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

Second Reading

Resumed from an earlier stage of the sitting.

HON NICK GOIRAN (South Metropolitan) [5.04 pm]: Prior to the interruption of the debate to allow the Leader of the House and others to take afternoon tea, we were considering the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. This is a bill that we were told earlier today, Madam Acting President, that the government considers —

The PRESIDENT: Sorry, member, but you keep demoting me!

Hon NICK GOIRAN: Thank you, Madam President.

We were told by the government earlier today that any delay was a risk, yet as we have seen, the government has been quite happy for there to be several breaks today, notwithstanding its unsubstantiated suggestions that some form of delay will be a material risk.

That said, prior to interruption for those other more pressing matters for the government in the last hour or so, I was taking members through some aspects of the second reading speech that was delivered by the Leader of the House, which refers to Mr Michael McHugh, who is a former High Court judge and is, in fact, the arbitrator at the centre of this particular dispute. The second reading speech states —

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

It is clear that this particular issue is at the heart of the dispute; that is, that it has been determined by the arbitrator that the terms of the state agreement do not permit a minister to treat a proposal as invalid. Another way of describing it, as was suggested to me earlier today in a briefing, is that the minister simply reject a proposal. If it is indeed the case that the state agreement has this systemic problem in it, the question that needs to be answered by the government is: Why not fix that problem? If the problem is that a minister is not empowered to reject a proposal or, as the words in the second reading speech say, simply treat it as invalid, why not fix that? Why take this completely over-the-top draconian-type approach when one approach that could be considered is to empower the minister to treat the proposal as invalid, and even contemplate the possibility of that power existing in some form of retrospective fashion? That seems to me to be a far more reasonable approach forward, at least with respect to the systemic problem that has been identified. But that approach does not seem to have been considered. Maybe it has, and perhaps the Leader of the House in reply will indicate whether indeed it has been considered and why that approach was not taken and say whether the types of problems that have emerged as a result of this state agreement need to be considered with respect to other state agreements. Do other state agreements have similar terms that would mean that a minister is not able to treat a proposal as invalid? If that is the case, one approach that should be considered is to fix that systemic problem with state agreements and not simply take this particular approach.

The second reading speech also goes on to talk about the consequences if claimants were to be successful in their damages claim. Specifically, the second reading speech that has been provided to us states —

> Obviously, if the claimants were to succeed in their damages claim at a level anywhere close to the amount sought, this would have dire financial consequences for the state of Western Australia and Western Australians.

That statement made in isolation is correct. If the claimants were to succeed in their damages claim at a level anywhere close to the amount sought, it would have dire financial consequences for the state of Western Australia. But is this government and its Attorney General, whom the majority of members in this house have said continues to repeatedly provide unreliable information to the Parliament, seriously suggesting that the claimants have any reasonable prospect of succeeding in their damages claim at the level sought? Is there an adviser to the government who would be willing to put in writing and sign their name under it that in their expert opinion, they seriously consider that a damages claim, which apparently the Attorney General has referred to as something in the magnitude of $30 billion, has reasonable prospects of success? I would like to see the letter. I would like to see the brave legal practitioner who would be prepared to put their name to that, because the moment they do it, they will be ridiculed by the rest of the legal fraternity. Where is the letter, Leader of the House? Is someone prepared to do that? Is the government's Attorney General, whom a majority of members in this place are concerned continues to provide unreliable information to the Parliament, prepared to put his signature under such a statement? Is he? Even if he was, we know it would be unreliable information, so perhaps do not get him to provide that certification, but perhaps get somebody else within government to provide it so that members in this place can have an assurance that the

statement the Leader of the House made in her second reading speech earlier today is full, frank and reliable information. Let us see the certification by a legal practitioner advising the government that this is the case. I very much doubt that we will see that over the course of this evening or into the early hours of the morning, however long it takes us to get through the scrutiny of this legislation. I very much doubt that we will find that, because the reality is, as has been explained to me, that with all due respect to Mr Palmer and his company, who, I have already said earlier, appear to have acted in bad faith, the suggestion that somehow had the state not breached the state agreement, he would be in a position to reap some $30 billion of reward, which he has not been able to do in the time that has elapsed since, is nonsense. There are several matters that Mr Palmer would need to undertake to be able to even profit to the tune of a few dollars. The fact that a former government rejected his proposal does not mean that the very next moment he would be in a position to reap the benefits of the proposal. Those are matters that will plainly be considered in any assessment of the quantum of the claim of the current arbitration, which, according to my notes, I was told earlier today is scheduled for a hearing on 30 November.

At the heart of this matter is that I have been told that there is a concern within government that the procedural orders that have been made by the arbitrator are in effect, and this is my word, unreasonable. They are unreasonable in the sense that, I understand, the state is expected to provide its defence and documents by the end of September. It is the view of the state, as I understand it, that that is not able to be achieved, in part because the magnitude of the documents that would be needed in mounting its defence is so large that more time is required. I am prepared to take the government at its word about that matter, in particular because that information does not come from the unreliable Attorney General, but from other officers within the state. But it seems to me that there were, again, other ways in which the government could have proceeded with this matter rather than proceeding in this fashion, which we cannot have any confidence will be effective.

That said, I note that the Leader of the House conceded in the second reading speech earlier today that the government accepts that the bill is unprecedented. If the bill is indeed unprecedented, it is appropriate it receives some form of scrutiny, particularly if it is almost certain to be subject to legal challenge. Regrettably, as several members already enunciated earlier today, there is inadequate time for that type of scrutiny to occur, and, accordingly, the entire success or failure of this approach lies squarely in the lap of those members of the cabinet who were instrumental in making this a reality. It was mentioned during the briefing to me earlier today that only a select number of cabinet ministers were aware of this matter prior to it going to cabinet, and I would be interested to know who those ministers were. I would like to know what office they currently hold in Western Australia, so we will be able to hold them to account for the outcome of this bill. I do not think it is entirely fair for the entire cabinet, every single member, to be responsible for this, because, as I understand it, they themselves were briefed at the eleventh hour. Courageous cabinet members, of course, might have bristled at what was occurring. We will not know that and we are not entitled to know the deliberations of the cabinet. One can only hope that there were at least some with a bit of ticker who may have raised some concerns about the approach taken. We will not know the answer to that, and that is fine, but I think it is appropriate for us to be informed about which members of the cabinet were advised of this course of action ahead of the others. Plainly, the Attorney General was one. One can only assume that the Premier was another. Were any others privy to this special information?

The minister with the carriage of the bill in this place went on to say that Western Australian governments from both sides of politics have always refrained from intervening in the operation of state agreements by statute. The second reading speech says —

> This bill does not represent a change to that general and longstanding policy.

Perhaps the Leader of the House in her reply to the second reading debate can explain to us how the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020 is not an intervention into the operation of a state agreement by statute. I would have thought that that is exactly what it is. If it is not that, what is it? It is particularly bizarre to suggest that this bill does not represent a change to that general and longstanding policy. Nevertheless, one hopes that the Leader of the House will provide an explanation for that at some point.

A further explanation was provided, or at least an assertion was made, in the second reading speech —

> Therefore, this bill does not create a risk to other current state agreement parties or to future investors. Other state agreement parties and proponents deal properly and appropriately with the state in the terms of their proposals.

According to whom? Is it the case that there is no risk of further intervention by the McGowan state government into state agreements as long as other parties to the agreements comply with the directions and expectations of the McGowan government? Is that what is meant by that statement? It appears that unless the McGowan government considers that something is being dealt with properly and appropriately, there is scope for this type of unprecedented action to be repeated.

The Leader of the House in concluding her second reading speech indicated that there are at least four reasons why this bill must pass urgently through the Parliament. It is not clear to me why all the reasons for which the government

says that the bill is urgent were not provided earlier, so perhaps the Leader of the House in reply could indicate the other reasons why the government says this bill must pass urgently through Parliament. In the meantime, we are aware that the government says that there are four reasons.

The first reason indicated by the government is that the arbitrator has ordered a hearing to take place commencing on 30 November 2020; that is the matter I referred to a little earlier. The government has indicated that, in its view, a significant amount of time, resource and cost will necessarily be expended by the state and, of course, the other parties, ahead of that hearing, so in the event that the bill passes, there will be additional time and costs saved. I very much doubt that that is the case. Is the government seriously suggesting that the time it would have spent in the preparation for this hearing on 30 November will not at least be met with new work it will have to undertake in defending all the other actions that have now arisen?

I understand that a number of other actions have taken place. I again thank other members who made contributions to the second reading debate because it gave me an opportunity to do a bit more research into this matter, and I looked into some of the comments made in the other place. I believe there is some New South Wales court action on foot; some other colleagues have informed me that some Queensland matters have occurred as recently as today. While the government was enjoying its break, Mr Palmer was busy dealing with matters in the Queensland courts. I think it is appropriate for the government to advise this house exactly what actions it is currently engaged in with Mr Palmer and his entities. Is there a New South Wales case? Is there a Queensland matter? I would like to know how many there are. I would also like to know how many of them exist as a consequence of the bill before us. I have a very grave concern that the sheer volume of work the government's solicitors have to carry out—whether in-house or briefed to private law firms—will consequently exceed the amount of time they would otherwise have had to spend in preparing for this matter on 30 November.

The government's second reason for the bill to be urgently passed through the Parliament is that the claims by Mr Palmer are without precedent and outside the conventions and practice of state agreements. That may well be so. Let us be charitable for a moment and assume that everything in that statement made by the Leader of the House is reliable—that Mr Palmer's claims are without precedent and outside the conventions and practice of state agreements. Why does that make this an urgent matter? Okay; he makes claims that are without precedent—so what? He makes claims that are outside the conventions and practice of state agreements—so what? That is a consequence of entering into agreements with people. It does not mean that this bill is urgent. With all due respect to the Leader of the House, I am not sure that the second reason is a genuine reason for the bill to pass on an urgent basis. The first reason that was articulated might be, but as I say, the Leader of the House will need to identify for us the other court actions that the government is currently involved in with Mr Palmer and his related entities.

The third reason the government gave for this bill to pass on an urgent basis is that if the state were to not do anything at this point and instead continue to defend the matter and await a decision from Mr McHugh, it is entirely possible, if not probable, that the decision would be handed down during the caretaker period. The question I have for the government in response to that is: What if that still happens? What happens if this bill is enacted and is then challenged and deemed to be invalid? The arbitration will continue, the hearing will occur on 30 November, and a decision will be handed down in the caretaker period—what then? What is the government's fallback position in the event that everything it has just done is entirely pointless and a decision is handed down during the caretaker period? What will it then do? Perhaps the Leader of the House can indicate that in her reply, if she has the time; otherwise, I am happy for that to be addressed during consideration of clause 1. I will simply ask her, as a courtesy, if she would indicate at the relevant time which approach she would prefer to take.

The fourth reason the government gave for this bill to pass on an urgent basis is that it says that it would be fiscally irresponsible for this claim to continue and for the state and Western Australians to be exposed to the risk, or even the possibility of a risk, of having to pay Mr Palmer and his associated entities what might be tens of billions of dollars. Again, that does not explain the urgency of the matter. It may well be the case that it is fiscally irresponsible for this claim to continue, and, indeed, I think it is unacceptable for the state to have been exposed to this level of risk. I ask why the previous Labor government entered into an agreement with Mr Palmer in first place. That is why we are here today—because it decided at the time that it would be a good idea. I believe the agreement was entered into in the early 2000s; it looks like it was around 2002, and here we are now, 18 years later, paying the price. That said, I am confident that the individuals who entered into the agreement at that time would not have done so had they known what would transpire. Nevertheless, that does not explain the urgency of the bill before us today.

Of the four reasons the government has provided, it is not apparent why any of them explain why this matter will be benefited by its passage today, as opposed to, for example, next week, which was the government's position yesterday. We will spend some time, no doubt, during Committee of the Whole House looking at each of the nine clauses of the bill. I understand that one of the pieces of information that the Attorney General has provided to the house is that he believes that he has in a sense outfoxed Mr Palmer, in what he has referred to as a complicated game of legal chess, by specifically bringing his bill into the other place at a few moments after 5.00 pm on Tuesday.

The majority of members of this house have found that the Attorney General has repeatedly provided unreliable information to the house, so whether that piece of information is reliable or unreliable remains to be seen.

Clause 7 of the bill deals with what is called the introduction time. It states —

> ***introduction time*** means the beginning of the day on which the Bill for the amending Act is introduced into the Legislative Assembly;

If the introduction time is a core element of the bill, and that is why the Attorney General is boasting that he has outfoxed Mr Palmer, why is the bill urgent, Leader of the House? If the introduction time is important to the functioning of the bill, why does it matter at what time the bill receives assent, and why does it matter at what time the Legislative Council concludes its consideration of this bill? If the all-important thing is the introduction time, and that is the great move that has outfoxed everybody else, it will not matter whether we deal with the bill on 13 August or on 14 September. I appreciate that in the meantime, those conscientious legal practitioners who otherwise have obligations under the arbitration arrangement will have to continue to develop the documents to justify and support their defence, and that they might have some enthusiasm to not have to do that work if they can avoid it. That is not unreasonable. However, the question still remains: is the introduction time a core element of this bill that will supposedly achieve the outcome that the Attorney General has suggested—that is, to outfox all the other legal practitioners involved in the process? If that is a crucial element that will achieve that objective, in one sense the government can be congratulated for that. Whether that process would be consistent with the state being a model litigant is another thing altogether, and we can discuss that when we get into Committee of the Whole House. I would ask for some explanation from the Leader of the House about how important the introduction time is, and how that intersects with the time or the date on which this bill finally passes through the Legislative Council and, in particular, receives royal assent.

In conclusion, I note that earlier today the house made a decision, which I respect, that the bill not be considered by the Standing Committee on Legislation. As members will be aware, I made remarks earlier today to distance myself entirely from the process that has been embarked upon by the government. Nevertheless, it is appropriate that members give some consideration to the findings that our legislation committee would have made on this bill. The whole purpose of going into Committee of the Whole House is for us to expedite the process that would otherwise have been undertaken by the Standing Committee on Legislation. One of the things that the Standing Committee on Legislation would have considered, as it does routinely, is what are known as the fundamental legislative scrutiny principles. Several of those principles have application to the bill before us. One question that the legislation committee would have considered is whether the bill will adversely affect any rights and liberties or impose obligations retrospectively. It will be important for the Leader of the House to advise us which elements of the bill will affect rights and liberties, which elements of the bill will impose obligations, and which elements of the bill will do so in a retrospective fashion. We will need an itemisation of each of those things. That is the type of thing the Standing Committee on Legislation would have done had there been agreement to send the bill to that committee.

Another question is whether the bill will confer immunity from proceedings or prosecutions. It appears to me that this bill does do that. Therefore, it would be important for the government to identify which provisions of the bill before us confer immunity from proceedings or prosecutions. If it does so, that will not in itself satisfy the fundamental legislative principles. In scrutinising the legislation, we need to consider whether the conferral of that immunity from proceedings or prosecutions is done with adequate justification. In addition to identifying the provisions in the bill that confer the immunity, we will need some explanation from the government about why it says that meets the test of adequate justification.

Another element of the fundamental legislative principles about which I seek a response from the government, either in the second reading reply or, alternatively, during consideration of clause 1 in Committee of the Whole House, is whether the bill will make any of the rights and liberties or obligations dependant on administrative power; and, if it does, whether that will be subject to appropriate review.

Another element that requires our consideration is the delegation of legislative power in appropriate cases, and whether the bill contains any Henry VIII clauses. I note that the Standing Committee on Uniform Legislation and Statutes Review, which is chaired by Hon Michael Mischin, recently tabled in a report a recommendation that the government should identify in its second reading speeches, or alternatively it may have said in its explanatory memoranda, whether a bill contains any Henry VIII clauses, and the justification for that. I have not seen any explanation of that sort in the materials that have been provided to us today. It will be important for the Leader of the House to identify whether there are any Henry VIII clauses in the bill. It would be preferable, in order to facilitate the consideration of this matter over the course of today, if the Leader of the House would not reply by saying there are no Henry VIII clauses, because that would take us on another course of action that will only prolong the debate. It is plain that the bill does contain Henry VIII clauses. I specifically draw the attention of the Leader of the House to clause 7 of the bill. We can give some consideration to that when we eventually get to page 64 of the bill. Nevertheless, these things warrant appropriate consideration by members over the course of the Committee of the Whole House process.

As was identified by my colleagues earlier, the opposition's position is not to oppose the legislation. However, of course we will not walk away from our fundamental duty to scrutinise the legislation, particularly legislation that has been brought on with effectively no notice, and without an opportunity for members to consider all the supplementary materials and to have appropriate consultation with affected stakeholders and the like.

HON COLIN TINCKNELL (South West) [5.39 pm]: I start my remarks with the statement that I do not want my name or that of my party associated in any way with the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020. I believe it will not be effective and generally that it will be a waste of time anyway. There are a number of principles that we hold to be inalienable to democracy. Two of those principles are that everyone is equal under the law, even those who annoy the hell out of us, and that if the government takes something from someone, they must be compensated. This legislation sets aside both of those principles. The Attorney General tells us that the reason for this legislation is that Palmer is not normal. Well, that is a really good reason to legislate to take away someone's rights—not! I cannot see how we can consciously do this. I really think we are making a big mistake and that is why earlier in the piece we were looking to send this bill to a committee to have more time to consider it.

One of the most dangerous aspects of the Labor government's legislation is that it seeks to obliterated what was clearly a very bad decision all those years ago by a former Labor government. We have to wonder for whose benefit we are seeking to rewrite history with this legislation. In 2002, One Nation members voted against the state agreement because they saw flaws in the legislation. It was the major parties that passed the legislation. At that stage, One Nation members, along with the Greens, voted for the bill to go to a committee, but they were defeated. Generally, One Nation is in favour of state agreements but we also understand that state agreements need to be examined thoroughly, because this example clearly shows that mistakes are made. Later on, a Liberal Premier highlighted how weak this state agreement was and pointed out that it was flimsy. Of course, he has been lambasted for that in the paper as well. He was really just pointing out how weak this state agreement was and why it should never have happened in the first place. I am proud of the fact that my colleagues back in those days—2002 was a long time ago—18 years ago to the day, made that speech in Parliament. It is quite ironic, really, when I think about it.

I need a few questions answered today to understand a little more about what is going on here, because we have not had time to scrutinise the bill. I have some questions to ask in the Committee of the Whole stage, but where did the $30 billion figure come from? I keep hearing people say $30 billion, then I hear it is $35 billion and then $40 billion. I also heard it may be only $1 billion. Was it chosen because it is an extreme figure that would scare the bejesus out of the people of Western Australian? I imagine so. I feel the $30 billion figure was chosen to create fear amongst the people of WA. The headlines are putting the emotional argument and, like I said, creating fear and clouding people's judgement. The press has bought the same argument, especially *The West Australian*. It was very disappointing to see its *NT News*–style headline today. Our daily paper really has become an absolute rag and it is embarrassing to the state.

This action is pretty similar to the Bell Group litigation five years ago. That was challenged in the High Court. We do not know yet what the ultimate cost will be for this action. That is the issue. We have been poking a stick at this bear and we have really upset him, and we are making it worse with our actions. To make someone public enemy number one and for the media to buy that rubbish is pathetic. This is playing politics to the extreme. Earlier tonight I heard someone say that people are not playing politics. That is rubbish. Clive Palmer has registered arbitration in Queensland. What will the government do now? I really want to hear from the government on that.

The president of the Law Society of WA has acknowledged how unprecedented this action is. A dispute needs to be settled by fair process regardless of who it is with. That is even more important when one of the parties is the government. Government needs to show leadership, not change the rules when it gets something wrong. If we need to fix up state agreements, let us fix them up, but this is a knee-jerk reaction. We have not been given enough time to scrutinise the bill and it should have gone to a committee. The law of natural justice must be applied evenly and fairly. Where has it gone on this one? No doubt Mr Palmer is exploiting the litigation and the legal system to his own needs in a way that is not moral or in good faith. I acknowledge that. But if we take Palmer out of the picture, we are setting a bad precedent. Mr Palmer has also shown that he is willing to horse trade and that he uses the law to try to pressure the government to do what he wants. We have seen that. We all know he is a lamentable character, but I think the government's handling of this situation has been pathetic. This encroaches on the basic principle of the separation of powers, which is one of the most fundamental principles in our society. Everyone is equal under the law, but the legislation targets one person. I see a problem with that, no matter who it is. But it is not a problem according to this government; it is pushing this legislation because of who it is.

WA One Nation will not support this legislation. Let us look at some of the things we talked about earlier. The bill is fundamentally undemocratic and will set a bad precedent that facilitates corruption. It is retrospective legislation that will remove the rights of an individual. A former Labor government signed a legally binding agreement, but 18 years later the current government wants to legislate it away. There are so many things wrong with this bill and I think that is part of the reason it is being pushed through Parliament. There has been no respect from the lower house towards the upper house and our job to scrutinise legislation and make informed decisions. Making Council

members sit extra hours to push through legislation is a tactic I have got used to over the last three and a half years of this government, and it does not impress me much. It shows no respect for this house.

All we can do is let the government know when we think it has got things wrong and speak clearly and precisely about that. I say to this government that if it gets this wrong, there is a good chance that it will be poking the bear even more. We do not know what the High Court will come out with. Will the government make things worse by pushing this through? From my briefing today, with all respect to the people who gave us the briefing—they were very kind and quickly provided us with a briefing at the last minute—they are not 100 per cent sure; they are struggling with whether this will fall bad. For the sake of Clayton Utz, the other people involved in this and the state, I hope the government has got this right. I do not believe it has. That is why One Nation will not support this bill. I will ask a lot of questions during the Committee of the Whole.

I do not have any more to say. As I said, I will have more questions during the committee stage. I need answers to a lot of questions. I think the government has got it wrong and I think this house has been, unfortunately, ineffective in allowing us the time to make an informed decision. I think this bill is being rushed and that mistakes will be made.

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.50 pm] — in reply: If I may, by way of information for the house, I propose to start my second reading reply now, and then at six o'clock I will seek leave to continue my remarks at a later stage. Somebody else will adjourn the debate and I will ask the President to leave the chair until the ringing of the bells. I anticipate that will be until about seven o'clock to allow members to have a dinner break.

I thank all members for their contributions and acknowledge, as I did earlier in my second reading speech, that this is an extraordinary resolution of an extraordinary problem. We are faced with an extreme problem and are applying an extreme measure to resolve it. I acknowledge that what we have asked the house to do today is extraordinary and unprecedented. I thank the members of the house who made the decisions that they made earlier today.

I thank the Leader of the Opposition for his contribution and for the opposition's support of this important Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill. The honourable member raised three essential matters. He asked whether the bill will create a precedent that will concern other state agreement proponents or give rise to sovereign risks and how it is proposed that the bill will actually provide a positive outcome. The honourable member raised some concerns around the structure of the state agreement. He then asked a specific question about the exclusion of the FOI act, so I will go through each of those.

In its operation, the bill is confined to the Mineralogy state agreement. It seeks to prevent damages claims only under the Mineralogy state agreement. It is confined to that agreement because it is the only state agreement that has resulted in such claims. No other proponent under a state agreement has sought to arbitrate or litigate disputes or issues with the state. That is likely to be why the WA Chamber of Minerals and Energy made public comments yesterday that Mr Palmer's claim that the government's legislation would deter investment in the state was far-fetched and uneducated; that is, the WA mining lobby expressed the view publicly that the bill does not give rise to sovereign risk. It does not change any rules for state agreements generally, although I note that in some of the contributions we have heard, a question was posed about whether that would be a better solution.

The bill does not change any rules for state agreements generally because other proponents of state agreements have worked and continue to work now cooperatively with the state in the advancement of their projects. With respect to how this bill will provide a positive outcome, it is designed to provide the best possible protection against Mr Palmer's claims against the state. The honourable member referred also to "guarantee"—I think he used that word. As he acknowledged, nobody can guarantee any particular outcome. However, acting on the best advice available to us and having that advice tested, the view taken by government on that advice is that this bill in its construction will provide the best possible protections in the circumstances we find ourselves in.

Independent law firm Clayton Utz considered the actions that Mr Palmer might take. I am advised that all members who participated in the briefings have been afforded the opportunity to hear this advice. The bill has been scrutinised to ensure that it covers off against every conceivable type of action that Mr Palmer may bring against the state or its officers. The bill has been drafted in such a manner as to withstand a constitutional attack. It is a very different beast from the Bell legislation, which a number of members have referred to. For example, structurally, in the unlikely event that a provision is struck out, it will not invalidate the rest of the bill. Proposed section 8(4) and (5) provides express protections in relation to any invalidity findings. With respect to the structure of the state agreement and concerns raised by Hon Colin Barnett in 2002, this is an unusual state agreement because it provides for both proponents and co-proponents, but this is simply not the reason for or cause of Mr Palmer's claims.

In 2002, the government was quite up-front about the fact that the co-proponents were all wholly owned subsidiaries of Mineralogy and that the co-proponent companies were vehicles for other entrants into a project. More importantly, nothing about the structure of this state agreement in relation to the consideration of project proposals has given

rise to Mineralogy's claim. The framework is standard and has been adopted in many state agreements ratified by both Labor and Liberal governments.

The claim of approximately $30 billion relates to decisions made in 2012 and 2014 about proposals made under the state agreement by Mineralogy and its subsidiary International Minerals, which is also its co-proponent under the state agreement. I will get to the last contribution that we heard from Hon Colin Tincknell in due course, but the notion that that $30 billion figure has been manufactured by the government for the purposes of creating fear is just not factual—it is just not factual.

If Mineralogy had been the sole proponent in the state agreement and made the proposal alone, it simply would then have brought this claim alone rather than with its subsidiary. It really makes no difference. The honourable member expressed some concern about the provisions in the bill that exclude the application of the Freedom of Information Act. I want to make a couple of points about that and I have some information that I think I can table. Of course, the reason for the bill is that the state is trying to prevent litigation and claims for damages. That is our objective. We would not be opening the state to processes that facilitate access to documents that would feed the capacity, if you like, of Mr Palmer and the Mineralogy parties in those claims. Why would we do that? Secondly, the exemption from FOI is not unprecedented. There are many examples of whole agencies and types of documents being exempt under the FOI act. The FOI act itself lists over 20 exempt agencies. Most directly comparable was section 77 of the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015. It made the authority created under that act, which had the important task of distributing litigation funds, exempt from the FOI act. That act, of course, was passed when the previous Liberal government was in power. The Freedom of Information Act itself is not absolute, as many members will be aware. In fact, most of the requests for information that are exempt from FOI under this act would be exempt in any event because they would go to commercial, confidential and legal professional privilege, for example. Modification of freedom of information laws is usually done in one of four ways.

[Leave granted for the member's speech to be continued at a later stage of the sitting.]

Debate adjourned, on motion by **Hon Pierre Yang**.

Hon SUE ELLERY: Madam President, may I ask that you leave the chair until the ringing of the bells?

The PRESIDENT: Before I do that, I advise members that if you wish to have a meal during this break, you can go to the staff cafeteria. I understand that takeaway meals will be available for staff and members there. I have been asked to leave the chair and will do so until the ringing of the bells.

Sitting suspended from 6.00 to 7.00 pm