IRON ORE (FMG CHICHESTER PTY LTD) AGREEMENT BILL 2006

Second Reading

Resumed from 19 September.

HON KIM CHANCE (Agricultural - Leader of the House) [8.13 pm]: I thank all honourable members who have made a contribution to the debate. While some were more supportive than others, some could hardly be described as supportive at all. Nonetheless, the contributions to the debate were of a uniformly high quality. I thank honourable members for the thought and depth they applied to the consideration of the Iron Ore (FMG Chichester Pty Ltd) Agreement Bill 2006, particularly given that the bill has been before the house for only a very short time.

Hon Ken Baston has carriage of this bill for the opposition. I thought he gave a very good overview of the fundamentals of the bill, which is his role. He made some very interesting points, particularly about the mining system that is contemplated for Cloud Break and Christmas Creek. That is certainly something that I was not aware of. For those members who did not hear his speech, the system is more akin to what we are used to in coalmining technology rather than iron ore technology. It requires very little blasting. The result is that it is more selective. It can deliver higher grades and can give operators a much greater degree of flexibility about the grades that they are delivering and about the grades that their marketers are able to offer. That may well give this particular operation a distinct market advantage.

Hon Ken Baston also referred to some of the complications involved in the infrastructure arrangements. Those are manifold, of course. The more mines that come on stream, the more complicated these infrastructure arrangements will become; they will certainly be much more complex than in the 1960s when we had a clean sheet to draw on.

Hon Ken Baston concentrated on the somewhat unusual residential arrangements for the mine. He made a particular point about the motel that the company is constructing in South Hedland. It will be a massive hotel with 455 rooms. It reminded me of my early days in the Pilbara, when we lived in a standard donga with four rooms, each measuring 10 feet by 10 feet, and each room housed four men. That meant that each 40 x 10 donga housed 16 men.

Hon Robyn McSweeney: It's not worth thinking about.

Hon KIM CHANCE: It was even worse to live in. I later moved out of that camp to a Bell Brothers camp. That was camp 2, Dampier. We moved out to what is now known as the Dampier Salt site, where we had the unbridled luxury of only two people to a room, which was rather nice.

Hon Ken Baston also referred to the more sophisticated elements of the agreement. He referred to the obligation on FMG Chichester to produce value-added material in the form of metallised agglomerates. He referred to the community development plan but raised the point - perhaps he might want to delve into this a little deeper in the committee stage - that each element of the community development plan seems to have an escape clause it. I was interested in that. I hope we have some discussion on that.

Hon Ken Baston also endorsed the commitment to a regionally based work force. He mentioned that it was disconcerting that the agreement seems to be about engendering confidence amongst investors. I think that point was also picked up by the Leader of the Opposition. Of course agreements are about engendering confidence amongst investors. In the history of agreement acts in modern times in Western Australia - dating back to the 1960s - it has been very clear that they are in significant part, but not wholly, about giving foreign investors, particularly Asian investors, confidence in the integrity of the project. That remains the case today. I have had some personal experience of that in the forestry industry, in which a number of resource customers have state agreement acts and some of their competitors do not. Those competitors who do not have state agreement acts sometimes come to me and say they would like one. We say that it is unlikely they will get one because - this will give Hon Paul Llewellyn some confidence - some of the existing state agreement acts are causing me some pain at the moment. I then ask them why they would want one, because they are established, they are operating and they are funded, and they obviously will not need to go to Asia to raise capital, and they say no, but they need to go to Asia to get customers. They say that when Asian customers look at their resource security arrangements and see that some of their competitors have state agreement acts and they have only a contract with government, they know very well that in the event of some calamity that might somehow restrict the absolute availability of the resource, a government is more likely to breach a contract than it is to breach it own law.

Hon Paul Llewellyn: That actually demonstrates quite clearly that they are anticompetitive.

Hon KIM CHANCE: I do not debate, and I do not think the government debates, that their nature is anticompetitive. In fact, I will go into that matter a little later. Very clearly, at least foreign investors and, to the

extent that I have illustrated, foreign customers regard a resource secured by a state agreement act as a more valuable form of tenure than a resource secured merely by a contract or, in this instance, a mining lease.

Hon Ken Baston wished the company and, presumably, the government luck in the fulfilment of the value-adding components. I know that he did not say that with his tongue in his cheek. We all wish the company luck. We all know it is a difficult thing to do. The Pilbara in particular has not been a great success story in value adding. More value adding was done when I was in the Pilbara in the late 1960s and very early 1970s than is done now, because at least in Dampier the pellet mill was in operation.

Hon Norman Moore: There were a few problems with that.

Hon KIM CHANCE: Yes. As I recall, it was about 50 metres from my bed. However, Hon Ken Baston has indicated the opposition's support for the agreement bill.

Hon Murray Criddle similarly supported the bill and saluted the company's enterprise and commitment. He was particularly supportive of the requirements for training for a regional work force. He liked the idea of local ratings, and I will say more about that later. He also supported the concept of a community development plan and the commitment to community services. He made the point that the secondary processing obligations are an important component. He said that it seems a pity that we have not done all that well in our value-adding processes in this commodity and, indeed, other commodities. He did not confine that comment only to iron ore or minerals, but referred to a wide range of commodities; indeed, he mentioned wool processing. He also introduced an interesting fact that there are parallels between Fortescue Metals Group Ltd and some of the projects in the mid-west. He noted the high cost of infrastructure development and the need for the company to get cash flow going. That issue was also picked up from a different aspect by Hon Paul Llewellyn.

Hon Nigel Hallett took an interesting approach to the debate. He, like other members, welcomed the fact that this is a home-grown company and that it provides a third force in iron ore production in Western Australia. However, he made a lot of comments about third party access provisions. He noted that the open access to facilities in this agreement is commendable, but he was then very critical of the third party access provisions of earlier agreement acts. He attributed the denial of that access to a particular position of the state government. The Gallop government and the Carpenter government have been very strong on the issue of third party access. The fact is that if the agreement acts that are in existence, many of which were signed a number of years ago, do not make provision for third party access, it is a very difficult thing for the government of the day, even in renegotiations, to open up the issue of third party access again. I think Hon Nigel Hallett has confused the state government's position with that of BHP Billiton. BHP Billiton took a particular position in the interests of its shareholders, and I am not critical of it. However, it was BHP Billiton's position, not the state government's position, that prevented things from happening that could have opened up more third party access.

Hon Norman Moore: What is the state government's position?

Hon KIM CHANCE: The state government is very supportive of third party access, and I believe that its position is accurately portrayed in this agreement, which Hon Nigel Hallett recognised is a commendable and highly supportable position.

Hon Norman Moore: Perhaps the media just misrepresented your position, because that is not how I read what has been reported about your position on that matter.

Hon KIM CHANCE: I think, keeping within the standing orders relating to this debate, our position is best encapsulated by what is in this agreement. If every state agreement act that has ever been signed in Western Australia, or even only those that apply to the iron ore industry, had the same open access provisions that are being made available in this agreement, we would have a much more efficient and effective iron ore industry.

Hon Norman Moore: I don't know about that. Both the Hamersley Iron and Mt Newman agreements have third party access to the rail system and to the ports.

The DEPUTY PRESIDENT (Hon Ken Travers): Order, members! This is not time for debate; it is time for the Leader of the Opposition to give his response to the second reading debate. I am sure that there will be more flexibility during the committee stage.

Hon KIM CHANCE: Similarly, Hon Nigel Hallett made the point that earlier state agreements were not as well structured as the agreement that has been negotiated in this instance by the Carpenter government with Fortescue, and that the towns that were established earlier in the Pilbara would have greatly benefited from similar arrangements. I can only support him in that view. He also commented on planning matters and housing costs, and he suggested that the government should displace the private sector from the housing market. That is an interesting point.

Hon Paul Llewellyn asked why we cannot get downstream processing going. That is a terrific question.

Hon Paul Llewellyn: You can answer it.

Hon KIM CHANCE: I cannot possibly answer that in the time permitted, but it is a terrific question. It is an entirely fair question and it deserves an answer. It is not a question that only the government should be asked; it is a question that the whole state needs to ask itself. Industry also needs to ask itself that question. I have given a great deal of thought to how it applies to the industries that come under my portfolio, and possibly the same applies to the mineral industry; I do not know. My industries are no less than mining in the way in which they add value to their commodities. In Western Australia we add value to only about eight per cent of our agricultural production. The figure in Victoria is more than 30 per cent, and that is calculated by volume, not by value. If those figures were calculated by value, there would be a much greater disparity. Certainly we have different industries, but the Victorian government, with very significant support from the commonwealth government through Food Science Australia, has been able to radically reform Victoria's agriculture through that process. If nothing else, that demonstrates that value adding is achievable, and can be performed very effectively in Australia, at least in agriculture but possibly also in mineral development.

The member asked another relevant question: why are we rushing to get these projects operational when those resources have been there for millennia? I will have a go at answering that question, but it will be a fairly superficial and possibly uninformed answer. It is my view that there is a self-limiting factor in the market economy. The cost of developing a project in a boom will ultimately limit a resource developer's capacity to meet the market at a competitive price. That is simply the market providing an answer. The market window that we have currently is finite. For the project to work, as Hon Murray Criddle said, it must achieve cash flow. The scope and the scale of the resources available to us, particularly in iron ore, is absolutely stupendous; it is mind-boggling. I can recall that within party forums I opposed the redevelopment of Koolyanobbing. I did not oppose it outside those party forums, but I think I am allowed to say that now because it was a long time ago. I opposed the redevelopment of Koolyanobbing on the basis that it was the last significant iron ore deposit in the south of the state. I view Koolyanobbing as the industrial future for the wheatbelt-goldfields region, which is a region not noted for its employment opportunities. I thought that at some time in the future it would be a place from which employment would be generated. I certainly did not think that that would occur in my lifetime; I was thinking far into the future. I did not see it as a particularly competitive resource compared with the Pilbara. It was relatively low-grade iron ore and had high contaminants, particularly phosphate.

Hon Norman Moore: Phosphorus.

Hon KIM CHANCE: Phosphorus - it is similar. It could have been phosphine. The conditions that existed then are quite different from current conditions, despite the fact that a lot of iron ore has been mined in Koolyanobbing. The known reserves of iron ore in the south of the state are larger now than when the redevelopment started. We have gained a better understanding of that ore body, and new ore bodies have been discovered in the south of the state. The vision I had of the finiteness of the iron ore reserves in the south of the state was probably not accurate.

Hon Paul Llewellyn: The point I was making is that by developing these projects one on top of the other, we are overheating the economy. It might be that it is a very narrow window.

Hon KIM CHANCE: I used the world "finite", but it might well be narrow also. I took the member's point, which is a valid point of view. I believe it is overweighed by other considerations, but it is a valid point of view. We are overheating the economy. An additional resource project will put even more pressure on our skills shortages and will create greater difficulties. However, the government has formed the view that the benefits that derive from a project of this nature outweigh the disadvantages.

Hon Paul Llewellyn: One of our points is that no cost-benefit analysis has been done. I know we would all get a warm feeling if we could just take more, but no cost-benefit analysis was done.

Hon KIM CHANCE: I need to move on.

The DEPUTY PRESIDENT (Hon Ken Travers): I remind members that a back-and-forth debate is better done in the committee stage.

Hon KIM CHANCE: Hon Paul Llewellyn also drew the conclusion that the one-off stamp duty concessions diminish the ongoing revenue stream. They do not. The stamp duty concessions are finite. Hon Paul Llewellyn said that the stamp duty concession would amount to $20 million. I believe that figure was supplied to him in a briefing. However, it was provided in a hypothetical context and assumed a number of things. The stamp duty concessions were accurately described in the second reading speech. They are finite within two years. However, they apply also to stamp duty that would otherwise have arisen in the event of a refinancing of the whole project. I think it was in that context that the figure of $20 million was used. They are time limited and the royalties, of course, are ongoing while the mining continues. The member claimed also that state agreement

acts are the mark of a banana republic because they can set aside the provisions of other legislation. I think he was getting passionate at that stage. They do set aside the provisions of other legislation. I will not give the member in a nutshell a description of what I think is a state agreement act, but that is its effect and that is why they are so effective. State agreement acts are commonly used to provide security for resource proponents. They enable the companies to raise the massive capital that such developments require. State agreements are not confined to mineral resource companies; indeed, as I have indicated, they exist in other industries, including the timber industry. The member also asked where else in the world state agreement acts are entered into. I was hoping to be able to give the member an answer to that, but I am not able to at this stage.

Hon Paul Llewellyn: In Queensland.

Hon KIM CHANCE: I will avoid quipping on that comment. Other countries have similar legislative arrangements. Indonesia is an example of a country that has provisions in documents that are legally similar to state agreement acts, but are not described as state agreement acts. They are usually described as differential taxation arrangements. There are a number of countries in which a range of legislation can enable existing statutes to be set aside in favour of the legal instrument, but that legal instrument is more commonly a legal contract rather than a contract that is entered into the legislature. Often it is agreed to by direct contract and direct partnership with the ruler of the nation. That is a quite common process for obtaining oil concessions in the Middle East and North Africa.

Hon Norman Moore did my job and explained why state agreement acts are used in major resource developments. Apart from those matters that I have mentioned, they provide a proponent with the ability to progress a development through a single government agency rather than having to deal with numerous government agencies. The member expressed an interest in learning how local government rates were to be determined and asked why there are two state agreements for Fortescue Metals Group Ltd. I will deal with that question first. State agreement acts usually deal with a project in its entirety. They usually include a balance of rights and obligations by the state and the company over the life of a project. In a moment I will go into the reason this project has been split into two parts - the infrastructure component and the mining component - and why there is a separate agreement for each of those components. The fact that there are two agreements must be considered in the context that the two agreements cannot exist without each other. The link between the agreements prevents the infrastructure agreement from coming into operation until the mining agreement has been signed. At the time the government was considering whether a state agreement was required for this project, the FMG Chichester project was not sufficiently advanced to enable an agreement to be negotiated for the mining component of the project. Nonetheless, there was a clear need to put in place processes for the infrastructure parts of the project. Without the state agreement covering infrastructure, the company could not commence any planning or approval processes for the railway. It was considered essential to put in place the system that enabled planning and government approvals for the railway to proceed. The government wanted to set very clear and enforceable rules for third party access to the rail and port infrastructure. As soon as the infrastructure component of the agreement had been ratified by Parliament in December 2004, negotiations commenced on the mining agreement, during which time FMG Chichester Pty Ltd continued to explore and delineate its reserve base. The company now has sufficient ore reserves to support a major iron ore development and it was considered appropriate for a state agreement act to be put in place to facilitate the project.

The Leader of the Opposition asked some interesting questions about rating. The point was made, and it is well understood by honourable members, that the agreement contains no limits on the ability of local authorities to rate the project. Hon Norman Moore asked how that will be done because the unimproved value of the land - that is, the land other than the buildings in town and where the workers are housed - can be rated only at the unimproved value, and that has very little value. The local government authority would gain little from that. The project will be rated under the Local Government Act 1995 and the Valuation of Land Act 1978 now and into the future. Any changes to those laws, either the rating or the valuation basis, would also affect the project.

The answer to the Leader of the Opposition's question is essentially that following the proclamation of the Acts Amendment (Local Government and Valuation of Land) Act 1994, the then Minister for Local Government lifted the moratorium that had been in place on the application of gross rental value rating on mining tenements. This has been around for some time. The local authority does not have to rate a mining tenement on unimproved value; it can rate it on GRV. Circular 764 to that effect was issued to all local government authorities in 1995, and that policy and procedure remain in place.

The amendments clarify the rateability of mining tenements and enable councils to convert the method of valuing improvements on such tenements from unimproved to gross rental value, and there are a range of conditions that I do not need to go through. Election commitments were made by the government. One of those commitments was to undertake a rating study. That study is currently being undertaken by the Department of Industry and Resources. Industry and local government are involved in that study. Effectively, the study takes a

snapshot of seven state agreements across the state and determines from that the rates forgone as a result of the ratings limitation clauses that exist in the older state agreement acts. The phasing out of ratings clauses from the old state agreement acts was, again, an election commitment, albeit in 1995. Any action in that regard is pending the completion of the rating study report.

A question was also raised about the cost benefit of the state agreement. The Department of Industry and Resources in consultation with the Department of Treasury and Finance conducted a legislation review of the state agreement in line with requirements under national competition policy. National competition policy requires that all legislation be reviewed for anticompetitive impacts.

Hon Paul Llewellyn: Has this one got through?

Hon KIM CHANCE: Yes. There are a few double negatives, but just bear with me. If there are any non-trivial anticompetitive impacts - that is a quadruple negative, of which I am very proud - they must be able to be justified on public interest grounds. Members will understand that provision. The review found that this agreement did not contain any restrictions on competition that were unable to be justified in the public interest. The key restrictions on competition are the secondary processing, local content and community development plan clauses, all of which were assessed as being in the public interest. I will pause while Hon Paul Llewellyn takes notes.

Hon Paul Llewellyn: If that is an impost on the company, it is very anticompetitive. I see what you mean. It is quite extraordinary.

Hon KIM CHANCE: I knew the member would like that bit.

Hon Paul Llewellyn: Yes, it is interesting.

Hon KIM CHANCE: There is a one-off stamp duty exemption for a corporate reconstruction within the first two years - this gets back to the issue that was mentioned earlier - following the commencement date of the agreement. It is a standard clause in state agreements. It will enable FMG Chichester to put in place the most efficient corporate structure for the project, if necessary, without facing a stamp duty liability. The rate of stamp duty payable is approximately 5.5 per cent of the value of the transaction, so the value of revenue forgone would depend on the value of the transaction, but I think that has already been discussed in more detail during the member's briefing.

I have appreciated the comments that have been made because I think, even though sometimes those comments were generic and directed at the broader issues affecting the mining industry, such as the impact of state agreement acts generally and did not just apply to this particular agreement, it has been an informed and informing debate. I certainly appreciate the expressions of support that have been shown for the bill and the serious and appropriate questions that have been put to government by Hon Paul Llewellyn.

Question put and a division taken with the following result -

Ayes (23)

Hon Ken Baston	Hon Sue Ellery	Hon Ray Halligan	Hon Louise Pratt
Hon Matt Benson-Lidholm	Hon Donna Faragher	Hon Barry House	Hon Ljiljanna Ravlich
Hon George Cash	Hon Anthony Fels	Hon Robyn McSweeney	Hon Sally Talbot
Hon Vincent Catania	Hon Jon Ford	Hon Sheila Mills	Hon Ken Travers
Hon Kim Chance	Hon Graham Giffard	Hon Norman Moore	Hon Ed Dermer *(Teller)*
Hon Bruce Donaldson	Hon Nigel Hallett	Hon Helen Morton	

Noes (2)

Hon Paul Llewellyn	Hon Giz Watson *(Teller)*

Question thus passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon George Cash) in the chair; Hon Kim Chance (Leader of the House) in charge of the bill.

Clauses 1 to 3 put and passed.

Clause 4: Ratification and authorisation -

Hon NORMAN MOORE: Mr Chairman, I seek some indication of how we might best handle this clause. This clause deals with ratification and authorisation of the schedule, which is the agreement itself. For the sake of simplicity, would it be possible to go through the schedule in a logical sequence from start to finish rather than be all over the place?

The CHAIRMAN: As the Leader of the Opposition has pointed out, clause 4 deals with the schedule; therefore, there will be a need to refer to the schedule, as required, in dealing with clause 4. We can certainly deal with the schedule sequentially. As members will be aware, I cannot go directly to the schedule until we have dealt with the clauses, because the vote on clause 4 will determine whether the schedule will be agreed to in due course. Therefore, as I have said, there will be a need to refer to the schedule, as required, in dealing with clause 4. The question is that clause 4 do stand as printed. If members can indicate the particular clause of the schedule that they are dealing with, that will assist in any answers that may be required.

Hon KEN BASTON: Clause 5 of the schedule deals with the Aboriginal Heritage Act 1972. Why is it necessary to modify the Aboriginal Heritage Act? In particular, why it is necessary to insert the words "the Company" after the words "the owner"?

Hon KIM CHANCE: I am glad Hon Ken Baston asked that question! The answer is that the Aboriginal Heritage Act 1972 refers to who can make applications for clearances under the act. The term that is used in the Aboriginal Heritage Act is "the owner". Fortescue has a need to apply for clearances before it becomes the owner. However, under the act it will be inhibited from applying for clearances until such time as it becomes the owner. This variation to the act will enable the company to make such application before it becomes the owner.

Hon KEN BASTON: Clause 7 of the schedule deals with the community development plan. Subclause (1)(d) refers to a regionally based work force. Does this mean a fly in, fly out work force in the normal sense of the words, or, bearing in mind that a hotel will be built in South Hedland, does it mean a work force that is regionally based and flies into and out of the work site, if the Leader of the House knows what I mean?

Hon KIM CHANCE: It means a regionally based work force in the same way as we understand the regionally based work forces at Paraburdoo or Tom Price, which we are so familiar with, where towns have been established to service the operations of a mine or mines.

The difference between the two is the amount of spatial separation between the mine site and the accommodation facility. It could be argued that a mine workforce living at South Hedland, working on a mine 120 kilometres out of Newman, has a fair degree of spatial separation such that we might say it is not an on-site workforce. That is what the term means. The important thing is that it means that the workforce on these mines - there is more than one - comprises people who live and work in the Pilbara. It does not mean that they were born and went to school in the Pilbara; it means that they will be workers from all over the world, just as workers from the Pilbara were when I was in the Pilbara 35 years ago.

Hon KEN BASTON: Clause 7(3)(a) reads in part -

> (a) consult with the relevant local government or local governments with respect to the need for community . . .

What is meant by the term "consult", and who will judge that the consultation has taken place to the satisfaction of the local government?

Hon KIM CHANCE: The term "consult" has the common meaning. The judges of whether consultation has been an effective and sustainable process will ultimately be the two parties who are engaged in the consultation - the local authorities and the company. A perceived failure in the quality or the extent of the consultation will subsequently be addressed by the parties. This is clearly a cooperative arrangement that can be effective only if it is seen to be working in the interests of both parties. There is a degree of internal protection of the integrity of the process in this because the company would not enter into such an agreement unless it felt it had support from the local government authority, and vice versa.

Hon NORMAN MOORE: The community development plan is one aspect of this proposed state agreement act that concerns me. It requires the company to submit a plan to the government, which will either agree to it or disagree to it and seek some conclusion on it. That plan will not be presented to Parliament; whereas most of the old state agreement acts, as I understand them, included this sort of detail. This requires that the company will provide a plan in future. It will be then left to the government, as opposed to Parliament, to accept or reject the plan. Future state agreement acts should contain these plans so that the decisions are made before Parliament's approval is sought. Although the content of the community plan might be acceptable to the government, Parliament might have serious reservations about it, but will have no opportunity to express those reservations because by agreeing to this agreement we are forgoing the right to be involved in that. I expressed that view in the second reading debate and likewise during debate on the previous agreement act. I hope the government will

not in future include in the agreement that the company can deliver a plan some time down the track because Parliament will not have a chance to consider it.

Hon KIM CHANCE: I thank Hon Ken Baston and the Leader of the Opposition for raising that matter. I understand now that my answer to Hon Ken Baston was somewhat incomplete, but commenting on the Leader of the Opposition's point will allow me to fill in the answer. It is true that earlier state agreement acts had specific community commitments. Most notable of those were the construction of facilities; indeed, in some instances, whole towns. Those commitments were specifically stated, as the Leader of the Opposition has said, in the state agreement act.

This is a rather different agreement in that it does not contain a commitment of that nature, but it does contain a commitment for a negotiation process for the development of a plan that can be designed and adapted over time to meet the community's needs. There is a part on which I did not provide accurate advice to Hon Ken Baston, as the Leader of the Opposition said. The adjudicator is the minister. I had led Hon Ken Baston to believe that it was a self-regulating matter between the two parties. Perhaps to some extent it is, but final approval is not given until the minister has approved it. I heard very carefully what the Leader of the Opposition said, and I am not going to argue with him on that because he may be right or the government may be right.

Hon Norman Moore: It is not a matter of right or wrong; it is a matter of process.

Hon KIM CHANCE: Yes, but is this an issue of whether this agreement is a good thing or does it have limitations? Time will tell on that. Its advantage is that it gives the company and the community flexibility to determine a future position, which might not exist if we were to lock down the parameters of the community service obligations in the black-and-white text of the agreement.

Hon NORMAN MOORE: I will respond to that very quickly and then desist from any further comment on this matter. The concern I have is that we as a Parliament are being asked to ratify an agreement. Some aspects of the agreement will occur some time in the future over which we will have no influence at all and which may be inferior to what we would expect to be asked to ratify in the first place. It may turn out, for example, that the community development plan that the minister ticks off on is something that I as a legislator would find completely unacceptable, but he is asking me to agree sight unseen to what this company will do with a community development plan.

Hon Kim Chance: But the minister has to be accountable for it.

Hon NORMAN MOORE: I know that he has, but the reason the government is asking us to ratify this agreement is that it wants Parliament's approval, otherwise it would not come to Parliament. Therefore, what I am saying is that if the government wants my approval as a member of Parliament, I would love to know what the community plan actually contains in detail before I say yes or no. I am not going to get there, and that is why I raise the issue. It is in my view a quite unacceptable state of affairs and one that I hope will not happen again.

Hon KEN BASTON: I add my concerns about the community development plan. The Leader of the House noted that in my speech I talked about feelgood clauses. I guess this is one of them. It is all nice and feelgood. For a start, clause 7(1)(a) refers to training and guaranteed employment for indigenous and non-indigenous persons living in the area. If we take that as read, does it mean that anyone who is trained is guaranteed employment?

Hon Kim Chance: No.

Hon KEN BASTON: I guess what Hon Norman Moore is saying is that we must agree with this bill but we do not really know where it will go. Will the Leader of the House comment on that?

Hon KIM CHANCE: Yes, it means that under the agreement, people who undertake and successfully complete their training are guaranteed a job.

Hon Norman Moore: For how long?

Hon KIM CHANCE: Until they lose it.

Hon PAUL LLEWELLYN: I can see how anticompetitive this clause is because the company is signing up for a pretty open-ended arrangement in the kind of obligation it has here. Given that we are looking at a quantum of a $1.6 billion revenue stream, what does this clause commit the company to do? What is the value of the community development?

Hon KIM CHANCE: The value is being able to say to local people who have so often not been able to share in the benefits of the exploitation of minerals in their area, "If you will undertake and complete training on our site and meet our specifications, you will have a job." That sounds a simple enough thing and members can query its value, but only one state agreement has ever done that before, and that was also the Fortescue state agreement -

the infrastructure agreement. We have taken what might be a small step in the member's view, but it is a step that no other state agreement has taken before. I think it is a big step.

Hon Norman Moore: The previous state agreement said a vast number of locals would get a job and they had to import thousands of workers to make it work.

Hon KIM CHANCE: I am talking about the Leader of the Opposition's electorate now and I concede that he knows it much better than I do. I will quote something that a former local member, Larry Graham, said to me in speaking about Marble Bar. He said, "There are 150 people receiving unemployment benefits every fortnight in Marble Bar. Do you know the number of people who fly in and fly out of Marble Bar every fortnight?" I said, "No." He said, "It is 150." He then used the kind of colourful language that Larry is known for using to describe what he thought of that arrangement, but one could discern from his words with the expletives deleted that we do not have our training position right.

Hon Norman Moore: I suspect you might find there are other reasons apart from training.

Hon PAUL LLEWELLYN: Given that we have set out a clause like this which places an obligation on the company, I am interested to know what is expected of the company. Has a target been set for the number of people will be employed? Is there some kind of social and community benefit index? How can it be measured to show that this has been done? There are quite a few specific measurable propositions here. Is there some kind of quantum so that at the end of the day we can say the company has either done the minimum necessary or it has done everything it possibly could have done? How do we know?

Hon KIM CHANCE: The ratios, milestones and targets are not set, and will not be set, in the agreement. They will be determined by agreement, discussion and negotiation with local government authorities in the area. I draw the member's attention to what one mining company has done in the north; it is not an iron ore company, as I am speaking about Rio at Argyle. What Rio has done at Argyle in employing local Aboriginal people has been remarkable. Rio Tinto went from being one of the worst of its kind in this field in Australia to being far and away the best of its kind. Rio matched the capacities and needs of local Aboriginal people mostly on a bus in, bus out arrangement over a shift that works for Aboriginal people. We now have a situation on the Argyle mine site in which Aboriginal people are significantly obvious as important members of the work force. As the member knows, the Argyle training regime is a very comprehensive one. A person is not regarded as a fully qualified Argyle employee until he can perform every task on the mine site. It takes four years from the time a person starts at Argyle to the time he is deemed to be a qualified worker. By that time a person can drive every machine and operate every piece of equipment at the mine. Many of those Aboriginal people are from Turkey Creek. They and Argyle have been able to fulfil each other's expectations. We have clear benchmarks about what is possible if sufficient effort is put into it. I might add that, as a result of that investment and that inspired leadership by Rio at Argyle, Argyle is suffering much less difficulty in terms of labour skill shortages than any other mine in Western Australia.

Hon KEN BASTON: I refer to clause 8(6)(a) of the first schedule. Should not the demonstration of marketing arrangements come first? It seems to me that it should be the first priority of any agreement. I am wondering why it was left until now. I mentioned in my second reading contribution that it was a bit like putting the cart before the horse.

Hon KIM CHANCE: I am informed that, in this form, this is standard timing within a state agreement act. The company has already made its announcement in the Australian Stock Exchange that it has a market for 39.5 million tonnes. Its announcement has satisfied the Stock Exchange. When it submits the last of its proposals, at that point the minister will expect the details of those markets to be laid out to him. I am informed that this is a standard arrangement.

Hon PAUL LLEWELLYN: I need some clarification. We are clearly dealing with clause 4 of the bill, which deals with the ratification of the scheduled agreement.

The CHAIRMAN: I will explain why we are dealing with clause 4, which is the ratification clause in the bill. I am happy to go straight to the schedule but there will be a need to postpone clauses 4, 5 and 6 because the end question is whether the committee agrees to clause 4. Do members want me to go to the schedule? If it is more convenient, I am happy to go to the schedule. In the end we must go back to the question of whether the schedule is ratified. Hon Paul Llewellyn has the call if he wants it.

Hon PAUL LLEWELLYN: Is the Chairman saying that it is my prerogative to go to the schedule now?

The CHAIRMAN: Yes, I am, because if the member reads clause 4 -

Hon PAUL LLEWELLYN: I followed the logic. The Chairman is happy for us to work through the schedule right now.

The CHAIRMAN: I am happy to postpone clauses 4, 5 and 6 so the member can go straight to the schedule, but I cannot put the vote on clause 4 until we have fully discussed the implications of clause 4, which is the schedule.

Hon PAUL LLEWELLYN: I follow that, in which case will we work through the schedule from the top down in an orderly way?

The CHAIRMAN: Yes, as I said, sequentially.

Hon PAUL LLEWELLYN: Sequentially. That sounds like that guy in the film who was from Barcelona. I want to get some clarification of the intention of clause 8 of the schedule, which states -

> The Company shall, subject to the EP Act, . . .

Can the Leader of the House give some clarification of what is implied by that?

Hon KIM CHANCE: It means that a state agreement act cannot override the provisions of the Environmental Protection Act.

Hon KEN BASTON: I refer to clause 11 of the schedule, "Limits on mining". Why is the limit 45 million tonnes; what will happen to the royalties and/or rentals if the minister agrees to more ore being taken out; and what will be the long-term implications?

Hon KIM CHANCE: The figure of 45 million tonnes is the amount of iron ore that the company has indicated it wishes to mine. The member will be aware from an earlier answer that the company has advised the Australian Stock Exchange that it has markets for 39.5 million tonnes. It may go to the company's assessment of the size of the resource; I do not know. However, the company has told the government that it intends to mine 45 million tonnes, so that is the extent of the agreement.

Hon PAUL LLEWELLYN: Because we wanted to go through this sequentially, I thought we were dealing with clause 8 of the schedule.

The CHAIRMAN: I am happy to deal with clause 8, and I am sure that Hon Ken Baston will refrain from asking any more questions until we have finished with clause 8.

Hon PAUL LLEWELLYN: I am glad that it is not just one of us who is having difficulty with the sequences.

The CHAIRMAN: It seems to be just one.

Hon PAUL LLEWELLYN: Clause 8(6) of the schedule states -

> At the time when the Company submits the last of the said proposals pursuant to this clause, it shall furnish to the Minister's reasonable satisfaction evidence of:
>
> (a) marketing arrangements demonstrating the Company's ability to sell iron ore produced in accordance with the said proposals;

I understand from recent media reports that there was a question about the markets for the iron ore, the subject of this legislation. Can the Leader of the House please clarify what the baseline requirement would be in this case?

Hon KIM CHANCE: I have already provided the only information the government has about the company's marketing arrangements, and that is the information made publicly available to the Australian Stock Exchange by the company. I am not aware of media speculation about the company's marketing arrangement.

Hon PAUL LLEWELLYN: Can the company make claims in the marketplace and will those claims actually substitute for meeting this provision? Is that what we are taking this to mean?

Hon KIM CHANCE: I thought we had been through that. Clause 8(6) reads -

> At the time when the Company submits the last of the said proposals pursuant to this clause, it shall furnish to the Minister's reasonable satisfaction evidence of:

It must provide evidence of those things outlined in paragraphs (a) to (d). If it does not, the agreement will fall over; it is as simple as that.

Hon KEN BASTON: I refer to clause 11, headed "Limits on mining". I was under the impression from the company that the 45 million tonnes was really a figure that it had picked out as an economical amount and it had been agreed by government in the negotiations.

Hon KIM CHANCE: I am informed that the figure of 45 million tonnes, apart from being as I have described it - the figure that was agreed between the company and the government in the context of this agreement - also

acts as a trigger point for the value-adding provisions of the agreement. Therefore, once 45 million tonnes is passed, there are value-adding issues which arise, I am informed.

Hon Norman Moore: Are there any royalty considerations when you reach that point.

Hon KIM CHANCE: It would seem to me - I am saying this without advice - that this is an agreement which is limited to 45 million tonnes. If the company wanted to go beyond 45 million tonnes it would involve a different agreement.

In answer to the somewhat informal question by the Leader of the Opposition about royalties in the event that the company sought to continue its production beyond 45 million tonnes, royalties could be raised but only with the consent and agreement of the company.

Hon PAUL LLEWELLYN: Can I get clarification on the operation of this clause which states in subclause (2) -

> If the Company desires to increase the annual tonnage beyond that specified . . . it shall . . . give notice thereof to the Minister . . .

What is the mechanism by which the annual quantum can be increased and what are the checks and balances against exceeding some of the environmental constraints, capacities and so on?

Hon KIM CHANCE: The mechanism for the process is actually quite clearly set out further on in clause 11 of schedule 1. Hon Paul Llewellyn specifically mentioned the provisions of the EP Act. The provisions of the EP Act are entirely unaffected by this agreement. As I said earlier, a range of acts can be affected by an agreement act. One of the acts which specifically may not be affected by an agreement act is the EP Act. The provisions of the EP Act continue in force, particularly when a company may be proposing to change its method of operation. To the extent that that change may impinge on environmental issues, it might require a new process under the EP Act. That is dependent on what that change is. If, for example, further processing was being done, on site or off-site, I have very little doubt that that processing facility would trigger something so that it could be assessed under the EP Act. The provisions of the EP Act are unaffected by the agreement.

Hon PAUL LLEWELLYN: I follow that because that question was answered previously. I am looking at the mechanism by which it is possible to expand beyond 45 megatonnes and what checks and balances would be in place. I follow that the EP Act would remain active. Can the Leader of the House give a scenario involving a company wishing to expand to 65 megatonnes per annum?

Hon KIM CHANCE: As I indicated, clause 11(3)(b) of schedule 1 gives quite a clear picture of the processes. That was Hon Paul Llewellyn's question to me. He did not ask for a specific example; he asked what the processes are. The processes are pretty clearly laid out in clause 11(3)(b), at the bottom of page 27, which states -

> If at the time the Minister is considering whether or not to so agree for the purpose of this subclause the Company has pursuant to clause 20(3) applied for or been granted a postponement of its obligations to submit proposals under clause 20(2) or such an application made by it is subject to clause 20(3)(d), the Minister shall in considering whether or not to so agree for the purpose of this subclause take into account the estimated quantity of iron ore then still available to be produced from the Mining Leases.

Hon BRUCE DONALDSON: I was interested in the Leader of the House's answer to the Leader of the Opposition's question about the royalties over 45 million tonnes. Did I misunderstand that unless the company agreed to pay additional royalties, it would be free of royalties over 45 million tonnes?

Hon Kim Chance: There would be no increase in the royalties unless the company agreed.

Hon BRUCE DONALDSON: So it is not on a tonnage basis?

Hon Kim Chance: There would be no increase in the rate of the royalty. It would be X dollars a tonne unless there was agreement by the company.

Hon BRUCE DONALDSON: Would that per-tonne rate remain the same if the company increased its tonnage to 60 million tonnes?

Hon Kim Chance: The per-tonne rate remains the same.

Hon BRUCE DONALDSON: I thank the Leader of the House for that.

Hon NORMAN MOORE: Taking into account some of the recent negotiations between the government and other companies that are mining iron ore, the Leader of the House has indicated that the royalty rate would increase only if the company agreed. Is it conceivable that the company might be put in a position whereby if it

wanted to mine more than 45 million tonnes of iron ore, it would have to agree to an increase in the rate of the royalties?

Hon KIM CHANCE: No. That is specifically defined out of the equation in my reading of clause 11(2)(b), the second sentence of which reads -

> An in-principle approval by the Minister under this subclause -

That is, whether the minister approves or does not approve to the proposed increase in production -

> may be given subject to conditions including a condition requiring variations of or additions to this Agreement provided that any such condition shall not without the consent of the Company require variations of -

The bill then defines the four requirements to vary those provisions, which include -

> the rates or method of calculating royalty.

Hon NORMAN MOORE: Clause 12 relates to the mining tenements. We are advised that schedule 1, part A lists the exploration licences currently held by the company, that part B lists the exploration licence applications that are in existence and that schedule 2 includes the mining lease applications. Will the Leader of the House explain the status of the company's leases? As the Leader of the House knows, an exploration licence is not a mining lease; it is an exploration tenement and must be converted to a mining lease before mining can take place. Does the company have any mining leases at this time? If it does not, what processes must it go through to have its exploration licences converted to mining leases? Is it through the normal processes of the Mining Act or does this state agreement act automatically provide for the exploration leases to be converted into mining leases?

Hon KIM CHANCE: As defined by the agreement, the exploration licences relating to the project number 27. Twenty-five of the 27 ELs have been granted from the schedule. There are 110 mining leases within the scope of the project, of which 89 have been granted from the schedule. They have all been granted under the existing provisions of the Mining Act. The difference is that in each case no mining can take place on any of those 89 MLs until agreement has been reached on the agreement act.

Hon Norman Moore: What about the conversion of the exploration licences that have been applied for? Will they be granted under the normal processes of the Mining Act, or does this agreement provide for that to happen automatically?

Hon KIM CHANCE: This is a complicated answer and I want to get it right. Where an existing application has been made to convert from those exploration licences to mining leases - the whole area is never converted; only parts of it are converted - the existing provisions of the Mining Act will apply. New applications that are made to create MLs out of ELs, which do not exist now, will have the benefit of the special provisions which come into effect as a result of clause 12(2) of schedule 1 of the agreement. Clause 12(2) reads -

> (a) in relation to an application that the Company may after the commencement date make under the Mining Act:
>
> (i) to convert all or part of an exploration licence referred to in part A of schedule 1 . . . ; or
>
> (ii) otherwise for the grant to it of a mining tenement solely over land within the Defined Area where the grant is provided for in approved proposals,

The CHAIRMAN: I advise the Leader of the House that we are running out of time.

Hon KIM CHANCE: Some of the objection provisions of the Mining Act will be set aside.

Progress reported and leave granted to sit again, pursuant to sessional orders.