STATE AGREEMENTS LEGISLATION REPEAL BILL 2013

Second Reading

Resumed from an earlier stage of the sitting.

MR C.J. TALLENTIRE (Gosnells) [3.56 pm]: I will resume my remarks. I was discussing a state agreement act that was formed for the benefit of the BHP company back in the 1990s—in 1994 when the current Premier was the Minister for Energy and the Minister for Resources Development. It was a state agreement act that went terribly wrong, as it led to the creation of a mine that was never able to deliver any financial contribution to the state, or indeed to the company's shareholders, yet we know at the time of its opening that the current Premier was lauding it, saying that it was going to be a major contribution to the wealth of the state and a sign of the then Court government's ability to get on with resources development. I give this as an example of the problem with state agreement acts. They are problematic in that they are a negotiation between a company on one hand and the state of Western Australia on the other. The opportunity to have external expertise come into the discussion around a particular project in the state agreement act process is ruled out. That is why we ended up with this very poor situation. This is just one example. The Beenup mineral sands mine, therefore, was a failure. It was not given the great benefit that could have been had by giving people an extensive opportunity to comment and by bringing in outside expertise. The project was overseen by the agency then known as the Department of Resources Development—DRD, I think it was. The officers who worked there at the time were known in the public service to be receiving a rate of pay much higher than that received by people in other government agencies. DRD people were being paid that higher amount but they got it wrong. They were the government negotiators who worked with the company on this project and they got it wrong. That project should never have been allowed to proceed. Had it been opened up and had the government not used the state agreement approach, shareholders of BHP would have been saved from very, very significant losses.

The State Agreements Legislation Repeal Bill repeals five acts and I am curious to know why, when we have this opportunity before us, we are not also repealing acts such as the Mineral Sands (Beenup) Agreement Act. I am not sure. It seems to me that we are missing an opportunity. I could cite a couple of other examples of state agreement acts that are still in force—I have checked that they are on the list of acts still in force—but could be repealed because they will not have any use to us in the future. Another example, which the Premier and I discussed late last year, is the Alumina Refinery (Mitchell Plateau) Agreement Act 1971. When we were debating the Browse (Land) Agreement Bill 2012, the Premier told me that he did not think bauxite would ever be mined on the Mitchell Plateau, so I am left wondering why we need a state agreement act for a refinery on the Mitchell Plateau. That act was created in 1971 and is still in force. Why have we missed the opportunity with this repeal bill to clean up a number of other state agreement acts and get rid of the unnecessary and unhelpful ones? There is obviously a problem that when we create these state agreement acts, we do not track them openly enough.

I turn now to the "Review of the Project Development Approvals System" report, which is referred to as the Keating review. That report was prepared for the Gallop government and tabled in this place in April 2002, or thereabouts. It is a very good report that looks at many aspects of the approvals requirements and recommends ways we can improve the project approvals system. The review found that there was a need for a degree of process and regulation. It found that things could, of course, be improved, but that we should continue with our general system of major project approvals. It specifically focused on this issue of state agreement acts. I will focus on that for a moment because the review stated that there are some problems with state agreement acts. I have touched on the main problem, which is that a state agreement is negotiated between the state and a particular proponent but that others do not get to hear about it until the bill is tabled in this place. Until that moment there is no engagement with anyone else at all. To me, that is not a healthy process. It leads us to those sorts of situations that we saw with the Beenup act. It gets us into problems and creates unnecessary things.

There are many other things wrong with the state agreement acts process. For example, companies that are signed up to these agreements often find that they are locked into certain requirements because of the regulatory regime. They would like some flexibility to renegotiate those requirements but cannot because it is in the act. The rigidity of state agreements was brought up in this report. The report was an independent review committee chaired by Dr Michael Keating, AC. As I said, it looked at a lot of aspects of the approvals process, but the discussion around state agreement acts was particularly interesting. I would like to read the recommendations that came out of that review regarding state agreements. One was —

> *The State Agreement process for facilitation of approvals through the proposals mechanism is no longer an adequate mechanism and should not be used in future Agreements.*

There we are hearing that the actual process that is used is problematic and that it is not always the appropriate mechanism. Often a state agreement act refers to something broader than a particular project. That seems to be a

problem and is something that needs to be looked at. When we sign up the state to an agreement with a company, we have to be clear about what the project is. If it gets broader than a particular project, that seems to be when there are problems. The second recommendation that came from the Keating review relating to state agreement acts reads as follows —

> *Future Agreements, if used at all for specific projects, should deal only with project-specific issues*

That is the point I was just making —

> *and should be contracts between the State and a proponent that do not require Parliamentary ratification unless there are sound operational or accountability reasons for Parliamentary scrutiny that cannot be delivered except by legislation.*

Taking into account those two recommendations—I look forward to hearing the Premier's response on this—I do not know whether we really have learned from this review and considered enough how to ameliorate the situation of how we use state agreement acts. Another important point that was made in the review is —

> The negotiation process is totally carried out within government with no opportunity for public involvement or scrutiny.

This is my main concern —

> Not even the Local Government that will "host" the project becomes involved in the negotiations. The first public access to an Agreement is when it is introduced to Parliament as a Bill. While Agreements are ratified by Parliament they cannot be amended; Parliament can only accept or reject an Agreement. Given that Agreements are negotiated in private and represent hard won, but agreed, packages, it is not surprising that both sides do not want changes made by third parties that may alter the deal in unpredictable ways. But this is cold comfort to those who see fault with the project, or with individual Agreement provisions, and seek an opportunity to reject the project or redress the faults.

The state has, of course, benefited from the use of state agreement acts, but I think we need to look at the list and see which live state agreement acts relate to those that are no longer in operation and add them to a bill such as this to have them eliminated from the statute books. They should be repealed; it makes perfect sense. I give that example again of the Alumina Refinery (Mitchell Plateau) Agreement Act 1971, which is —

> An Act to ratify an agreement made between the State and Amax Bauxite Corporation relating to the establishment of a refinery to produce alumina, to provide for carrying the Agreement into effect; to repeal the *Alumina Refinery (Mitchell Plateau) Agreement Act 1969*, and for incidental and other purposes.

We were able to do some tweaking back in the 1970s, but have not done so since. I am astounded that this act is not on this list of state agreement acts to be repealed this time around. We must also consider how we use state agreement acts. We should never lose sight of the fact that there is much wisdom in the community that we need to access. We should not be put in this situation in which basically a secret deal goes on between a proponent and an agency of the state government without broader discussion until it is presented in this place. I will conclude my remarks there, but I look forward to hearing the Premier's response to my comments.

MR C.J. BARNETT (Cottesloe — Premier) [4.09 pm] — in reply: I appreciate that the opposition will support the State Agreements Legislation Repeal Bill 2013. I will not go through the bill again. As has been said, it simply repeals five agreement acts that have run their course and no longer serve any purpose. Agreement acts have been extraordinarily important in the development of Western Australia. The earliest agreement acts date back to the 1950s with the development of the BP refinery at Kwinana and iron and steel projects that have now lapsed. Indeed those Kwinana blast furnace and pig iron agreements are part of the ones now being repealed.

Western Australia has about $110 billion of petroleum and mineral production, and about 85 per cent of that is produced under state agreement acts rather than the general laws of the land. The general laws of the land for mining still form the basis, but the state agreement acts usually extend the tenure of mining tenements; they also allow for infrastructure development and deal with special, unique features of big projects. It is true that as the state develops and its infrastructure becomes more widespread and sophisticated, the need for state agreement acts will diminish. They are facilitating, project-specific agreements, designed to get a major development underway and set criteria for the management oversight of that project. That is what they are; they are a development vehicle. They are not intended to be permanent features of the legislative framework of the state. I support state agreement acts. I have been involved in a large number of them over the years. They give the state a direct say. I disagree with the member for Gosnells: I think the process is very accountable. The state, through executive government, reaches all sorts of agreements and contracts with its building of hospitals or developing resources or financial arrangements, whatever they might be. A state agreement gets negotiated between the executive of government, through the Department of State Development as it is now, with the proponents of a

project. It goes through a cabinet process. It is signed, and then the whole agreement is brought to this house with a ratifying bill and the Parliament has an opportunity to say yes or no to the whole deal. It cannot renegotiate, which would be an absolutely ludicrous process. Therefore, there is actually a higher level of accountability than seen in different parts of the country on major projects. The process is very accountable. In other parts of the country, major contracts for power stations, agreements and the like do not come to their Parliaments. Western Australia has something in the order of about 80 agreement acts through that period. I think Queensland has about 20, and the other states have very few between them. They are a vehicle.

Members opposite made some comments on some particular projects, mainly going back to the 1990s—a long time ago. However, I make a few comments about them. No-one can be sure how a major development project will play out. The agreement act usually precedes the final investment decision. One of the issues is not to bring or sign an agreement with the proponent prior to being absolutely convinced that the project is about to proceed. If that is done, it gives the proponent a windfall capital gain. There have been a few examples of that in which some agreements have been signed, in my view prematurely, and proponents have been able to go to the market and make enormous windfall gains. I will not talk about the particulars. Therefore, it is a judgement as to when it is appropriate to bring an agreement or a prospective agreement to this Parliament.

The member for Cannington talked about the Kingstream project, which had its origins at a time of the start, almost, of the emergence of modern China. There was huge demand for high-grade iron ore, beneficiated, as there was a huge demand for basically rolled steel or slab steel. There was a window of opportunity to develop not only iron ore mining, but also beneficiation through to steel. To actually go further down the value-adding chain had been dreamt about since the 1960s. I was the minister at the time and I have no embarrassment about any aspect of that project. I regret the fact that it did not go ahead. Yes, in part, the member for Cannington is right; what killed it was that there was not a big established financial group or steel producer behind it. As it was, An Feng was fairly big in Taiwan, but it was not big on the world stage. Therefore, the project did not have one of the majors there, yet it was progressing—and I think in a proper way. There were unusual circumstances in negotiating with a Taiwanese business for a product to sell into China, particularly back in 1997. However, the government of the day took a conservative approach. We saw a role as the government in trying to encourage and facilitate this investment should it happen, and we also saw a unique opportunity to develop a deep-sea port on the Western Australian coast. Because of the continental shelf, we do not have many sites where we can develop a deep-sea port. The Oakajee site was identified way back in the 1960s as one of the few places on the Western Australian coast where a deep-sea port could be built relatively easily because an old palaeochannel went out through there. The position the state government of the time took was to ensure that any government funds were secure, and that they were used for a proper long-term benefit with not only the Kingstream project, but also any other project. I forget the exact number, but around $30 million was spent by the state in acquiring the land, and also for various approvals at the time and ensuring that not only would we have a deep-sea port, but that we would have a new industrial estate for large and high-value-adding industry right alongside the port. Therefore, there could be a conveyor from the factory site onto the port—something we have at Kwinana but really nowhere else. The issue was about port development, and in fact the agreement made it very clear that the port development would be a multi-user port with rights of access for anyone. The state, on that basis, had notionally decided it would contribute up to $100 million towards the port with the proponents to put the rest in.

At the time, Labor members in this house who supported the Kingstream project advocated that the state should hand the $100 million to Kingstream. Members of the Labor Party sitting right over there argued passionately that we should hand over $100 million. I refused to do that and Richard Court refused to do that. Of course, Richard had the complication that his brother was the chairman of the company, so he had to stay out of it; therefore, essentially I handled those issues. We would not put taxpayers' money at risk, and we did not—despite the urgings of the Labor Party to do so. The memory of WA Inc was still fresh in a lot of people's minds. The project did not go ahead, but the government behaved properly. What killed Kingstream was the Asian financial crisis in 1997, which was devastating in economies like Taiwan. The whole South-East Asia area was devastated by that event. That was the end of it—the capital dried up, the investment dried up and the project dried up. At the end of the day, the state still owns the site, still has corridors in place and the like and it is there, and, hopefully, this time, we will see an Oakajee development, because it will bring not only mining projects, it will bring mining processing, other manufacturing and other heavy industry onto a site 30 kilometres from Geraldton with wide buffer zones that is purpose designed with a deep-sea port right alongside. That is where thousands and thousands of jobs will eventually come. We have not got there yet, but I would love to see Oakajee go ahead for that reason—not to help anyone particular mine, as it is a bigger picture about the state looking into the future.

The member for Cannington also talked about the BHP hot briquetted iron plant that failed—and it did; that was another great disappointment. The story of the HBI plant is interesting. BHP had processing obligations under its iron ore agreements in the Pilbara that dated back to the 1960s in the David Brand–Charles Court era. BHP had

obligations not only to extract iron ore, but to add further value and process it. In the 1993 election, during the election campaign, then Premier Carmen Lawrence reached and announced an agreement with BHP to absolve it of all its processing obligations—all of them—for its Pilbara iron ore in exchange for building a gas pipeline from Karratha to Port Hedland. I remember at the time of the election campaign my response was, "All bets are off. This is a caretaker period, and apart from that, it is a bad, bad deal for Western Australia." When Richard Court and the Liberal Party won the election, that deal was off. It was an embarrassing moment for BHP to have done a deal with a government during an election campaign; it was improper and BHP was caught out. The electorate saw through it and it was one of the issues in the election campaign.

When the Liberal Party came into power in 1993, we—me included—sat down in good faith and said that that deal would not work and that it was not in the interests of the state. So, we renegotiated, not a full, but a relief of some of their processing obligations significantly, in exchange for BHP building an iron ore processing plant to a value of not less than $400 million; an agglomerate plant was the term used. BHP, to its credit, set about doing that because it wanted to free-up the obligations, and it could also see there was a growing market in China for highly beneficiated iron ore. The iron ore out of the Pilbara is about 60 per cent iron content out of the ground, if we are lucky—some of it today is well below that—but if you could get it up to 68 per cent into an HBI product, which basically looks like a lump of soap in size but is actually about 68 per cent iron content from memory, it becomes direct feed into the steel mills of China. That saves them costs and energy, and it also reduces shipping volume because a smaller amount of a higher product is being sent. The market price was, from memory, 20 to 30 per cent or more higher than other ore. I think iron ore was selling for about $80 a tonne then, and HBI was worth $140 a tonne or thereabouts. This was value-adding.

BHP went ahead and built the HBI plant, and the government did its role. There was a mistake, and it was a crushing one. BHP, for whatever reason, chose a new technology for converting iron ore into HBI briquettes; it was an unproven, unused technology. Had it gone to the widely used Midrex process, which had been in place for years and years and proven, not only would it have built that HBI plant for far less than the $2.5 or $2.6 billion it cost—it probably could have been built for the less than $1 billion, and it would have worked. It used an exotic technology that was unproven and untried, and the technology failed. It was a monumental mistake of management within BHP. Quite a few people lost their jobs over it.

Not only did the technology fail, but also the plant was dangerous. There were explosions and gas releases and the like. This plant was very different from anything Western Australia had ever seen before. I know BHP, at one stage in trying to solve the problems of this plant, brought out a former—I do not know whether he was the head—chief technologist from DuPont. I remember meeting this American gentleman, and I said, "What's going on here?" He said, "The problem is that BHP is a mining company. This is not a mining project. This is a high-temperature, high-pressure chemical plant." He said, "It's out of their experience." He said to me, "Minister, it typically takes three years to get these plants to operate well. The mining industry is used to putting up a plant and getting it operating in three months." It was a whole different cultural thing.

In any case, sadly there was a major explosion and a worker was killed. Ironically, at that point the plant was actually very close to performing to its design level. I think three of the four production trains were operating, and they were producing HBI. I remember very well visiting the plant just before that accident and the workers were walking around with T-shirts that read "We ship HBI", because they had worked so hard to get that plant going. BHP, to its credit, backed it, but at the end of the day it failed. The accident was the final straw, and they walked away from the project and that was the end of that. That is what happened there.

The member for Gosnells raised the Beenup plant. BHP had a bit of a horror period: the HBI plant in Port Hedland, the Beenup plant near Augusta, and a goldmine on, I think, the Sepik River in New Guinea were three projects that just went bad all at once. The whole BHP board and company was more than rattled; it was almost falling apart. Beenup was a big mineral sands project that, again, had unique issues of infrastructure. It required a power line. I think one power line route was called the north route that sort of went through farmlands from Busselton down; the other potential power line route went through the karri forest. The other issue was how to get the product out, and a road needed to be built from Augusta or Beenup up to the Bunbury harbour; otherwise, there would have been a large number of vehicles on the road system. Yes, the role of the state was the agreement relating to the development of the mine, which was a mineral sands mine with basically a barge operation in a water environment, with environmental issues and the like. The state's position in the negotiation was principally related to the power line and the road. The power line issue was interesting; I think Barry Carbon was head of the Environmental Protection Authority at the time, and there were a lot of photos of a little rustic road going through these beautiful tall karri trees, and the EPA had ruled that if a power line was to go there, it was to go underground. Therefore, miles away from anywhere, there was going to be massive expenditure to put a high-voltage transmission line underground, which is not technically easy to do. I have an anecdotal story about it: I went down there and drove around with someone from the State Energy Commission of Western

Australia, as it was, and someone from state development. We went down this road, and it was a beautiful piece of karri forest—you would not want to see it disturbed—and we drove around and went across an intersection, and there was a wide clearance; certainly it was wider than this chamber.

Mr W.R. Marmion: Probably 100 metres.

Mr C.J. BARNETT: Yes.

I said, "What is that? It seems to be going roughly in the right direction." It was basically a clearance relating to potential future infrastructure and a wide firebreak. I said, "Why aren't we putting the power line down there?" They said, "Oh, there's one deep valley and it will be quite difficult to cross it." I said, "How difficult in terms of money?" I think it was about $300 000, and I said "Forget it. Put the power line down there." That is where the power line went. To this day, I cannot understand how all our well-qualified and experienced advisers could not find what I think was the bleeding obvious, and we stumbled across it. It was put down there—it might have been marginally longer—and that power line is still there today and serving the south west and has stabilised the south west grid. That was paid for by BHP, and it is the property of the state at no cost to the state as a result of provisions in the agreement act.

The other point was the issue about transporting the mineral sands. Rallies of farmers took place down there not wanting a road system going through their area. Out of that, we negotiated what the member behind me has just told me is Sues Road. Whenever members go south and see Sues Road, which is a fantastic little road—no towns along the way and it is the quickest way of getting to Augusta—that was paid for and built by BHP, and it now belongs to the state without a cent of public money going into it.

Mr C.J. Tallentire: I think there was public money, Premier; I am sure there was $70 million.

Mr C.J. BARNETT: There might have been some part; it was built by BHP. The Sues Road project and the power line were legacies of a project that, sadly, failed.

One of the things in negotiating state agreements is not to expose the state to risk, but also to see that, at the end of the day, there is actually a material benefit to the state beyond, say, mining royalties and other parts. A member opposite sort of said, "Why isn't that agreement act in here being repealed?" Fair question. I am guessing a little here, but I would think the reason it has not been repealed is that BHP still has rehabilitation obligations on that site that go for many years. The only way of ensuring that is to maintain on the statute the agreement act. I would be almost certain that is the reason. At some stage, that may come to an end.

The member also raised the agreement act for Mitchell Plateau. I have not been to Mitchell Plateau; I hope I can get there sometime. It is obviously a spectacular and beautiful part of the state. I have said before that I doubt Mitchell Plateau will ever be mined. I would not expect the member to anticipate this, but, ironically, at the moment the agreement act serves the purpose of protecting Mitchell Plateau. That is what it is actually doing. If the agreement act was not there, it would be open slather on Mitchell Plateau. Therefore, the agreement act for Mitchell Plateau stays in place to protect and preserve. Presumably, the conservation in the longer term is an issue the government is yet to get to.

Every agreement act is unique and each agreement has its own story, but it has been a fundamental mechanism for developing the state. It has also been a fundamental mechanism for holding companies to account, particularly if there is a change in ownership of the project. We have to remind companies, even today, that they do not own the minerals; they belong to the state. Most companies think they own them; they do not.

Nevertheless, agreement acts ultimately should serve their purpose, and ultimately they should expire. This bill simply repeals five agreements that serve no purpose anymore. The world has moved on. I thank members for their support of the bill, and this will be part of, I guess, a program of this government to progressively get rid of unnecessary legislation and regulation. It is always harder to get rid of it than it is to introduce it, but members will see a whole series of probably fairly dull bills coming into this Parliament to continue to tidy up the statute book.

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 **Mr C.J. Barnett (Premier)**, and transmitted to the Council.

House adjourned at 4.30 pm