

**BHP BILLITON (TERMINATION OF AGREEMENTS) AGREEMENT BILL 2005**

*Second Reading*

Resumed from 12 April.

**HON KEN BASTON (Mining and Pastoral)** [11.47 am]: This bill provides for the termination of an agreement made on 7 October 1952 and subsequently varied, and an agreement made on 18 November 1960 and subsequently varied, between the state and BHP Billiton Ltd under the former name of Broken Hill Pty Ltd. It was interesting for me to go back through those bills. The Broken Hill Proprietary Steel Industry Agreement Act 1952 was of particular interest. It was set up with a desire that an integrated iron and steel industry should be established. That is where we are still going today. It was going to use Collie coal for the production of pig-iron on the site. The company also agreed with the state to establish and maintain a steel rolling mill. The iron ore for that mill was to come from Cockatoo and Koolan Islands, situated in Yampi Sound, near Derby. In return, the government would sell to the company an area of land for the erection of the steel rolling mill and for other industrial purposes such as wharves and shipping facilities.

In return, the government was to provide infrastructure to the company, such as adequate power, water, rail and road services. Those services were to come to the boundary of the land that had been sold to the company by the government. The steel mill would take four years to build and was to be completed in five years. The wharf that was to be constructed by the company was approximately 600 feet long, or approximately 190 metres in today's terms. The wharf was to be for the exclusive use of the company or any of its shipping companies. The agreement states that the company was to pay to the commissioner a sum equal to 1s and 4p per tonne by weight for inward cargoes. In today's terms that equates to about 12c a tonne.

The agreement states also that during the term of the mineral lease - the subject of the agreement - on the islands, the company will not export any iron ore from Australia; however, the company can sell iron ore to any other persons for use in the Commonwealth of Australia. That meant that the company could mine the iron ore but not export it. The iron ore was to be used predominantly for a steel mill and for value-adding in Western Australia. The agreement states that the potable water that was to be supplied by the government was to be no more than four million gallons a week. The bore water that was supplied was at a cost of 6p per 1 000 gallons; or, in today's terms, 5c per 4 500 litres. The government was also to provide a bitumen surface road and railway to the boundary of the site. That was to be fixed at a reasonable rate.

The Broken Hill Proprietary Steel Industry Agreement Act also contains a labour clause; namely, that every six horsepower of machinery installed on the islands and used for the agreement shall be counted as one man. I thought it would be interesting to drill down and find out the size of the largest Haulpak that Westrac can supply today. The largest Haulpak that is supplied by Westrac has an operating weight of 623 690 kilograms, a target payload of 345 tonnes and a horsepower of 3 370. From my calculations, if that labour clause were applied today, each of those trucks would be equivalent to about 560 people! I thought that was an interesting inclusion in a state agreement.

The royalty on the iron ore was 6p a tonne. That is equivalent to 5c a tonne today. The land sold to the company at the time to build the steel rolling mill was 600 acres, or approximately 270 hectares in today's terms.

On 27 August 2001 negotiations took place between the state and BHP to approve the purchase of the BHP land at Kwinana by LandCorp and the Fremantle Port Authority. Ironically, some of that land is now used by HIs melt Corporation Pty Ltd, a Rio Tinto company. The HIs melt process is a process of value-adding to the fines of iron ore. Hon Norman Moore has asked questions in this house about this agreement on five occasions. I have trawled through those questions, and it gave me some confidence that many of the questions that we would have asked today in committee have already been asked and answered.

The HIs melt process is very interesting. In 1982, Rio Tinto, in a joint venture with CRA and the German firm Klockner Werke, started looking at a process that could be used to value-add in this state. It took a number of years to bring that project to fruition. In 1991, as the next phase of development, a HIs melt research and development facility was constructed at Kwinana. That facility had a design capacity of 100 000 tonnes. In 1994, Midrex Corporation withdrew from the joint venture, and CRA - Rio Tinto - continued with the development of the process as we know it today.

In 2002 a joint venture was formed to construct and operate an 800 000 tonne HIs melt plant in Kwinana. The joint venture partners were Rio Tinto, 60 per cent; Nucor Corporation, 25 per cent; Mitsubishi Corporation, 10 per cent; and Shougang Corporation, five per cent. The construction of that plant commenced in January 2003. The cold commissioning of the six-metre plant commenced in the second half of 2004. The hot commissioning of the HIs melt Kwinana joint venture plant commenced in 2005.

An article in *The Australian* of 10 November 2006 titled "Rio: Kwinanas may go bananas" states in part -

Commercialising Australia's biggest research and development project could lead to five clones of the Kwinana HIsmelt plant operating in Asia within 10 years.

...

HIsmelt is a direct iron-making process in which iron ore fines and non-coking coals are injected directly into a molten iron bath to produce molten pig iron.

It is being marketed around the world as a potential replacement for high-energy blast furnaces -

That was, of course, what BHP had at the time -

or, in pellet form, as direct feed for electric arc furnaces.

The next comment is very interesting -

More than \$1 billion has been spent on the investigation to the commercial phase, with \$125 million being provided by the commonwealth and more than \$40 million by the West Australian Government, making HIsmelt one of the most expensive technologies yet to be developed in Australia.

The article goes on to refer to some comments by Rio Tinto iron ore division chief executive Sam Walsh -

Mr Walsh said there had been a lot of interest in HIsmelt, with virtually every major steel maker in the world visiting the Kwinana plant, as well as the President and Premier of China, which showed that people could see the promise and opportunity that HIsmelt offered.

Rio has been negotiating to sell the technology to plants in China, Europe, North America and India, particularly those considering expansions.

It is a little disappointing that we have developed such a high technology as the HIsmelt process, admittedly with the help of those other partners, and certainly with the help of both the federal government and the state government, only to have those plants built around the world in countries to which I presume we will be selling our iron ore. I presume also, from a press statement that I have seen, that both the federal government and the state government will be recouping the money that they have put into this investment so that they get some return on capital.

I commend the joint venture companies on the HIsmelt process. I hope that in the future that process will be used for iron ore, but in Australia.

Of course, Rio Tinto had an incentive. Firstly, it had an obligation under its state agreement act for the iron ore it has been mining in the north of the state since 1960. Secondly, it had a commercial incentive to find a use for the iron ore fines and lower grade iron ores, so that it could market them. There is no reason not to market them from the product that comes out of that HIsmelt process.

I will comment on the land that was sold - some 270 hectares from memory. In one of the speeches in *Hansard* I read that the land was sold for \$24.6 million, but it included a discount of \$11 million for remedying the contamination of the site over the long period that the steel mill operated. I presume that that \$11 million is adequate; I am sure that the minister will be able to answer that in his response.

BHP concerns me a little, in that it developed the hot briquetted iron plant at Boodarie, which cost billions of dollars and now stands as a monument for visitors to Port Hedland. That plant employed some 500 people. It was closed down after some workers lost their lives in an accident, and stands there in mothballs today. I believe that it will cost millions of dollars to cut it up and sell it for scrap iron. Does that let BHP off the hook with regard to the value-adding component? Its original operation was a steel mill in Kwinana. It tried to value add in its plant at Boodarie; does that mean that it does not have to continue to try in the future? I could not find an answer to this in other state agreements.

Basically, schedule 1 of the explanatory memorandum sets out the intent of this bill. It states that the agreement -

- provides that the *Broken Hill Proprietary Steel Industry Agreement Act 1952* as varied . . . and the *Broken Hill Proprietary Company's Integrated Steel Works Agreement Act 1960* as varied . . . are terminated on and from the date that the Bill comes into operation as an Act;
- provides for certain mineral leases set out in the Schedule to the 1952 Agreement to continue in full force;

Of course, those mineral leases are now mined by Aztec Resources on Koolan Island, and by Portman Mining at Koolyanobbing. They, of course, will remain in force. The schedule further states that the agreement -

- grants a full unconditional release of BHPB's and BHPM's obligations under the above two State Agreements, including obligations of BHP Steel -

That is the backdating -

(AIS) Pty. Ltd. . . . under the State Agreements assumed by BHPM under a Deed of Covenant dated 31 January 2002;

- grants a full unconditional release of BHPB's and BHPM's obligations under former and existing Western Australian legislation to the extent that such obligations were excluded from applying to the activities of BHPB or BHPM under the terms of the 1952 Agreement and the 1960 Agreement; and
- confirms the grant of similar releases of AIS' obligations . . .

That basically states that the land has been sold back to them, and they will have no further responsibilities whatsoever. We will obviously support the agreement. If the Leader of the House will respond to the second reading debate, we do not believe it will be necessary to go to a committee stage.

**HON PAUL LLEWELLYN (South West)** [12.05 pm]: On a number of occasions the Greens (WA) have placed on record its concerns about the creation of agreement acts. Nevertheless, this particular act has been successful in driving investment and the creation of an industry that has basically run its course, certainly in terms of these two agreements. I understand that the bill seeks ratification for dissolving the two agreements made in 1952 and 1960. The reason given for the termination of these agreements is that they have essentially ceased and it is government policy to remove spent legislation. The Greens have no objection to removing spent legislation. However, before supporting the bill the Greens need some assurance that BHP is not being released from all the obligations that it should have met under the agreements. For example, has a full audit been undertaken of the obligations that BHP entered into, and where is that audit? On the face of it, the bill fully releases BHP from any further obligations. The Greens have a number of questions for the government. If an audit has been done, where has it been documented? I understand that the termination agreement provides for a full release of the parties from the agreements, unfulfilled or otherwise, and these obligations are set out in the relevant agreements.

The Department of Industry and Resources has undertaken a review of the agreement and considers that the company is not being released from any material obligations under the agreement. What material obligations are outstanding, and where is the information documented? My office asked this question in an e-mail to the office of the Minister for State Development in July, but as yet has not received a comprehensive response. That is a long time ago. That e-mail was sent after the date on which these agreements were intended to cease - 30 June 2005 - and I understand that that date has been extended to 31 December 2006. One would have thought that that was ample time to furnish us with the details. If we are led to believe that the department has fulfilled all its responsibilities in respect of this bill, we would expect there to be an audit on the obligations.

I also want some clarification. I will read from some notes that have been sitting on my desk for some time. I understand that the termination agreement has been extended to 31 December 2006. The termination agreement provides full release to parties to the agreement from all obligations, unfulfilled or otherwise. These obligations are set out in the relevant agreement. The Department of Industry and Resources has undertaken a review of the agreement and considers that the company is not being released from material obligations under the agreement. What does that mean? We need to clarify what that means. That information has not been provided to my office to date. Clearly, the agreements have been terminated and all the activities under the agreements ceased some time ago.

The Greens do not feel comfortable supporting this legislation until we have been assured that there has been a full audit on all the obligations related to this agreement, that there are no outstanding environmental obligations or obligations to remove the structures that Hon Ken Baston spoke about, that there are no outstanding obligations to make good any environmental damage that might have impacted on the operation of the industry and that there is no environmental, social or economic legacy that Western Australia will have to foot the bill for as a result of fully terminating this agreement.

Although the two primary agreements were entered into in 1952 and 1960, one would have thought that the procedure for terminating the agreements would have involved a much more open process, a public process that basically placed an audit on the stream of benefits that the company gained as a result of entering into the agreement, the stream of impacts and legacies that might have resulted from that and the stream of obligations that arise as a result of entering into the agreement and gaining benefits from operating in Western Australia with the support of an agreement with the state government.

There are some questions that we need to ask the minister in the committee stage about how the bill will play itself out. We need some answers on the questions that I have asked.

**HON KIM CHANCE (Agricultural - Leader of the House)** [12.12 pm]: I thank honourable members for dealing with what is a very simple bill. As was stated in the second reading speech, the BHP Billiton (Termination of Agreements) Agreement Bill 2005 merely ratifies an agreement already made between the state and BHP Billiton Ltd and BHP Billiton Minerals Pty Ltd to terminate agreements made respectively in 1952 and 1960. The 1952 agreement provided for the construction of a steel rolling mill at Kwinana and also BHP's iron ore operations at Cockatoo Island. BHP ceased mining, as Hon Ken Baston said, on Cockatoo Island in 1984. The lease was subsequently subleased to Swan Portland Cement. Under the 1960 agreement, BHP undertook operations at Koolyanobbing and ceased mining there after the closure of the blast furnace in 1983 or 1984. The downstream processing obligations that were part of the 1952 and 1960 agreements have been met through the construction of the steel rolling mill and the Kwinana blast furnace.

Hon Ken Baston asked a question about the land. I understand that in August 2001 cabinet approved the purchase of BHP land at Kwinana by both LandCorp and the Fremantle Port Authority. The Fremantle Port Authority purchased the BHP Billiton bulk handling business. That secured the future use of the strategic heavy industrial land at Kwinana and facilitated, in turn, the establishment of the pig-iron plant, which Hon Ken Baston referred to, by HISMelt Corporation Pty Ltd.

Hon Paul Llewellyn asked whether any material obligations binding upon BHP Billiton or BHP Billiton Minerals Pty Ltd have been released under the agreements. My advice is that the agreements have been terminated and all the activities under the agreements ceased some considerable time ago. Basically they are the obligations that I have already enumerated. The release in the termination agreement is provided to maintain the legitimacy of historic activities undertaken by the companies with the authority of the state agreements, notwithstanding that those state agreements have since been terminated. I do not think there is any question arising about outstanding material obligations and the extent to which the agreements and the legislation we are dealing with now ratifies those agreements passing over any material obligations that would otherwise have been outstanding. However, the Department of Industry and Resources has undertaken a review of the Broken Hill Proprietary Steel Industry Agreement Act 1952 and the Broken Hill Proprietary Company's Integrated Steel Works Agreement Act 1960. It considers that the company is not being released from material obligations under those agreements. The department's review clearly identified only a couple of instances when the company's obligations have not been fulfilled. The 1952 agreement contained a provision for the company to carry out investigations into the use of Collie coal in primary furnaces for the production of pig-iron. The 1960 agreement contained a provision for BHP to carry out investigations into the feasibility of establishing steelmaking facilities within the state. Given the closure of the steel rolling mill in 1995 and the blast furnace in the early 1980s, and that the primary activities under the agreements had ceased at least 10 to 25 years ago respectively, it was considered inappropriate and entirely unnecessary to continue to require BHP to carry out investigations that were specifically related to those processing activities enumerated in the agreements. I am grateful that the Department of Industry and Resources has been back through those agreements to try to satisfy the issues that have been quite properly raised by Hon Paul Llewellyn. We can be confident that there are no outstanding obligations of a material nature arising from the agreements.

I thank both honourable members who have contributed to the debate for their support and diligence in raising these matters.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

*Third Reading*

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