is in a similar situation. We think that what we are doing in this respect is quite helpful to other little companies. We will continue to work with the companies to try to ensure that we get haulage arrangements in place where appropriate. Obviously, it has to be on the basis that they will not in any way adversely affect the economics of the parent owner's railway line.

Hon Jon Ford also asked about the environment and heritage issues. The Environmental Protection Act 1994 applies to anything these companies do. I think the provision in the bill has been rewritten to put the obligation to abide by the Environmental Protection Act up-front. With respect to the involvement of the Department of Mines and Petroleum, there is a memorandum of understanding that has been around longer than me between the Department of Mines and Petroleum, the Environmental Protection Authority and the Department of Environment and Conservation about who will make the judgements about environmental assessments. It is generally accepted that the Department of Mines and Petroleum's environment branch will deal with minor activities in which there has been minimal environmental damage. If it is a major environmental issue, DEC and/or the EPA will deal with it. That has not changed with respect to this legislation. This is identical to what went on before. Hon Jon Ford suggested that because I am in a hurry to get approvals through the system, somehow or other I will ignore the environment. That will not happen.

Hon Jon Ford: No, no. It is just relating to the discussion about the lead agency model. You have given an explanation.

Hon NORMAN MOORE: The lead agency does not change the system. This agency is responsible for monitoring the progress of an application. If it starts at the mines department and has to go to the EPA, the department knows where it is in the EPA. The EPA informs us where it is so the mines department knows all along where the proposal is in the process, which is good news for the companies that want to know where it is. The lead agency does not have any control over the EPA or DEC or Aboriginal heritage. It is a monitoring

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agency that, in effect, is responsible for seeing an application go through the system but it does not change the rules on environmental heritage. The existing heritage and environment rules remain the same.

Hon Jon Ford raised the matter of pastoral issues again. We spent a fair bit of time on that the last time we talked about the Roy Hill pastoral lease. The bottom line is that if all the negotiations should fail if a company needs to access and use part of a pastoral lease for mining purposes or for a railway or a road, agreement should be reached between the company and the pastoral company. That is what has generally happened.

Hon Jon Ford: It is the same process as currently under the agreement acts, as we discussed on Roy Hill.

Hon NORMAN MOORE: The bottom line is that if agreement cannot be reached, there is capacity to compulsorily resume that part of the lease.

Hon Jon Ford: But it's negotiated.

Hon NORMAN MOORE: It is a last resort.

Hon Jon Ford talked about the public interest and what it is. I should not say it quite like this but I will—it is in the eye of the beholder in a sense. Public interest has a subjective element and a political element. It has all sorts of different connotations to different people. What one person thinks is in the public interest is quite different from what I think. However, under this act when a minister makes a decision in the public interest to say yes or no to a proposal and it becomes public, as it will, it is for the public to judge whether the public interest has been properly identified. I cannot say any more than that other than, in my view, the public interest in the state agreement acts is the public interest of Western Australia. I say that because the minerals belong to the state of Western Australia. What we do with them and what we do with the money we receive from them relate to the public interest of Western Australia and nobody else.

Hon Jon Ford asked about the land area going from 777 square kilometres to 1 000 square kilometres. This is a reflection of the fact that companies can hold up to that much land in tenements to ensure that they have an ongoing supply of iron ore because of the very huge capital costs of developing these projects. We cannot simply let them run out of ore in five minutes because they do not have enough reserves to keep going. And so, because there has been a significant increase in production in the past five to six years, it is felt that the companies need more land to ensure their future viability. It ties in a bit with the iron ore policy, which we have not discussed. But fundamentally that means that the rules for renewal of tenements for iron ore projects are different from those for other minerals to enable these companies to hang onto land even if they are not doing anything much with it at the time. As long as they have an assessment of the inferred deposit, they are able to keep the land until such time as they are ready to develop it. I mentioned an example a minute ago, Rhodes Ridge, which may be developed in due course.

Hon Jon Ford raised the issue of BHP's downstream obligations. He is quite right that they have expired. Most of them had to do with the direct reduced iron—DIR—process plant. Rio still has some obligations for downstream processing, but this agreement provides that it could be for things other than perhaps the ongoing process of iron ore. That will be up to the minister to agree with the companies; that is, whether it is in the interests of the Pilbara by way of, say, a water supply system or some other infrastructure that they may pay for that can be counted against their downstream processing obligations. I think that is a sensible approach, as so far we have got nothing from either of the major companies in terms of downstream processing. DIR did not work; Hismelt probably has not worked, if truth be known; technology is probably going to be good in the future; but we have not got anything. So let us try to get something rather than nothing. That is why I think this is a good idea.

Hon Jon Ford talked about the rehabilitation of these mines. It is interesting to note that the state agreement acts do not include an environmental bond and probably no environmental requirement for closure. But I have no doubt that companies of the magnitude of BHP and Rio—these two “monsters”—have an obligation to their shareholders and to the community to make sure they rehabilitate the mines that they operate, and I have no doubt they will do it. They are the least of my worries when it comes to rehabilitation. I appreciate the fact that Hon Jon Ford did not want them to fill in the hole at Mt Whaleback. If we start asking them to fill in holes, we will have no mining operations here in WA at all.

Hon Jon Ford: Long-term employment!

Hon NORMAN MOORE: I think if it was filled up with water, we could make it into a big swimming pool or do aquaculture or something.

I just say as an aside that the state government has now put in train a new system for other mining operations that requires companies to attach a closure plan when they make a mining proposal. We just announced today in fact that we will increase the bond next year. A moratorium on bond increases was put in place to take into account

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the global financial crisis. That moratorium will finish at the end of this year. There will be a 25 per cent increase in bonds next year. But we are also putting out for public discussion a paper that considers a number of different options. I recommend that Hon Jon Ford have a look at that. One of the bright ideas is about a fidelity fund, which I think might just about be fantastic if it could be made to work. So, we are working on that.

In response to the issue of local government rating, the government will by about March next year have ready for public consideration a plan for local government rating under state agreement acts. But let me also say in respect to this negotiation that the leverage was not there to get this plan. As Hon Jon Ford knows, and I know only too well, this has been a vexed issue for a long time and the companies have dug their heels in on it. Part of the problem is that when local governments rate, they decide the rate in the dollar. If they want to start upping the rate in the dollar to suit their own requirements and determine how many dollars they want, they could hold companies to ransom. It has been hard work. The member's government tried it. In fact Hon Ljiljanna Ravlich said that she found it was a terrible thing when she was Minister for Local Government. I wrote down, "Why didn't you do something about it?" It is hard. We are working on it, but it is not something that could be achieved under this leverage arrangement in this agreement, albeit, I would like to see some progress made. We made a decision a few years ago about some form of rate-equivalent payments to local governments that might overcome the concern about gross rental values and cents in the dollar being determined by the local government. I should say, however, that we are spending about \$1 billion in the Pilbara through royalties for regions. Members opposite might say that that is the state government spending it, not local government. But a lot of money is going to local governments to spend as they determine. We have been criticised because we have been leaving them to decide how they want to spend that money. On the other hand, we are told that we are holding local governments to ransom because it is our money. But it is \$1 billion going into the Pilbara for significant infrastructure development. I would have thought, through the Pilbara Cities program and the associated activities, that people would say, "Goodness, that's terrific; some of the royalties are going back to where they came from".

Hon Jon Ford: Well, it is.

Hon NORMAN MOORE: I think that is a good thing. We are not leaving those towns and local authorities in limbo. Whilst we are negotiating rating changes, we are investing \$1 billion in the Pilbara through royalties for regions to do the sorts of things local governments are probably also interested in doing. State investment is being made in infrastructure. But I do ask the question: why did the Labor Party not change it when it was the government? I guess I can answer that by saying that it was too hard.

Hon Jon Ford talked about a letter from the Premier. The letter did not say that it would be agreed to in the next round of negotiations; it said, "We will if it's achievable." I am saying that on this occasion it is not achievable because we could not get all the things members opposite want us to get at the same time as saying to the companies, "Give us \$350 million cash and \$340 million a year, and growing, while their operations are still going", and at the same time say, "And we want you to give in on local government ratings and changes to local content and to this and that." We could not get all that; we got as much as we could get. It may well be that some other government could have got a better deal for the state; I do not know. Nobody has ever tried and we have an outcome that I think is fantastic.

There has been talk tonight about mining industry profits and how they are getting too much and they are monsters and all this sort of stuff. Just remember this: the mining industry is going through good times now because of the Chinese economy. It has not always been like that. I have been associated with the mining industry all my life as well as with about half a dozen towns and mines that have closed because they ran out of ore. I have seen the iron ore industry and the nickel industry go through very bad times because prices and demand were low, and nobody made any money. Indeed, BHP Billiton closed down its Ravensthorpe nickel mine because it could not make any money. It lost \$2 billion, not because it wanted to; it just did. It lost \$2 billion on the direct reduced iron plant in Port Hedland. These things happen; firms lose big dollars. They are doing okay now, but it is not always going to be like this. I wish it would be.

The issue of social infrastructure was raised and that somehow the mining industries should pay for social infrastructure. Why because it is having good times, should the mining industry pay for the sorts of things governments provide? What about the other industries in Australia that make "excess profits"? What about the banks? Do we ask the banks to build a hospital or a road? No. They just keep getting their profits and sending them to the shareholders. Nobody says, "Let's change the rating system on banks because they are making too much money", or "Let's get into the pockets of the banking industry because we think they should be responsible for social infrastructure." Let us be fair about this. The mining industry pays its way in lots of ways. In local communities, Rio, and BHP particularly, spend a lot of money in the towns they built, as well as Port Hedland, on education, health and sporting issues and a range of other issues that are important to those communities; they

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are big contributors. The worry I have is that the moment we bring in a rating system, they will say, “Right. That is all the money you are going to get through the rating system. We are not going to pay any longer for these other philanthropic ventures that we are engaged in.”

The member also mentioned competition issues. The bottom line is that—I think Hon Ljiljanna Ravlich raised this—whatever these companies do under their state agreement acts will be subject to the normal competition regulators in our country. So if these companies decide to do something that the competition regulators assess as being anticompetitive, they will be assessed as such. This legislation will not exclude these companies from any of those processes. Any anticompetitive actions by these companies will be subject to assessment by the anticompetition agencies, as it should be.

The member also mentioned local content. I remind the member of the law of comparative advantage. This state has a comparative advantage in iron ore, nickel and other minerals. We do not have a comparative advantage in building railway lines or steel mills or railcars, because, if we did, that is what would be happening in Western Australia. Companies invest their money when they can be competitive with other parts of the world. Companies would be flocking to this state to build these things if they could be competitive here. The member talked the other day about tyres. Companies would be making tyres here if they could make a profit by doing that. They are not doing that, because they do not see this state as having a competitive advantage over places like China, and increasingly places like Thailand, Indonesia, Japan and Singapore, and all those other countries in which costs are lower. If the ALP thinks that we should have government involvement in building a manufacturing industry in this state, that is another argument for another day. I do not believe that, simply because we would like to have a manufacturing industry in this state, the government should be in the business of building that business. On the other hand, we have a motor car industry in Australia that is heavily subsidised by the federal government to keep it going. All the taxpayers of Australia are paying, I think, \$3 billion a year to enable South Australia and Victoria to keep manufacturing motor cars, when we could buy them a whole lot cheaper from overseas if we did not have to do that with the tariffs that we have in place. So we are not going to force companies to do things by mandating that, as I said earlier.

The member also mentioned Aboriginal issues. These two companies have a very good record when it comes to Aboriginal employment—a very good record, and getting better. But there is no reason why mining companies should be responsible for the problems of Aboriginal communities, any more than the banks, or Coles or Woolworths, or anybody else who is making money, should be responsible. But they do that, because they operate in areas in which there are fairly large Indigenous communities, and they see that as an obligation that they want to take on board. It is also good public relations, frankly, quite apart from the fact that they are getting workers whom they particularly need; and if they live in the area, so much the better. I also make the point that vast numbers of dollars—tens of millions of dollars—are being spent by these companies each year in payment for native title arrangements. Some Aboriginal people say, “These are royalties that we get from these companies, and we should be able to keep them;”—just like Gina Rinehart keeps the royalties that she gets from Hamersley Iron—“we should not have to spend them on health and education and law and order and all that sort of stuff.” That is also another argument for another day. But a lot of money is being spent by these companies, on the basis that they are providing these funds to help these communities improve their standard of living.

During Hon Jon Ford’s contribution to the motion to send this bill to a committee, he made some amusing comments about some of the old terminology contained in the state agreement acts, such as “twopence-halfpenny” and “per acre”. Let me say this: these amendments to the state agreement acts reflect the agreement that has been reached through the heads of agreement and relate to the integration process. The opportunity was not taken to modernise everything else in the state agreement acts. If we did that, we would be here until pancake Tuesday, as Clive Griffiths used to say. It is a mammoth task. That may happen over time but it has not caused anybody any grief. What is in this legislation is a reflection of the agreement that has been reached in respect to integrated operations in the Pilbara.

Hon Robin Chapple mentioned small companies, local government, that the government got dragged into Parliament, and that BHP and Rio drafted the agreements. I say to members that that is not the case. The variations—that is, the actual changes to the agreements—were negotiated and drafted by the State Solicitor’s Office. The actual bills were drafted by Parliamentary Counsel. The companies may have had copies, they may have worked together with the government—in fact they would have—but they did not draft them for the government. It was a negotiated arrangement and the government did the drafting.

Water is not part of this agreement, but I recognise Hon Robin Chapple’s comments about water in the Pilbara. We have issues there that need to be sorted out. There is a lot of water going down creeks that could be used for other good purposes, as Hon Wendy Duncan highlighted. It may well be, with new arrangements in respect to downstream processing, that Rio might engage in a new bore field and provide additional water for the west

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Pilbara. Again, there was this tone that BHP and Rio are monsters that are not helpful to the Western Australian economy. Seventeen thousand employees is —

Hon Robin Chapple: I did not make that comment.

Hon NORMAN MOORE: I know, but there was this flavour coming through. I made the point of writing down 17 000 employees, a \$29 billion contribution per annum to the economy, \$1.5 billion in royalties and 45 per cent of the state's royalties. Those figures are in the second reading speech. They reflect how important these companies are to Western Australia—they are very important. We need them, whether members opposite like them or not. I would sooner have them than some other companies around the place.

Hon Robin Chapple talked about rail access. I have talked about that already. I have mentioned the bit about public information on variations to a state agreement act that will be announced in Parliament, but that has been achieved. Again, he talked about benefits to the state and that we will not get any. I do not agree with that. Hon Robin Chapple mentioned some issues about royalty provisions in the new amendments that he suggested might enable us to increase royalties. That is not the intention. The intention is to standardise the definitions of what “lump” and “fines” mean across all the state agreement acts. It does not provide for any increase in royalties. Who knows—the state can increase them, but under these state agreement acts the only way the royalties can be increased is by negotiation. That is what happened in this outcome.

Hon Ljiljanna Ravlich put on the public record all her knowledge about the Pilbara, which took about three minutes! Then she told us a whole lot of other things about how terrible everything is on the Kwinana strip and it is all the fault of this government. She mentioned the point that shareholders do well out of this, and so they do. There are a lot of Australian shareholders in BHP and Rio. That is good to see. Hon Ljiljanna Ravlich asked what is in it for Western Australia. She said there was nothing in it for us and that we did not do enough. I have tried to explain that it is a negotiated outcome. We got as much as we thought we could get out of it. The \$350 million was a negotiated figure. The government sat down with the companies and argy-bargied about how much they wanted to contribute as a lump sum to the state in recognition of the fact that this integration agreement would go through. These companies thought that they could save \$10 billion over time if they amalgamated.

I appreciated Hon Wendy Duncan's support.

Hon Ken Travers talked about the negativities of booms, and he is quite right. There are downsides to booms. But we do not fix the economy by slowing down the bit that is going fast; we try to do something about the bit that is going slow. This reminds me of the federal government's attitude to the resource sector: because Western Australia is doing well and other states are not doing so well, we should slow Western Australia down by whacking this new mining tax on top of everybody and send all the money across to the eastern states to buy things for them. I would have thought that the federal government would look at the problems that are associated with the slow part of the economy and do something to try to speed it up. I acknowledge that rapid growth of the sort we could experience puts a lot of pressure on governments to deliver the infrastructure and services that people need, to deal with the labour shortages that will occur and so on. Hon Peter Collier will shortly release a document that deals with training issues. There is also a need to look at the immigration system to make sure that we have enough people to do the jobs that need to be done.

I have already discussed a number of other matters that Hon Ken Travers raised. He suggested that this bill is all about significantly ramping up production by these two companies. My view is that that is not the case. They are ramping up anyway regardless of this bill, but it will enable them to do their ramping up more efficiently and to benefit from each other's infrastructure when that is considered appropriate.

The member raised an interesting issue about having a finite term for state agreement acts. It would have been fantastic if they had done that in the 1960s, but they were negotiated and a finite term was not part of the negotiations for state agreement acts in the 1960s and 1970s. A termination date can be put in only if there is agreement, and there is not, so that has not happened.

The member criticised Richard Court and Colin Barnett because they agreed to the GST and the GST got mixed up with the Commonwealth Grants Commission process. We have already talked about that. I should also make the point that the current Prime Minister wants one-third of whatever GST we have left to run the health system. I think we get 65c in the dollar. She wants one-third of that. She also wants our royalties. If members read Ken Henry's views, they will find that he wants royalties to be taken off the states and given to the commonwealth, or for royalties not to be charged at all but to have a mineral resource rent tax that will suck something like \$7 billion out of the Western Australian economy each year, if we can believe Treasury's figures, and generally we cannot.

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The member also mentioned that royalties are payment for the sale of capital assets, which is probably a fair comment, and that they should not be treated as recurrent revenue. It would be lovely if we could do that. It is rather interesting that he said that we are making all this money through royalties, but then we were told by him and Hon Jon Ford that 70 per cent of the money goes elsewhere anyway, so what is the point of hanging onto it if we are not getting much. We are getting 30 per cent but we get it up-front and then we can use it as we need it. If this notion of treating royalties as payment for the sale of capital assets, not as recurrent revenue, is to be the Labor Party's policy for the future, I would like to see that happen.

I have done my best to cover most of the issues raised by members. I will just conclude by saying this. These bills represent a negotiated agreement between the government and the company. In negotiations such as this, both sides are trying to get as much out of the other side as they can. It all started off with the government wanting to get from BHP Billiton and Rio Tinto \$340 million a year extra revenue from the change to the royalty rates on fines. That is where it started. That arrangement has been around since before the current government. That is what the government wanted. Coincidentally, the companies wanted some capacity to share infrastructure. They said that it would make their operations more efficient so they could save money, make more money for their shareholders and at the same time pay more royalties. They said that they would give the government a down payment of \$350 million to sweeten the deal. That was what was negotiated; it was not available to us to go beyond that. It was not available to us to change the local government rating system, it was not available to us to change the local content laws and it was not available to us to change the access rules and the other matters raised by members; it just was not achievable under the sort of leverage that the state government has, bearing in mind that we are getting money out of them, and that was the whole purpose of the exercise.

I thank members for their contributions and recommend the second reading of the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Helen Morton) in the chair; Hon Norman Moore (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon JON FORD: I would like to talk about how we might proceed. We are dealing with 11 different agreements and I have a suggestion along similar lines to the way in which we dealt with the Railway (Roy Hill Infrastructure Pty Ltd) Agreement Bill 2010. My questions are based on matters that will go generally over all 11 agreement acts; I want to talk about the extent of the powers that are to be granted to the minister and a number of other matters that basically go across all 11 agreements. If the minister is happy to proceed that way, I will limit my questions to clause 1, and that will be it; I do not intend to go into any of the individual agreements.

Hon Norman Moore: I'm happy to do that, if that suits.

Hon JON FORD: Most of my comments will be based on the Iron Ore (Hamersley Range) Agreement Act 1963, as an example.

Hon ROBIN CHAPPLE: By way of support and clarification, if the minister is happy to proceed that way, I will have some particular questions on clauses in specific bills, and if we can deal with those in clause 1, that will be fine by me.

Hon NORMAN MOORE: I think the proposition put forward by the two members to look at the issues in clause 1 debate is very sensible, because a lot of the issues go across the whole range of different state agreement acts. It is probably stretching the friendship a little, but it would, I think, facilitate debate allowing us to deal with the issues as they come up one at a time. It is a very sensible approach.

The DEPUTY CHAIRMAN (Hon Helen Morton): I agree that that is the way to go.

Hon ROBIN CHAPPLE: I want to look at the royalty issue. I need a bit of clarification. I have been provided with some advice by the minister's staff via email and I want to test that against what the minister has said about royalty return, then I want to look at, I think, five plus two of the instruments. I hope it is okay to follow this process.

I am advised that there has been no change to royalty rates since the Iron Ore Agreements Legislation Amendment Bill 2010 was granted royal assent on 26 August 2010, and that there will be no change from the previous royalty regime to that which comes into play after this amendment legislation before the house goes

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through. As there will be no royalty change minister, I am trying to find out how this will indicate extra revenue for the state.

Hon NORMAN MOORE: The member is right; the bill to increase the royalty on fines and beneficiated ores has been passed by Parliament and that increased the rate to the Mining Act rate. I think I kept saying that increase was \$340 million and growing—not growing because we want to change the rate, but growing because I expect the production of fines to grow. As more and more tonnage goes out, more and more royalties come in. It is not the government’s intention to increase the royalty rate. Down the track, a government might say lump and fine ore should be treated the same way at 7.5 per cent; that is not our intention, but some government might say that. There is an argument for that; however, at the moment it is not our intention to increase royalty rates. The extra revenue will come from increased production as these companies ramp up their production levels.

Hon ROBIN CHAPPLE: Thank you; I will ask a further question on that in a minute. If I can, I will go quickly to part 4; that is, the Iron Ore (Mount Bruce) Agreement 1972, as varied. My apologies; I had better go back to the principal agreement and ask: is the minister working from the acts before us or the consolidated documents?

Hon Norman Moore: The acts; I could change if you need me to.

Hon ROBIN CHAPPLE: A large section about Mount Bruce royalties was removed and I am trying to follow the insertion as a result of that removal. Was there any royalty change between the lump ore and fine ore at 7.5 per cent; the fine ore sold or shipped at 5.625 per cent; the beneficiated ore at five per cent; and on all other iron ore at a rate of 7.5 per cent—which I believe is new in this arrangement? Could the minister please explain what all other iron ore at a rate of 7.5 per cent is going to cover?

Hon NORMAN MOORE: Proposed clause 7AD(7)(iv) states —

on all other iron ore at the rate of 7.5% of the f.o.b. value.

I will go back a step. We have talked about fines, lump and beneficiated ore being rated at five per cent. The “other” is any other iron ore products that might turn up. It is a catch-all for any other iron ore products that might eventuate or become available at some time in the future. They will be rated at 7.5 per cent. That provision could relate to the different size. Because there are dimensions for lump and fines, a company might want to sell it in some other format; therefore lump and fines are defined. If it is another form of iron ore, it is rated at 7.5 per cent.

Hon ROBIN CHAPPLE: I thank the Leader of the House for his explanation. I think I am getting it. It seems quite amazing that this provision is in the bill and we do not know whether it will or will not be used in the future. One would think that if it were not saleable, it most probably might have been rated at 5.3 or five per cent, comparable with what we used to do with fines. One assumes that this is a reference to a new substance that might be equally as saleable as lump, because that is the rate for lump—we have established that—and this is a new rate. It is interesting that there is reference to a rate for something that we do not know what it is.

Hon NORMAN MOORE: I gave the member some potential possibilities. What it is really saying is that the rate is 7.5 per cent for lump, 5.625 per cent for fines and five per cent for beneficiated iron ore. Anything else that is sold as iron ore is rated at 7.5 per cent if it is not one of those three categories. The provision is there just in case someone comes up with a different product that is not fines or lump, as currently defined. I cannot think of anyone who wants to do that, but while the amendment is being made, we have put in a catch-all in case anyone wants to do something different. The idea is that we want to establish the principle that the rate for iron ore is 7.5 per cent.

Hon ROBIN CHAPPLE: I thank the Leader of the House for that. I assume that proposed clause 7AD(7)(iii), beneficiated ore, deals with things such as sinter, pelletisation, hot briquetted products and those sorts of things. Could “all other iron ore” not cover any of those components?

Hon NORMAN MOORE: This provision replaces a part that has been removed, which is under the heading “royalties part IV”. That says “on all other iron ore not being locally used or at the rate of 7.5 per cent of the f.o.b. revenue”. This provision replaces that provision. It is replaced with the new wording, as we have standardised the royalty rates across the board. The fundamental principle of the royalty rates is that we charge 10 per cent of the value at the mine head. However, to get from the mine head to the next place it goes to, whether it is on a ship or wherever, it has to be crushed and screened, which adds value and means that the next level is 7.5 per cent. If it is beneficiated or concentrated, it is five per cent, and if it goes to metals, it is 2.5 per cent; therefore, the whole strategy of the royalty rates system is that the more value a company adds, the lower the rate. However, because it is value-added, it should equate roughly to 10 per cent of the mine head value. That does not actually apply to most minerals, I might add, but that is another story. Therefore, when a company

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wants to make pellets or direct reduced iron product or whatever, that is at a different royalty rate from the 7.5 per cent.

Hon ROBIN CHAPPLE: I refer to the Iron Ore (Marillana Creek) Agreement Act 1991 as varied. I will go to the same royalty area and I will be dealing with the variation to “Royalties”, clause 13 of schedule 1 of the principal act.

Hon Norman Moore: Can you give us half a second to find this?

Hon ROBIN CHAPPLE: Sorry, I am more than happy to. I knew this would be a bit complex.

Hon Norman Moore: It is, but it is okay, we will get there! We’re doing very well so far.

Hon ROBIN CHAPPLE: Clause 13(1)(ab) will read —

... lump ore and on fine ore and pisolite fine ore where such fine ore and pisolite fine ore is not sold or shipped separately as such at the rate of 7.5% ...

I am interested that we are now moving fine ore and pisolite fine ore up to a 7.5 per cent rate. Is that actually an increase?

Hon NORMAN MOORE: Fundamentally what it means is that when lump and fines are mixed together and transported, the rate is 7.5 per cent. When lump and pisolite ore are sold together, the rate is 7.5 per cent. When fines and pisolite are sold together, the rate is 5.625 per cent.

Hon ROBIN CHAPPLE: One would then say that there would be an interest in the corporations mixing pisolite fine with fine ore and paying a lower f.o.b. royalty than is the current practice of allowing it to be mixed with lump ore.

Hon NORMAN MOORE: I understand that pisolite is not common throughout the Pilbara. It is found in the Marillana Creek, Yandicoogina and Robe River projects. Fundamentally, the Marillana Creek mine has a mix of pisolite and fines; therefore, the rate is 5.625 per cent. That reflects the nature of that operation. To have uniformity, in a sense, the rates go from 7.5 per cent down to 5.625 per cent depending on the mixture, but in this particular operation it is mainly a mixture of fines and pisolite fines, which is 5.625 per cent. Perhaps that is a benefit to the company. Fines are 5.625 per cent so it seems to be fair and reasonable.

Hon ROBIN CHAPPLE: I accept that. I think the key issue is that as we have an amalgam of two corporations now sharing infrastructure, there is an indication that mixing of ore to provide the right grades for export will become more available and more fluid. I had a concern that the extra ability to use pisolite fines to bring ore grades up or down or control ore grades might be better used by the mining companies. That is merely a statement.

I turn to the change to clause 13(1)(b), under “Royalties”, of the Iron Ore (Marillana Creek) Agreement Act. We previously talked about all other iron ore of whatever kind at the rate of 5.625 per cent. That rate has now been lifted to 7.5 per cent. Has that other iron ore, whatever rate it is, ever been used? If so, what will be the net benefit of going to 7.5 per cent if it has been used at any time in the past? I am wondering whether there is some income stream there.

Hon NORMAN MOORE: I understand that this mine was fundamentally set up as a fines mine with a rate of 5.625 per cent. As I explained in answer to the previous question that Hon Robin Chapple asked about residual product, that may not be fines or pisolite; it may be ore lump or something else, bearing in mind the definitions that apply to these things. This residual coverall covers any other sort of problem that might come out of this project. It is probably not likely to occur because, as I said, it is mainly a fines pisolite mine. If it has lump, there is provision for 7.5 per cent. But, again, if there is some other product that is not covered by those three definitions, it is 7.5 per cent.

Hon ROBIN CHAPPLE: I thank the minister for the explanation. I was trying to establish whether 5.625 per cent at paragraph (b) had been previously used to generate revenue. Clause 13(1)(b) seems to be there to cover all eventualities, as it was originally intended. I am interested to know whether it has ever been used in the current agreement to generate revenue.

Hon NORMAN MOORE: The view is no; nobody is aware of it happening.

Hon ROBIN CHAPPLE: I will now move to the Iron Ore (McCamey’s Monster) Agreement Authorisation Act 1972. I am still dealing with royalties in all of these questions and I am just trying to keep my focus on that area.

Hon Norman Moore: Which clause?

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Hon ROBIN CHAPPLE: We are going back to royalties again, clause 31(1)(b). Again this is dealing with the same matter, but I note that the rate for this act has gone up by a different percentage from the one we just dealt with. The one we just dealt with went from 5.625 per cent to 7.5 per cent. The one we are now dealing with, the iron ore McCamey's Monster act, will go from 3.75 per cent to 7.5 per cent. Given that the iron ore McCamey's Monster act is basically a Brockman-type ore, I would be interested to find out whether any of this material had been charged previously at 3.75 per cent. Although I understand the act is normalising rates, it is a significantly large jump from the rate in the Marillana Creek agreement.

Hon NORMAN MOORE: Our understanding and recollection is that it has not been charged at that rate. McCamey's Monster has been charged at 7.5 per cent for lump and the old fines rate, which is now 5.625 per cent. So that one has not been used to our knowledge.

Hon ROBIN CHAPPLE: Just to clarify that before I move on, is the lift in the rate from 3.75 per cent to 7.5 per cent merely to normalise all of these 7.5 per cent figures?

Hon NORMAN MOORE: Yes. The opportunity has been taken to standardise the royalty rates across each of the state agreement acts so that this coverall proposal is 7.5 per cent. That will therefore be changed in all of the acts. As the member can see, in a couple of acts there have been variations in the past and the intention is to standardise them.

Hon ROBIN CHAPPLE: I turn now to clause 13(1) of the Iron Ore (Hope Downs) Agreement Act 1992 under "Royalties". It reads in part, "on beneficiated ore at the rate of 3.25% of the f.o.b. value;" In this Iron Ore Agreements Legislation Amendment Bill (No. 2) it has been crossed out and (v) is to be inserted. Again, I am assuming that is a normalisation for beneficiated ore. I do not think so from my knowledge, but has any beneficiated ore ever been produced under the Iron Ore (Hope Downs) Agreement Act? If so, what will be the net income change from going to five per cent f.o.b?

Hon NORMAN MOORE: We are not aware of any that has been produced at this project. If the member wishes I can follow that up to double check. I cannot give any other advice now because we do not think it has happened.

Hon SALLY TALBOT: I appreciated the minister's explanation in his reply to the second reading debate about the lead agency model. He confirmed what I had understood of the way that model was to work. I am sure he will tell me if he does not think this is the appropriate place to ask this question. I note that the clause on environmental protection has been given more prominence by being put at the end of clause 1. It used to be clause 29. In relation to the memorandum of understanding that has been signed between the Environmental Protection Authority and the Department of Mines and Petroleum, I understand that on projects of a certain size the DMP is now not so much the lead agency but is doing environmental assessments without involving the EPA. I would like to know how the provisions in the MOU relate to the environmental conditions that crop up periodically during this state agreement.

Hon NORMAN MOORE: The member is right. The lead agency model has been created to enable one agency to have responsibility for monitoring the progress of an application for an approval. I will go back a step and say why we are doing that. Prior to the lead agency model a company might make an application for, say, an exploration licence to the Department of Mines and Petroleum; that department would then deal with the issues that affected the granting of a tenement. But if they were environmental issues that saw it referred to the EPA or DEC. DMP did not know where it was in either of those agencies. The same applies to Aboriginal heritage issues. The department that is responsible ultimately for the approval has seen the application go off to other agencies and it has got "lost" as far as the DMP is concerned. It has no knowledge of where it is unless it tries to follow it up. It causes difficulty for DMP staff when a company might phone or write and ask where its application has gone, and all they can say is, "It's with another agency; we don't know where it is; you better go and ask them". That caused some delays and, in a sense, there was no oversight of the application process through the system. The lead agency simply means—in this instance—the DMP, which will be aware of where the application is within DEC or the EPA.

DMP will also be aware of the time lines that those agencies operate under, and it can then ring up or send a note saying, "Your time frame is now up; have you finished that application?" So the role of DMP is to monitor the progress of the application through the system. The lead agency model will not change the responsibility of any agency in respect of giving approvals. It will simply give the lead agency the capacity to be aware of the progress of an application through other agencies, as well as its own, and it can then provide that information to the companies if they need to know about it.

The way the MOU works is that there is agreement between DMP, the EPA and DEC about which level of assessment is required from an environmental perspective. It is generally accepted that very low levels of

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environmental impact can be dealt with by DMP. DMP has a very capable environment division. That division does not look just at assessments for proposals. It also monitors the rehabilitation of mine sites. Indeed, it has quite an important role to play. Any matter that is considered to be of reasonably significant environmental impact is automatically sent to the EPA or DEC, and that agency then deals with it as the environmental agency responsible. The MOU basically identifies what sorts of propositions would go to which agency. It is all designed to make sure that the EPA and DEC are not dealing with a project that might involve a twig that has been broken off, or something, so that they are not tied up with minor matters that can be dealt with quite comfortably by our environment division. That is how it works. If the member wants to know more about how it all happens, I can show her the DMP website. The companies can access the DMP website to see the progress of their proposals through the DMP system. We are hoping ultimately to link that up with the other agencies so that proponents can go online and see where their applications are in the system. That is a very transparent process, and it will ensure that agencies deliver on the time lines, or have a reason for why they are not able to do that.

Hon SALLY TALBOT: That is a very clear explanation, minister. I should explain that I have a growing feeling that perhaps what is troubling stakeholders in the environmental movement is not so much the lead agency model, but some of the effects of the MOU. That is why I have raised this issue in connection with this insertion in clause 1 of the provisions about the EPA act. Can the minister give us some idea about exactly how the decision will be made about whether work that may have an environmental impact is likely to have a low impact or a high impact? I think it is fair to say—I am not in any way being derogatory about the minister's explanation—that some of the terms the minister is using are quite subjective. I can tell the minister that when the EPA responded to questions about this issue recently in a hearing, my recollection is that it said that there is no assessment of individual projects, but rather that a set of parameters is laid out, and those parameters relate not so much to whether the work is major or minor, but to things like distance from a conservation area. Again, when the minister was talking in terms of minor works and not very significant environmental impacts, that seems to me to be a bit subjective.

Hon NORMAN MOORE: I have to say that when it comes to environmental issues, an element of subjectivity is attached to that. What the member thinks is an environmental issue may not be an environmental issue to me. People have different views about environmental matters, depending on who they are and what they do, and what their attitude is to these things. I do not have the MOU firmly implanted in my mind—I do not carry it around in my head—but I would be happy to provide a briefing to the member, if that would be of any help, about how the judgements are made about which agency will do the environmental assessment.

In the context of this bill, that is irrelevant. All this bill does is reaffirm the fact that the EP act has primacy. It makes it very clear. As the member quite rightly pointed out, it has been brought forward in the legislation. It is given greater prominence to make it very clear that the state agreement act does not give a mining company the right to avoid any environmental requirements under the EP legislation. The issues the member talks about—whether it is the Department of Mines and Petroleum, the Environmental Protection Authority or the Department of Environment and Conservation that does the approvals—are not changed by this legislation at all. I cannot give a precise cut-off point for going from one agency to another; I simply do not have that in my head. I can arrange for the member to be briefed on that, if she wishes.

Hon SALLY TALBOT: Thank you, minister. That is an offer I will take up in the near future.

I have one last question about this, in an attempt to be as clear as we can be: could we have a situation in which a proposal, such as to vary the course of a road or something like that, is put forward to the minister under one of the various state agreements and a DMP officer makes the decision that it will not be referred to the EPA on the basis that the variation is relatively minor and involves only a matter of 100 metres either way? Does the minister see what I am trying to get to?

Hon NORMAN MOORE: I understand what the member is saying. I do not have the memorandum of understanding with me so I cannot answer the question about who determines where it goes, but I am sure the MOU provides for that decision-making process to occur. My understanding is quite simple—as most of the things I think about are!—that is, low-level impacts on the environment are dealt with by DMP within its own environment division. Some people who work in that division are very, very green. They get cross at me because they reckon I am not green enough! They are not mining company personnel who want to dig up the land and say, “Blow the environment”, because they are actually very dedicated environmental people. They do a good job for the department, particularly in terms of rehabilitation and things of that nature. That is not to suggest that if it is done by DMP, it has some lesser environmental interest. My understanding is that the ones of lesser impact can be done by DMP; the more serious ones are done by the EPA or DEC, depending on which organisation is going to do it. The MOU provides for the determination of which agency it goes to.

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Hon JON FORD: As I said before, the guide that I am using is the Iron Ore (Hamersley Range) Agreement Act 1963 as varied. I refer to page 22. It is the consolidated copy that incorporates proposed variations subject to the bill, which was kindly supplied by the agency. There is a list of items under the heading “Consideration of Company’s proposals under clause 8A”. I am trying to discover the limitations and boundaries of the minister’s discretions and considerations. Proposed clause 8B(1) states —

In respect of each proposal pursuant to subclause (1) of clause 8A the Minister shall:

- (a) subject to the limitations set out below, refuse to approve the proposal (whether it requests the grant of new tenure or not) if the Minister is satisfied on reasonable grounds that it is not in the public interest for the proposal to be approved;

Notwithstanding that I understand the subjectivity of determining what is in the public interest—the Leader of the House replied well to that issue in his response to the second reading debate—I am interested in how the minister may form that view. Does the bill allow consultation by the minister with third parties so that third parties are able to put their views? Is that discretionary or is that compulsory? I know that the Leader of the House addressed the other side of that issue very well—I thank him for his response—when he was asked how we will know about a decision when a decision has been made. He said that it will be subject to a ministerial statement in the house, and I really appreciated that response.

Hon NORMAN MOORE: The member is right; there is an element of subjectivity in the notion of public interest. However, it will be pretty obvious in some cases that a proposal is clearly not in the public interest; for example, mining in Kings Park, which will not happen. The public interest clearly says that that will not happen, but others may be more subjective or marginal than that. Some ministers might see a public interest problem with some proposals, whereas other ministers might not. That is the nature of the political system that we work in. Because ministers will make these decisions, they will make a decision based on their understanding of the public interest. What the minister does to inform himself is really up to the minister, but any sensible minister would not simply say no to a project on the basis of public interest if he had not talked to anybody else about it. I have no doubt that any minister who might be going to refuse an application that might, for example, involve a significant capital investment, would not simply say no. I imagine that the process of government would be used to assess that. He would probably ask the environment minister and the mines minister for their views.

In respect of the public interest, at the bottom of the page there are subparagraphs (i), (ii), (iii) and (iv). The lead-in sentence states —

In considering whether to refuse to approve a proposal the Minister is to assess whether or not the implementation of the proposal by itself, or together with any one or more of the other submitted proposals, will:

- (i) detrimentally affect economic and orderly development in the said State, ...
- (ii) be contrary to or inconsistent with the planning and development policies ...
- (iii) detrimentally affect the rights and interests of third parties; or
- (iv) detrimentally affect access to and use by others of the lands the subject of any grant or proposed grant to the Company.

They are the guidelines for the public interest that the minister would need to take into account in making a decision to refuse an application. That gives some guidelines, as it were, around which a public interest decision would be taken. It is not the capacity of a minister to make an arbitrary decision if he just does not like the company. I think that probably explains it.

Hon JON FORD: I thank the minister for that response. He pointed out that proposed clause 8B(1)(d)(iii) states —

detrimentally affect the rights and interests of third parties;

Does this infer a requirement by the minister to consult with relevant third parties to ensure that their interests are properly taken into account?

Hon NORMAN MOORE: There is no mandatory requirement for the minister to confer with anybody, particularly with any third party, but because there are some definitional issues in relation to the public interest, the minister would quite clearly need to inform himself. For example, proposed clause 8B(1)(d)(i) states —

detrimentally affect economic and orderly development in the said State ...

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If it were inconsistent with economic development, he would clearly take advice from the Department of State Development or the Department of Treasury and Finance. If it were to be inconsistent with planning and development policies, he would clearly discuss it with the Minister for Planning. If it were inconsistent with the rights of third parties, he would obviously confer with the third parties that might be affected by it, and so on. Although there is no mandated requirement to consult, I doubt that any minister worth his salt would not consult with those individuals or organisations that have an interest in a particular proposal and could be affected as a result of his judgement.

Hon JON FORD: Is there any right of appeal or any process through which third parties can appeal, if they feel that a decision by the minister has made some sort of unacceptable impact on their business?

Hon NORMAN MOORE: There is no appeal provision in this agreement act, but if the proposal required, for example, environmental assessments, the normal appeal provisions relating to environmental processes would apply. If it related to a planning issue, the appeal processes under planning legislation would apply. The normal appeal rights at law in respect of anything one does in Western Australia would still apply, but there is no appeal provision within this particular state agreement act.

Hon ROBIN CHAPPLE: On the same point, we are talking about public interest and the minister has said that that depends on how a minister interprets public interest. Could public interest include the interests of the Indigenous community, or the interests of the environment in its broader concept?

Hon NORMAN MOORE: As I have pointed out, proposed clause 8B(1)(d)(i), (ii), (iii) and (iv) effectively guides the minister in determining the public interest. It needs to somehow relate to one of these four issues. Proposed clause 8B(1)(d)(iv) states —

detrimentally affect access to and use by others of the lands the subject of any grant or proposed grant to the Company.

Just off the top of my head, I would have thought that that might be a provision to say that it is not in the public interest to allow this because of access to Aboriginal land, or Aboriginal involvement in the land, or whatever. That could, in fact, be relevant. Proposed clause 8B(1)(d)(iii) states —

detrimentally affect the rights and interests of third parties;

If allowing a particular proposal to go ahead were to have a detrimental effect on a third party, it could well be in the public interest to refuse it under that provision; it may well be an Aboriginal issue.

Hon ROBIN CHAPPLE: I thank the minister for his response, which tidies up the Indigenous area; I am assuming that we have finalised that.

Are the interests of the environment—which is not necessarily a party, but which is significant—in its broader concept something that the minister could consider as being detrimental?

Hon NORMAN MOORE: Environmental issues are dealt with by the Environmental Protection Authority under the EP act. If a proposal is deemed by the EPA to be something that it would not approve, it will not go ahead, regardless of the public interest in the mind of the minister. That is why we talked earlier about the EP act having, in this sense, primacy. On the other hand, it may well be that even though the EPA does not think a particular area of land should be preserved or that the land could be developed, the minister may decide it is in the public interest and, I suspect, in his own political interest, that the proposal should not go ahead. In that case I would have thought a minister could probably find a definition of public interest that would enable him to say no to the proposal.

Hon ROBIN CHAPPLE: In relation to this process, where is this going to fit in corollary to a normal referral to the EP act? Would this process occur before or after a potential environmental assessment? I am assuming it is well before, and therefore the minister's decision in relation to the matter might be made in isolation to the view of the Environmental Protection Authority or its minister.

Hon NORMAN MOORE: I refer to page 23 of the consolidated document and proposed clause 8B(2), which states —

The Minister shall within 2 months after receipt of proposals pursuant to clause 8A(1) give notice to the Company of his decision in respect to the proposals, PROVIDED THAT where a proposal is to be assessed under Part IV of the EP Act the Minister shall only give notice to the Company of his decision in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the EP Act.

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That describes the process that has to be gone through before the environmental issues are sorted out.

Hon JON FORD: I thank the minister for his response to proposed clause 8B(1)(a). Proposed clause 8B(1)(c) states —

defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in clause 8A(1) not covered by the said proposal;

I am wondering if the minister will explain in practical terms or give a practical example of what that means. I think it is saying that with agreement between the proponent and the minister, they can, maybe informally, outline their proposal and the minister can say, “I think you need to work this up.” That is, it is done through consent between the minister and the proponent.

Hon NORMAN MOORE: This basically means that if a company with a proposal makes an application for part of the proposal to be approved, the minister may defer the consideration of that until he knows what the rest of the proposal is about so that he can see the full picture of the proposal before he makes a decision on any part of it. If the company has a railway line and a port and it makes an application for the railway line but leaves the port for another time, the minister will not deal with the railway until he knows what the company proposes to do with the port.

Hon JON FORD: I know it has been a very long day. I have about seven more questions to ask. Proposed clause 8B(1)(d) states —

require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such conditions,

I would like to know a couple of things about this. This is about the boundaries and limits. Are there boundaries to those conditions? Could the minister say that he wants some land to be rateable, for example? If the minister does say that, is that condition to be applied or limited only to that particular proposal or to the whole area covered under the agreement? If the company believes it is an unreasonable proposition, can the company challenge that, and how is it challengeable?

Hon NORMAN MOORE: In the ratings example the member used, a condition cannot be made that is contrary to the agreement because an agreement is already in place.

Hon Jon Ford: Can the minister not make new conditions?

Hon NORMAN MOORE: He cannot make a new condition which is contrary to the agreement that is in place or which is contrary to the law. With respect to what can and cannot be done as a result of that, I refer the member to proposed clause 5B(3), which states —

If the decision of the Minister is as mentioned in either of paragraphs (a), (c) or (d) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.

The provision provides for consultation between the minister and the company. Proposed clause 5B(4) states —

If the decision of the Minister is as mentioned in either of paragraphs (c) or (d) of subclause (1) and the Company considers that the decision is unreasonable the Company within 2 months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder.

That is complicated. The proposed clause continues —

A decision of the Minister under paragraph (a) of subclause (1) shall not be referable to arbitration under this Agreement.

Therefore, there is provision for arbitration in respect of paragraph (d). However, for the first proposal if the minister says, “Under clause 8B(1)(d) I think it is unreasonable and I’m not going to give you approval”, there is a process of consultation under clause 8B(4). If the parties still cannot reach agreement, under clause 8B(5) there is provision for arbitration.

Hon Jon Ford: The bottom line would appear to be that if arbitration fails, that is the end of it. Is that correct?

Hon NORMAN MOORE: Yes. The decision of the arbitrator is binding.

Hon Jon Ford: On both parties?

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Hon NORMAN MOORE: Yes.

Hon ROBIN CHAPPLE: In terms of the arbitration, clause 4(2) on page 19 has proposed clause 8B(4) of the 1963 principal agreement, which provides that certain types of decisions by the minister can be referred to arbitration if the company is unhappy and others are not possibly. The matter can be determined by arbitration. Obviously, Pearce sees a fairly sound reason for this approach. Can you please describe the arbitration process for the record?

Hon Norman Moore: Is this the one that I have just been referring to?

Hon ROBIN CHAPPLE: Yes.

Hon NORMAN MOORE: I refer the member to page 98 of the consolidated copy which in fact has a section in relation to arbitration—that is, clause 25(1). I will not read it out but I refer the member to it. It also talks about the provisions of the Commercial Arbitration Act 1985 and that is the process by which arbitration is held. Clause 25(1) and (2) cover the issues of arbitration.

Hon JON FORD: The bottom of page 22 of my copy—we jumped to it a bit early from where I was going—states —

In considering whether to refuse to approve a proposal the Minister is to assess whether or not the implementation of the proposal by itself, or together with any one or more of the other submitted proposals, will:

The clause then lists four conditions. When the minister makes that consideration, is any particular weight applied to any of these conditions? Are they listed in the weight of consideration or are they all just generally weighted as determined by the minister's discretion?

Hon NORMAN MOORE: There is no weighting attached to any particular one of those conditions; they are simply all the things that the minister should take into account when determining the public interest.

Hon JON FORD: Does the government intend to look at similar amendments to existing agreement acts for other parties involved in the mining industry that are not included in this agreement?

Hon Norman Moore: Do you mean companies with other state agreement acts?

Hon JON FORD: Yes. If a couple of other companies come to the minister and ask for the same sort of concession, does he have plans to do that?

Hon NORMAN MOORE: This agreement has been reached because these companies came to the government and said that they would like to negotiate some outcomes that they thought would be beneficial to their operations. If any other companies want to do the same, the government is happy to talk to them about it. I do not have a problem with that. I cannot imagine this ever happening, but FMG and Roy Hill might start talking about sharing resources.

Hon Jon Ford: You and I will never see that!

Hon NORMAN MOORE: That is why I was loath to say it was even a possibility. We never know; circumstances may change. We are always happy to look at what companies want to put to government that might improve the efficiency of their operations. That is in everybody's best interests. If any company puts up a proposal, we will give it consideration.

Hon JON FORD: My next question relates to page 53 of the same agreement. Proposed clause 10J of the agreement states —

The Minister may approve, upon application by the Company from time to time, for the total area referred to in subclause (1) to be increased up to a limit not exceeding 1,000 square kilometres.

I have two questions about that. First, what parameters are to be considered? What are the considerations? Second, does the government have plans to broaden this to all other industry participants in the future?

Hon NORMAN MOORE: I understand that this provision was contained in the Iron Ore (Hamersley Range) Agreement Act 1963 and not in the others. I think it has been the practice that these companies have been holding land they are not using under the iron ore policy. As part of these variations to the state agreement acts, it was decided to provide this provision in each of the state agreement acts so that each state agreement act would allow a company to have up to 1 000 square kilometres from what was 777 square kilometres. That is not by right but by application to the minister. The minister would consider the matter and refer it to the Minister for Mines and Petroleum to determine whether it was any good and then it might be granted. It does not have to be all or part; it could be 800 square kilometres or 850 square kilometres but it is a maximum of 1 000 square

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kilometres, subject to application. If any other state agreement companies want a similar provision, we would be happy to listen to what they put forward as a proposal.

Hon JON FORD: I thank the minister for that answer. I have a last question. Silence within the chamber! It is no guarantee, as I am not Hon Robin Chapple! My leader is looking at me!

My last question is on a proposition that was put to me by a third party miner. I will read it out and hope that the minister can help me. The claim is that third party iron ore producers have enforceable rail haulage rights against BHP Billiton for the Mt Newman railway line by virtue of the Mt Newman state agreement as varied by the rail transport agreement of 1987 and section 11(2) of the Property Law Act 1969. I should have put this question on notice. Does the minister accept that through these laws the government is bound to consult with affected parties and to secure their prior consent to any amendment that may potentially compromise their rail haulage rates? The minister can take that question on notice.

Hon NORMAN MOORE: I will take the question on notice and give the member a detailed response. But I will say that the access provisions that are in the state agreement acts—which have been there for a very long time and which basically provide for third party access in the event that it is economically reasonable—have been challenged in the courts. They have been challenged everywhere we can look; there have been challenges by the Hancocks and by Twiggy Forrest. Every man and his dog has challenged BHP and Rio and nobody has ever succeeded in any court action to change the access arrangements that currently exist, other than the most recent determination of the Australian Competition Tribunal. It has “declared”—I think the word is—the Goldsworthy line and the Robe line, and now third party access is being negotiated for the Goldsworthy line. The member mentioned another act but I do not have any information on that at the moment. If the member gives me that question, I will take it on notice.

Hon JON FORD: I will give the minister a copy of the question.

I have a final statement, not a question, to make. I am not anticipating anything that any other member might say, but I am finished. The opposition, therefore, is finished. I would like to thank the minister, in particular for his response to the second reading debate. I note that he spent an hour and 10 minutes responding to my second reading contribution. I appreciate that, and as a result we were not, from my perspective, in committee for very long. It was probably one of the most comprehensive second reading responses I have ever heard. Noting the time, we are getting close to having spent about nine and a half hours on this bill, which is equivalent in real time to about a week and a bit of work for this chamber. I therefore appreciate the time that the government has given to this bill. It has allowed the chamber to give due regard and due consideration to these very important matters. On that basis, I encourage the chamber to support the passage of this important bill for the state.

Hon ROBIN CHAPPLE: I refer to clause 4(1)(l) of the Iron Ore (Hamersley Range) Agreement Act on page 14 of the bill—the twelfth schedule. I am dealing now with the actual bill, not the consolidated aspects. I merely support the insertions under paragraph (l), which reads in part, “Nothing in this Agreement shall be construed”, followed by provisions in (a), (b) and (c). I would like to know how this will work in practice. If the Minister for State Development is to be given in-principle approval for the integration proposal, what sort of signal will this send to the Minister for Environment, especially if the state development minister is also the Premier. I note that page 14 of the explanatory memorandum refers the reader to the commentary regarding subclause (28). The commentary referred to on page 42 of the EM is only one and a half lines long; it is not very descriptive. I am trying to figure out exactly how this will work in practice if the minister is the Premier and what his or her status is in decision making concerning what was described on page 14 of the EM where it refers to “[see commentary regarding subclause (28) which deletes clause 30 of the Principal Agreement]”. The EM gives a very brief explanation and I would like the minister to expand on that explanation if he could.

Hon NORMAN MOORE: That question is seriously hard work. I am trying to work out what the question means, so it might take a little while to find an answer. While the advisers are looking through the documents to try to drill down into the legislation to see what it means, the suggestion that somehow the Premier rides roughshod over everyone else because he is the Premier ignores the convention that the Premier is the first among equals in a cabinet environment. A lot of Premiers would not like that description. But that is the nature of the beast; the Premier does not have any more power than anyone else when it comes to cabinet decisions.

Hon Sue Ellery: Oh, but that were true!

Hon NORMAN MOORE: I cannot speak of the cabinets Hon Sue Ellery has served in, but I know when it comes to the law that the Premier is bound by the same laws as everyone else. On the matter the member raised, it is a rearrangement of the clause. It used to be clause 30 under “Environmental Matters” and has been moved up to become paragraph (a) at the end of clause 1.

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Hon ROBIN CHAPPLE: I am trying to get an idea in more detail how that process will work. So would the Premier or Minister for State Development at the time engage with other ministers in determining what his or her evaluation of those matters should be, or would the minister make that decision in isolation and then have the discussion in cabinet on those matters?

Hon Norman Moore: Are we talking about paragraph (l)?

Hon ROBIN CHAPPLE: We are talking about, in essence, what is derived from clause 4(1)(l).

Hon NORMAN MOORE: To the extent that I understand the question, nothing in this agreement will take away any obligations that exist under the EP act. So a minister, in considering a proposal under proposed clause 8B(1), is obliged to make that decision only after the EP act has taken effect. So in a sense the minister is required to take into account any recommendations or decisions of the EPA or DEC. Therefore, whether it is the Premier or the left hand of God or whatever, the EP act will always win.

Hon ROBIN CHAPPLE: I thank the minister. I understand the minister's answer. Will the minister, notwithstanding the powers under the EP act or any other act, be seeking advice from any other minister or entity in the process of making his or her decision?

Hon Norman Moore: Advice about other things, not just environmental issues?

Hon ROBIN CHAPPLE: Advice on matters that are before the minister. Will the minister be seeking the advice of other ministers?

Hon NORMAN MOORE: When decisions of this magnitude are being made by government, what normally happens is that the department that has responsibility for the proposal, in this case the Department of State Development, will make a recommendation to its minister; and, in doing that, it will as a matter of course consult with other agencies that have an interest in the matter. That is the way in which I have seen government work since I have been in this place. Rarely, if ever, would a minister arbitrarily make decisions of the magnitude that we are discussing here—it could be a railway line or a port or something—without consulting with the relevant minister. I cannot for one minute imagine that the Premier, if he was the Minister for State Development, would not consult with the Minister for Transport in respect of a port, or with the Minister for Mines and Petroleum in respect of a mine.

The process of government is that advice provided by an agency to its minister is the collective advice to government on all issues surrounding that matter. If it is a cabinet decision, most cabinet decisions are sent out to the various ministers who have an interest—in some cases to all ministers. Ministers are able to make submissions through the cabinet process and via cabinet comment sheets. I think it would be an extraordinarily rare occasion for a Minister for State Development to make decisions of the sort we are talking about here without consulting the rest of government.

Hon ROBIN CHAPPLE: In relation to clause 4(2) of the 1963 variation agreement and proposed clause 8B(1), which we have covered already, how will the minister generally inform himself or herself of matters relating to public interest at items (ii) and (iii)?

Hon NORMAN MOORE: I think the member has asked me a similar question to the one I have already answered in respect to Hon Jon Ford's comments about how the minister determines what is in the public interest. Is that the question?

Hon Robin Chapple: Not quite. I am trying to ask how the minister informs himself or herself.

Hon NORMAN MOORE: Again, we are talking about potentially quite significant proposals. We have already discussed at some length how the minister can reject a proposal on the basis of public interest. We have already talked about the definitional boundaries of what the public interest is. It seems to me that any Minister for State Development would consult with all cabinet colleagues and would use all the resources of government to provide advice on whether the proposal is in the public interest, based on the criteria outlined in proposed clause 8A(1) to (4). I do not know what the member's concern is. He seems to follow the line that a minister, particularly a Premier who is the Minister for State Development, will simply make all the decisions and nobody else will know about them. That is not the way government works. It does not work like that at all. Remember that if the minister makes a decision not to allow a proposal to proceed in the public interest, there will be significant public interest in the decision made. The minister will need to be very much aware of the reasons the decision has been taken and will need to have taken advice from a range of sources. As I say, the processes of government almost inevitably involve significant parts of the public sector and other ministers in coming to a collective decision at the end of the day.

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Hon Robin Chapple: By way of interjection, just for clarification: the minister would not go outside his or her ministerial colleagues or departmental colleagues to talk to other miners —

Hon NORMAN MOORE: No; the minister could do that if he or she wanted to. The minister is not constrained. If the minister wanted a view of the mining industry, he or she might go to the Chamber of Minerals and Energy. If the minister wanted a view of a particular company, he or she might go to that company. If the minister wanted to know a bit about some environmental issue, he or she might go to the Conservation Council; who knows?

Hon Robin Chapple: That is all I am after. Thank you, minister.

Hon NORMAN MOORE: But the whole idea is that the minister needs to get as much information as he or she can before making these decisions, because they could be very significant decisions involving a lot of capital investment. Governments have to get it right.

Hon ROBIN CHAPPLE: In relation to clause 4(2) of the Iron Ore (Hamersley Range) Agreement Act 1963, which is the variation agreement we are all working from, I asked at the briefings about the new disclosure requirements imposed by the Australian Stock Exchange. We did not really get an answer to that. The new disclosure provisions identify that a corporation cannot make any disclosure to anyone prior to informing the Australian Stock Exchange. Will the matters that are going to come before the minister or, indeed, this house, as the minister said earlier in his response, when a major approval has been made be disclosed to the ASX, as required under the new ASX disclosure regime, before or at the same time as the company goes to the minister and discusses the matter? This has come about recently. About a year and a half ago, there were some major issues about disclosure, so we changed the disclosure regime. No corporation can give advance notice of anything it is going to do or progress without first informing the Stock Exchange.

Hon NORMAN MOORE: Nothing in this legislation changes the rules of the ASX. The companies will be required to abide by their obligations under the Stock Exchange rules. I gather that the size of the project affects the materiality of the issue and the materiality of this relates to the size of the project, and not everything has to be revealed up-front. Fundamentally, this legislation does not make any changes to what is required to be done now under the ASX rules.

Hon ROBIN CHAPPLE: On page 21, proposed clause 8C(4) states —

Neither the Minister's response nor the Minister choosing not to respond shall in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.

The explanatory memorandum does not tell us what this means. I wonder whether the Leader of the House can articulate it a little more fully.

Hon NORMAN MOORE: If we look at what is now proposed clause 8C(2), it states —

Within one (1) month after receiving the notification the Minister may, if the Minister so wishes, inform the Company of the Minister's views of the matter at that stage.

Further along, proposed clause 8C(4) states in part —

Neither the Minister's response nor the Minister choosing not to respond shall in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, ...

Not making a decision at that time does not affect the minister's powers to ultimately reject or agree to it. It has to be tied in with all the other provisions.

Hon ROBIN CHAPPLE: I refer to proposed clause 8C(5)(f); I am wondering whether there is a typographical error here. Should proposed clause 8C(5)(f)(iv) and (v) not actually be proposed clause 8C(5)(f)(i) and (ii)?

Hon NORMAN MOORE: I want to thank the member for drawing attention to a typographical error or two. Proposed clause 8C(5)(f)(iv) and (v) should indeed be (i) and (ii).

The DEPUTY CHAIRMAN (Hon Helen Morton): Given that the minister is referring to the bill, could he please identify the page he is referring to?

Hon NORMAN MOORE: Pages 23 and 24 of part 2. It is under proposed clause 8C(5)(f).

The DEPUTY CHAIRMAN: To clarify: (iv) should be (i).

Hon NORMAN MOORE: Yes, that is right, and (v) should be (ii). I thank the member kindly.

Hon ROBIN CHAPPLE: How do we deal with that? Will it be amended as a typographical error?

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Hon Norman Moore: As a Clerk's amendment.

Hon ROBIN CHAPPLE: In relation to the Iron Ore (Hamersley Range) Agreement Act 1963, what is the effect of the proposed amendment to clause 10I(11) on page 32? It does not really tell us.

Hon NORMAN MOORE: The insertion of the word "environmental" in subclause (11)(b)(ii) in a sense qualifies the approvals process so that it refers to environmental approvals, because this issue relates to environmental matters. Under paragraph (f), the amendment is to put in clause 8B and subclause (10), which also relate to environmental matters.

Hon ROBIN CHAPPLE: I accept the minister's response; albeit I did not think it did that.

I refer to clause 4(20) of the 1963 variation agreement, and proposed clause 10L(2)(b) on pages 42 and 43. These limitations to the company power could prove useful. I note that paragraphs (iii) and (v) of clause 10L(2)(b) rely on either "the minister's reasonable opinion" or "the reasonable opinion of the minister". We had legal advice that such a concept essentially makes the minister's option almost impossible to challenge in court. Could the minister clarify that?

Hon NORMAN MOORE: I do not have a copy of that legal opinion and therefore do not know the basis of that opinion; however, I understand that the minister is required to make a reasonable opinion and that that opinion has to be based on a reasonable assertion or a reasonable judgement. The advice I have is that if it is clearly unreasonable, action could be taken on the basis that it is an unreasonable decision and that nobody in their right mind could have reached that conclusion. I need to take that on notice because the member asked me a legal question and I have not seen his opinion. If he could provide me with a copy of that, I will provide him with a considered response.

Hon ROBIN CHAPPLE: Proposed clause 10L(2)(b) states —

The Company shall not be entitled to:

I want to know how that relates to the second reading speech in which the Leader of the House stated —

The integration companies have not been given the right to share water rights and related infrastructure.

How does proposed clause 10L(2)(b) relate to the second reading speech? The explanatory memorandum did not clarify this matter.

Hon NORMAN MOORE: As I understand it, the provision provides that the companies can share their water infrastructure but they are required to abide by their existing arrangements with respect to the quantity of water they are able to use. There is no provision for additional water resources except that the companies may share their pipelines—their infrastructure. They have no access to any more water.

Hon ROBIN CHAPPLE: If the companies are using the same pipeline, how will they deliberate whose water may be going down the pipeline if both companies are using water going down that pipeline?

Hon NORMAN MOORE: I suppose the BHP water will be red and Rio Tinto's water will be green—they will put some dye in it! The constant questioning of these issues that could have been dealt with before today is getting a bit stressful, to say the least, but that is another story. The companies have meters on the pipes. A metering system is in place. No doubt the metering arrangements will determine which company is using what water and that will ensure that they do not exceed their water allocations under their existing agreements.

Hon ROBIN CHAPPLE: I thank the minister for the answer. Just in response, we spent a long time with departmental staff and we ran out of the time that we had with them, so we were not able to progress to some of these matters; therefore, we thought to bring these matters to this chamber.

I refer to proposed clause 10N(8) under clause 4(20) of the same agreement we are looking at, on pages 74 to 76. Would the minister please explain the effect of these provisions? Again, the explanatory memorandum was very, very light on in trying to identify how this was going to play out.

Hon NORMAN MOORE: This is a facilitating provision that allows the companies to seek to secure Aboriginal heritage clearances as though they were the owners of the land. Under the existing processes, owners of land are able to seek to have clearances conducted. This facilitates companies getting clearances by having the same capacity to seek clearances of any other land as a landowner. It is the same rule that is in the Fortescue Metals Group's The Pilbara Infrastructure state agreement act and in the Roy Hill state agreement act; the same provisions are in both of them.

Hon ROBIN CHAPPLE: I refer to clause 4(20) again, proposed clause 10N(9) on pages 76 and 77. In our briefing it was put to us that the compulsory acquisition process brought into the state agreement acts by this provision is a truncated process. For the record, in what ways will the normal compulsory acquisition process be

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so shortened and why? It was also said to us in the briefing that the minister's discretion was unfettered. Why has the government not proposed to impose reasonable limits on ministerial discretion? Again, the explanatory memorandum was fairly quiet on this matter.

Hon NORMAN MOORE: The matter relates to the taking of land for the purpose of a railway line. We had a similar debate about Roy Hill, at some great length, I might add. Clause 9(a) states —

The State is hereby empowered, as and for a public work under Parts 9 and 10 of the LAA, to take for the purposes of this clause any land (other than any part of a Port) which in the opinion of the Company is necessary for the relevant Railway Operation and which the Minister determines is appropriate to be taken for the relevant Railway Operation ...

If a company cannot ultimately reach agreement on land access matters after following the proper processes that it must go through, this is the final position that the company can take. In a sense, the proceeding is truncated because the minister proceeds to the taking order only after the process of negotiation between the company and the landholders. My understanding of most railway reserves over time has been that in virtually every case agreement has been reached between the company and the landholder. This provision will apply in the event that agreement cannot be reached. If a company is going to build a 500-kilometre railway line and one person right in the middle has one kilometre of pastoral land, the minister would take the decision that the one kilometre of pastoral land should not prevent the 500-kilometre railway line being built. If negotiations between the landowner and the company cannot reach a final conclusion—as I said earlier, they generally do—there is provision for compulsory acquisition of that land. Because the landowner and the company have already gone through the processes, the minister can go straight to a taking order at the conclusion of that process of negotiation.

Hon ROBIN CHAPPLE: It was also noted in the briefing that companies could not forcibly take or compulsorily acquire land that was subject to another state agreement act. Given that there is a lot of land under state agreement acts out there and in a lot of cases a rail line is going to cross land under another state agreement act, why does that provision not apply to other state agreement act lands?

Hon NORMAN MOORE: By virtue of a company having a state agreement, the state has given it entitlement to the use of the land to carry out its activities and therefore will not resume that land because of the rights that are bestowed upon that company over that land by virtue of its state agreement act. I think there is an issue surrounding Roy Hill at the moment. If it wants to cross over another state agreement act's land, it has to negotiate an outcome. One would hope that that would be achieved. Obviously, if one company wants, say, a railway corridor over another company's state agreement act land, the location of that corridor would have to be such that it did not interfere with the activities of the company on the original state agreement act land. That is why a negotiated outcome is necessary to be achieved. I guess it is possible that the company would be unable to proceed with the railway line if both companies could not reach agreement.

Hon ROBIN CHAPPLE: That was indeed my concern. There is, therefore, still the ability of companies that are using these state agreement acts to be potentially precluded by other less than supportive corporations in pursuing their development. Would it not be suitable to insert a clause that actually gave the minister some powers in relation to this matter, rather than just relying on companies—I think we know the companies we are talking about—which to date have been less than complimentary to one another?

Hon NORMAN MOORE: When an original state agreement act is granted, the state actually grants rights and entitlements to that company. To then arbitrarily or by ministerial decision take away some of the company's rights would be an issue that would cause a lot of concern, I would have thought. What will happen—I suspect it will probably happen with Roy Hill and FMG—is that the minister will probably speak to the two companies and spend a fair bit of time using whatever influence governments have to convince these companies to reach some agreement; bearing in mind that these companies would be loath to put the government in a situation in which a particular state agreement act could not be implemented because one company was being intransigent over land access. I would have thought these matters could be sorted out. I have just asked the advisers whether they know of any example when this has happened before, and nobody has one. We will therefore just work our way through this. But I will mention to the Minister for State Development that this issue has been raised and see whether he will consider any other means of reconciling their differences without having to legislate for it.

Clause put and passed.

Clauses 2 to 49 put and passed.

Title put and passed.

Report

Extract from *Hansard*

[COUNCIL - Thursday, 2 December 2010]

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Hon Robin Chapple; Hon Norman Moore; Hon Jon Ford; Deputy President; Hon Max Trenorden; President;
Hon Ljiljanna Ravlich; Hon Wendy Duncan; Hon Ken Travers; Deputy Chairman; Hon Dr Sally Talbot

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Norman Moore (Leader of the House)**, and passed.