

**ECONOMICS AND INDUSTRY
STANDING COMMITTEE**

**INQUIRY INTO THE MANAGEMENT OF
WESTERN AUSTRALIA'S FREIGHT RAIL NETWORK**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 25 JUNE 2014**

SESSION TWO

Members

**Mr I.C. Blayney(Chair)
Mr F.M. Logan (Deputy Chair)
Mr P.C. Tinley
Mr J. Norberger
Mr R.S. Love**

Hearing commenced at 10.04 am

Mr REECE WALDOCK

Director General, Department of Transport, examined:

Ms SUSAN JANE McCARREY

Deputy Director General, Department of Transport, examined:

Mr MARK ANTHONY BURGESS

Managing Director, Public Transport Authority, examined:

Mr DAVID BROWNE

Executive Director, Safety and Strategic Development, Public Transport Authority, examined:

The CHAIR: Good morning. On behalf of the Economics and Industry Standing Committee, I thank you for your appearance before us today. The purpose of this hearing is to assist the committee in gathering evidence for its inquiry into the management of Western Australia's grain rail network. You have been provided with a copy of the committee's specific terms of reference. The Economics and Industry Standing Committee is a committee of the Legislative Assembly of the Parliament of Western Australia. This hearing is a formal procedure of the Parliament and, therefore, commands the same respect as proceedings in the house itself. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. This is a public hearing and Hansard is making a transcript of the proceedings for the public record. If you refer to any documents during your evidence, it would assist Hansard if you would provide the full title for the record. Before we proceed to the inquiry's specific questions we have for you today, I need to ask you the following: have you completed the "Details of Witness" form?

The Witnesses: Yes.

The CHAIR: Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

The Witnesses: Yes.

The CHAIR: Did you receive and read the information for witnesses briefing sheet provided with the "Details of Witness" form today?

The Witnesses: Yes.

The CHAIR: Do you have any questions in relation to being a witness at today's hearing?

The Witnesses: No.

Mr J. NORBERGER: Page 4 of the PTA's submission states that if WestNet Rail had been required to re-sleeper the tier 1 and tier 2 lines, as opposed to the government injecting the funds to do so, one of the potential outcomes could have been that access fees would have to increase to allow Brookfield to recover the cost of the re-sleeping; and, that in turn, could have resulted in increased volumes of road grain freight. In relation to that element of your submission, can you advise why the PTA was considering this impact on the private operator and the access proponents rather than leaving it to market forces to work out? In the current regulatory environment, would

that have not been the domain of the ERA if operators and access proponents could not reach an agreement on the increased access charges?

Mr Waldock: Can you pick up the key points there again?

Mr J. NORBERGER: In your submission you indicated as part of the justification why the state government put in additional millions to pay for the re-sleepering of the tier 1 and tier 2 lines—when, in all fairness, Brookfield should have done that as part of its responsibilities—that it was good that the state government paid for it, because if it did not, Brookfield would have put up its access charges in order to recoup that. So my question really is —

Mr Waldock: I have got that clear, thank you, member. The reality is, as you well know, we had gone through many years of very deep analysis both with the GIG report and certainly the strategic grain network report. It was clear in the first report—and the federal government did its own reports, so there were reports over too many years probably; in fact, if there was any issue, I think it did take far too long to come to terms with the issues. But the reports were quite clear: if we wanted to maintain those grain lines, then somebody had to provide support because they were uneconomic. We had to make a decision in government and across governments how we were going to respond. To answer the question, it would have been fairly clear; in fact, the KPMG report also identified that a vast majority of the lines were uneconomic and that if we did not step in, nobody else would. That is not an ERA issue from my perspective; it is about pricing. We were talking about how we were going to maintain the lines for the future and put them on a basis that they could be economic and be privately managed properly.

Mr J. NORBERGER: Thank you. But with all due respect, Mr Waldock, the requirements to maintain the lines, unless I am terribly mistaken, was always a requirement of Brookfield in the lease. Was it not required to maintain the lines fit for purpose?

[10.10 am]

Mr Waldock: Sue McCarrey might want to pick up, but they were fit for purpose. The question was what would happen in the future.

Ms McCarrey: The actual lease agreement with Brookfield Rail always acknowledged that certain of the grain lines would not be as profitable as the other lines. That is why a number of clauses in the lease related specifically to that circumstance and what may arise over time in relation to those lines. The other thing that changed over time was the importance of the aboveground operator. The lease always allowed that when they were looking at whether the lines were economic or uneconomic, they had to take into account any revenue that was being made by a related entity who was an aboveground operator. When it was first leased, there were two wholly owned subsidiaries of Australian Railroad Group, which had WestNet Rail at the time, and Australian Western Railroad was the aboveground operator. The lease was set out. Because that is a related company, if it is making money and getting revenue from the aboveground operations, that had to be taken into account when you are saying whether the rail lines are economic or uneconomic. What had changed was the sale of the business and then the onsell of Australian Western Railroad. There was no longer a related entity that had aboveground rail operations and all that revenue that had to be taken into account to say whether or not the lines were economic went away. That caused a huge shift and the lease never envisaged that happening. If we took the lease totally to its word, many of the lines were suddenly uneconomic because we had lost the ability to take into account the aboveground operations. We also had a situation from a government perspective of, yes, there was a regulator. Brookfield Rail, or WestNet Rail at the time, was saying that if it did the re-sleepering itself and built that into its access charges, the access charges would go up to such an extent that the imbalance to road would be so major that there would be a huge shift off all the rail lines, apart from maybe some of the big ones. Government had a situation of whether to let it go through regulators and that system because in the meantime the grain would have left the rail and gone to road. Government's concern at that stage from a policy perspective was whether to let that happen,

because once it has left it is very hard to get it back; or does government intervene and say no, let us do a strategic grain network review and find out which lines are viable moving forward. The lease always envisaged that potentially some government investment would be needed in those lines.

Mr J. NORBERGER: You mentioned that the lease never envisaged the potential sell-off. By virtue of the sell-off of the above rail, it created a standing opportunity for Brookfield. Is it fair to say that the lease was very poorly constructed?

Ms McCarrey: Looking back, certainly, it is nice with the benefit hindsight. Having dealt with it for a few years, I would not say it was poorly constructed. Are there a few things in there which, looking back, I would have done differently if I had been involved? Yes.

Mr J. NORBERGER: We are stuck with it now, are we not?

The CHAIR: Your submission seems to imply that the government, around this time, could have terminated the lease for those sections of the network. Is that correct? Are you suggesting that there was a submission under section 16 of the lease received by the government to terminate those leases?

Ms McCarrey: No.

Mr P.C. TINLEY: Since we have raised the SGNR, we have received evidence, and there has been some conversation with the committee, about the veracity or the applicability of the SGNR now, principally around the assumptions that underpinned that review. Can you give us your view as to whether it is now out of date or whether the assumptions are not relevant to the current set of circumstances we are looking at in the market?

Mr Waldock: It is a little bit of a no-brainer to realise that when we did that, CBH had not looked at the whole issue of moving into the rail business. Dynamics do change and certainly there is no doubt that that report was done before CBH made its announcement—the world has moved on.

Mr P.C. TINLEY: Plus assumptions around diesel pricing. A lot of people are relying on the SGNR for the purpose of making decisions and justifying decisions in government and around the whole industry. Is it now time just to put that into the archives and forget about it?

Mr Waldock: When you talk about justification, I think we made, we believe, the right decisions based on the right assumptions. If you are suggesting that the world is changing and we should relook at public policy, certainly that is a possibility. But I still think a lot of the fundamentals do not change potentially in terms of who should pay for the work if we do in fact believe that the tier 3 grain lines should be maintained. The government has had a pretty strong position on that and I think a position that we would expect Brookfield and CBH to come to some negotiated position on, and that has been our position for some time now. Quite frankly, it is an impasse. We do not see that changing unless potentially the ERA provides some information that might change somebody's view. I guess, if you think back, it was an incredibly difficult position for government. To answer the chairman's question from the earlier session, the federal government does put money into grain—perhaps not passenger rail, but it certainly puts it into freight rail. Indeed, the federal government were the major players in the \$187 million of the package for rail. The issue for us, I guess, is we would have had to do the roads as well, and that is \$118 million, as you have heard. The reality is we were looking at \$94 million to do the tier 3s. Perhaps it is easy to say, "Why didn't government find the extra money?" But the reality is no other jurisdiction in Australia has invested anything like this in the rail system in terms of government funding—public funding. The reality was: where does it start and where does it finish? We had a good position. You may wish to revisit it, but my sense is that still we would like to see the private sector take the lead on this. The dynamics have changed.

Mr R.S. LOVE: Why did the government and parties, when working through the SGNR, come to the conclusion that the appropriate action was to close the tier 3 rail, yet leave them in the hands of someone other than government when, I think, the original lease, if the operator did not want to run

it, would pass back to government, and leave us in a situation where the closure of the line leaves an operator in control who does not actually want to operate them anymore? It is pretty public, but we have a group who are looking to use those lines and, for whatever reason of commerciality et cetera, they are unable to come to agreement. What precludes the government from simply saying, “Okay; you don’t want these lines; let’s re-tender them to someone that does want them”?

Mr Waldock: There are probably two parts to that question. The first part of it is: why at the time did we prefer to keep it in the hands of the lessee? It was clear to us at the time—I was chief executive officer, as I am now, but that was my only job in those days of the PTA—that we saw no benefit. You can imagine these tier 3 grain lines that did not seem to have any customers; they were not seen to be the future and road was going to in fact dominate the market in those areas. We saw no value in the Public Transport Authority at that stage picking up, not an asset, but a liability in terms of we would have to then maintain them. Care and maintenance and all the rest was at least a number of million dollars per year to do. With the benefit of hindsight, we may have changed, but at that stage we believed that it was best left with somebody that would actually pay for it rather than taxpayers paying for it. In terms of winning them back, in the second part of the question, I am not going to express my views other than to say when you get into an agreement, an agreement is an agreement and it is very clear what that agreement says.

Mr R.S. LOVE: So you saw no value in keeping the lines, but clearly the lessee does see value in keeping control of those lines. They stated as much in the committee that that is the case.

Mr Waldock: It was a different time line. When we did that, we saw no value. Of course, for the lessee, things have moved on and there is value now. It is a different time line and we made the decisions we thought best at that time. As I say, the dynamics have changed. Now that CBH are in the rail business, there is value there, and that is what the whole negotiation is about.

[10.20 am]

Mr R.S. LOVE: So you put the valuation of the effort to keep those lines in care and maintenance at several millions, yet driving through the wheatbelt we saw a section that was closed earlier before the lease period that did not seem to have any maintenance at all. Weeds were growing and no work had been done on it. So why would you spend millions of dollars when clearly you have not done it in other areas of the network?

Mr Waldock: I will ask Mr Browne to comment, but certainly that was our assessment. I think it was \$2 million a year for ongoing, I guess, just care and maintenance, as you say, in terms of weed control and all the rest, but also inspections regularly to see that the rail was not being stolen, they were intact and all the rest.

Mr Browne: That is exactly right. They are the figures that we were provided from our internal tracking maintenance personnel who are very familiar with the freight network, and that was for weed spraying, it was for firebreak control, it was for inspections, and it was to ensure that the lines were in care and maintenance, which was that, in the shorter term, they could potentially be brought back into an operational sense but, in the longer term, they were not unsafe for the populations who potentially could stumble across them as well.

The CHAIR: So the \$2 million for care and maintenance is almost like a watching-over sort of role, is it not? It is not care and maintenance to keep them up to standard.

Mr Waldock: Not operational, no; that is right.

The CHAIR: I think there has been a degree. That is \$2 million. Did you have a year-in, year-out figure that it would cost to keep the tier 3s operational?

Mr Waldock: That is a maintenance tracker.

Mr Browne: That is exactly right. That comes back to the time it was determined that they were not operational, and for them to become or remain operational, you had two options: you had the \$94 million or \$95 million re-sleeper option —

The CHAIR: That was like a lump sum, was it not?

Mr Browne: Yes.

The CHAIR: I was just curious if you had, if you like, a year-in, year-out figure.

Mr Browne: No, because the maintenance methodology that has been adopted by Brookfield is cyclic maintenance.

Mr Burgess: There is some indication perhaps that \$3.5 million for three lines for 12 months is perhaps some indication —

Mr Waldock: Of what it would cost to maintain them and keep them operational.

Mr Burgess: Yes, from 2011 to 2012. That was for three lines.

The CHAIR: But then, if there had not been a block of maintenance done for, say, 10 years prior to that, it is not really a year-in, year-out figure, is it?

Mr Burgess: I think the answer to your question is that you would have to start with the \$94 million.

Mr Browne: We believe that that is conservative.

The CHAIR: If you are talking blocks, how long would the \$94 million have kept them —

Mr Waldock: That would have got you through 15 years.

The CHAIR: So \$94 million would have done 15 years. It just strikes me that, having looked at the roads out there, and if the main grain effort is going to be in the first six months of the year, I am getting the feeling that that annual maintenance figure on the railway line would be less than the annual maintenance figure that is going to be on those roads, but that is just my opinion.

Mr Waldock: I think the roads are \$3.5 million a year, or in that order.

The CHAIR: Once again, that is not a year-in, year-out figure for the amount of damage that is going to be done to those roads that were built in the 1950s and 60s.

Mr J. NORBERGER: So \$94 million over 15 years is about \$6 million a year.

Mr Burgess: That \$94 million was 2009 dollars, so it would be over \$100 million now.

Mr P.C. TINLEY: The follow-on question from that is: when advice was given, or you worked through these things, what sort of comparative business case was done in relation to accepting that there was going to be a significant move to road off rail? Was there any sort of business case done?

Mr Waldock: I guess the point I probably did not make as clearly as I should is that we would have had to do road works anyway, so the reality is there was leakage to roads, in fact, at the time we made the decision, and there still is leakage to roads. So we would not have got away with not spending in the order of \$100 million on roads as well. So whatever we spent, \$94 million would have been an additive, so you would not have done one or the other; you would have had to do both. The fact of the matter is that you would have had potentially less demand on the roads, but you would have had still significant demand on the roads because, indeed, they were being used. There was a lot of leakage onto road.

Mr J. NORBERGER: Is it fair to say that some of that leakage, certainly recently, is coming because you have got the majority of the growers—in fact, CBH is the representative of the growers—wanting to use the rail; and, in many instances, they were using the rail for 95 per cent, but the performance standards of those lines continue to be degraded and more and more obstacles

are being put in their way with speed restrictions, train restrictions. That is why you are getting leakage on the road.

Mr Waldock: If I could, member, we were getting significant leakage on the roads. As I said, maybe what CBH might do now is different, but they are in the business of having vertically integrated rail operations. The reality is that at the time there was leakage across the system, and that is what the grain network review suggested. They have done a lot of analysis on that—a lot of modelling. Sd+D, and Neil Matthews, is an expert in this business and he made it very clear that we were losing business. Now, we did not have Watco or CBH showing any interest at that stage, so it was a different business, a different world.

Ms McCarrey: Can I just add that to actually suggest that the \$94 million would mean that no other maintenance is required for 15 years is incorrect. The \$94 million was purely to re-sleeper to a standard that allows those trains to run on those lines. It was actually moving on some of those lines to one-in-four steel or one-in-two wood-steel on those particular lines. They would still have to do ongoing maintenance around constantly checking the timber sleepers that remain; they have to be constantly checked for cracks. They have to constantly check the rail, so they are always doing spot-welding on the rail. That ongoing maintenance is always there; the \$94 million was just to upgrade the sleepers. Can I just say that, in the agreement, the government agreed, on the tier 1 and tier 2 lines, to do the re-sleepering, but the ongoing maintenance remains the responsibility of Brookfield Rail. As far as the actual grain running in the tier 3 area, and based on the report that we had at the time—we do continue to monitor what is happening out there on the system—we tend to get conflicting messages from CBH and Brookfield Rail. When we are looking at the additional grain as a result of the closure of the tier 3, we are not talking about farm to bin. Farm to bin will continue to be done by road, because obviously farm to bin is not carried out by rail. What we are talking about then is what happens to the grain that is picked up from the bin, so it is bin-to-bin movement if you like. When we look at that additional—what is on the tier 3 lines, which is as a result of the bin-to-bin movement, certainly from the figures that we have, it is around 56 per cent on rail versus what is actually on road currently out there. Again, we do at times get different figures; it depends on the time of the year, on harvest and on all those sorts of things. Even though the strategic grain network review was done in 2009, and certainly the picture has changed, we continue to monitor what is actually happening out there on the system as best we can, because we obviously rely very much on information from both Brookfield Rail and CBH.

Mr J. NORBERGER: If I may, I would just like to explore something. You mentioned that it was a government-negotiated—apparently, by the sounds of it—responsibility to do the re-sleepering and that Brookfield would just do the ongoing maintenance. Why is re-sleepering considered a capital expense? Would not re-sleepering, if it is done on an as-needed basis as individual sleepers needs to be replaced, be expected ongoing maintenance? It does not seem like there is a lot left for Brookfield to do if we are doing it all.

Ms McCarrey: Certainly, I will try to answer capital versus the other. Again, whether you call it ongoing maintenance or capital, the re-sleepering —

Mr J. NORBERGER: There is a big differentiation—ongoing maintenance at Brookfield.

Ms McCarrey: — you need to do that work in order to keep the rail lines operational. Again, I go back. Because of the change in the aboveground operations and the ownership structure of the company, if we had said to Brookfield Rail, “You need to do this”, then they would fund it. They would obviously build the cost of that into their access charges, which they are allowed to within the rules of the access regime, and that would cause again a shift—what we were constantly comparing is cost of road transport, cost of rail transport. Particularly with the modern grain trucks out there, they are very different to what they used to be. They are a lot better. They have the ability to move more grain than they ever used to in the past. In looking at the comparison between rail and road, if Brookfield Rail had had to pay for that re-sleepering, in order to get that money back from

their customers over a set period of time would have meant that the access charges drove it up and the imbalance between road and rail would not have just been on tier 3, there would have been a pretty major imbalance, certainly across pretty much all of the tier 2 and potentially some of those tier 1s.

[10.30 am]

Mr J. NORBERGER: If you explore that through, in all honesty, you are telling me that we were going to spend money on the roads anyway, so no matter what we did we rail we were going to spend money on the roads. Where you have a natural monopoly in Brookfield, what you are basically saying is that we wanted to protect a natural monopoly that does not need a whole lot of protection from what little market forces there could have been. If we had forced them to do their maintenance and they had to put their access fees up and if your fee was that that would make them so uncompetitive with road that people would go to road that is market at work. That is not in Brookfield's best interests. Their only revenue stream was if people use their rail, so that actually would have forced them to be economical or give up the rail and we would take them back.

Mr Waldock: I am not sure if I understand—forced them to do what? It was demonstrated that the majority of grain lines were uneconomic, in independent analysis, so what would have happened, do you think? I am just trying to better understand your intention.

Mr J. NORBERGER: In your own wording in your own submission, you are saying that part of the justification for why the state government put millions and millions of dollars into this was so that Brookfield would not have to put up their access fees. If they had to pay for it themselves they would have. So let us call it as it is—we actually subsidised the rail.

Mr Waldock: No. I think that is just perhaps—I understand what it says, but what it was really saying is that was one scenario, a likely scenario, and they would have handed it back to government as uneconomic.

Mr J. NORBERGER: Great!

Mr Waldock: No, at the time —

Mr Burgess: There was no-one lining up and saying —

Mr Waldock: — please understand, there was nobody else. We had to make a decision. It was not just our decision. As I say, there had been eight years of analysis on this through state and federal, and at the end of the day, we made what we thought was the most enlightened decision we have seen in this state in terms of how we were going to protect—as much as we could we protected the vast majority. We protected 92 per cent of the grain task to rail. I think that was a very significant decision. I look back and say we should be proud of that. Sure, the market has changed, but the market forces are pretty clear. They would have been uneconomic. Brookfield would not have invested if they did not have customers back to back, and they would not have had customers at those access charges, so we would have lost the rail lines—far more than just the tier 3s.

The CHAIR: I would like to move on from this because I think the two points that they made —

Mr P.C. TINLEY: That is fine, but I want to finally tease this out. Right now—as in five days' time—there will be more rail shut. We are going to have dead asset—dead to the state, dead to Brookfield and not economic; in fact, it is bleeding money in any sort of care and maintenance. How is that a good use of the public asset in the end? Why are they allowed—I know it is a fault of the lease—to retain ownership of that particular asset of the state when it is not productive for anyone?

Mr Waldock: All I can say is that I understand exactly the issue. I feel the same as you do in terms of it is hardly in the state's interests, and certainly not the farmers' interests, to see that situation, but none of us were involved in that lease, and the lease is the lease is the lease.

Mr J. NORBERGER: Who drafted the lease?

Mr Waldock: It was done by the taskforce. Dr Chris Whitaker was chairing at the time. I think Mallesons were the key lawyers for it, but it was a select group that worked for over 18 months solely on putting up the Westrail freight business for sale. It was very, very complex work—all the issues, and I think if there are any messages, when we privatise government assets we should be very clear of all the issues that could impinge. Over 50 years—it is no different from the airport, which is 100 years—sometimes people get trapped in this space.

Mr J. NORBERGER: Bit of an average outcome.

Mr Browne: I think the other point is that the SGNR report was on the back of the GIG report and the grain network report, which was an ARG and CBH report. All of those reports have said, over history these lines were uneconomic; indeed the GNR report—that is CBH and ARG—was recommending far wider closures than the tier 3s that are closing on 30 June.

Mr Burgess: So it is a bit dangerous to just come in and take a snapshot of a point in history—at this specific point in history. These reports are all publicly available and I think they are very important documents that need to be understood. We cannot just drill in now and say, “This is terrible today.” This is all based on a lot of research by a lot of people—reports by the federal government as well of the day, 2009, that said, “This would transfer to road.” In their own report it says, “Road has a natural advantage; it is not a level playing field.” That is out of their report so there will be drift onto the road and these freight lines will close. Every single one of those reports predicted that would occur.

Mr R.S. LOVE: You said just then that the lease was a bit faulty, but I understand that some of these decisions have been made outside the actual lease conditions. Why did you adopt this process of pre-emptively deciding what was an economic or uneconomic line? I think in your submission, contrary to what Mr Waldock said a little while ago, that you had not actually gone through the interpretation procedures through the lease to determine whether or not the lines were actually economic or uneconomic. There had been assumptions made, I guess, about what was a reasonable rate of return for the proponent in terms of costs and profits et cetera. How did you actually arrive at the decision that those lines were uneconomic if you had not gone through the processes outlined in the lease?

Mr Waldock: As I say, we did a KPMG report that was both looking at the financial side of things but also looking at the condition of the rail. In fact, David do you want to pick up on that issue?

Mr Browne: Yes certainly. As Reece said, the KPMG report had shown that the vast majority of the lines were uneconomic and if any of you have looked through that report, if they had been required to cover the cost of those lines, then access fees as I think Sue has already pointed out, would have to have been increased to recover the cost of that investment as well as the maintenance. As Sue said, it is not just a matter of doing a resleeper and cycle every 15 years and then recovering the cost of that significant capital investment; there is also a maintenance cost and that is around about \$8 000 per kilometre, per year. So there are significant additional costs in that. We are saying that capital investment, plus the ongoing cost, raise your access fees, which were already tenuous in viability compared to road, then we would put it over the top.

Mr R.S. LOVE: That is not really what I asked you. There is a mechanism in the lease to address uneconomic lines. What I asked is why you did not go through that process.

Ms McCarrey: At the time WestNet rail actually approached the government of the day, through the minister, and said that in a sense the situation had changed. As I said, the actual way in which uneconomic was being determined had shifted because of that change in the above grain freight rail.

Mr R.S. LOVE: That is probably something we can leave aside for a minute because I want to go into that a little bit further too, but carry on.

Ms McCarrey: When they approached government to say, “We believe now the majority of these lines are going to be uneconomic”, government said we will have KPMG test that assumption. That is why KPMG actually went out and had a look at what was happening, had a look at the books of WestNet at the time, and came back and confirmed that the great majority of the grain lines—not ones that carry a great deal of other product—would actually be uneconomic. As Mr Waldock has mentioned, at the time then it was the case of, “Well, does the government go through a process and take all the rail lines back?” At that stage there was no interest in another party taking it on. I understand that has now changed— a part of it—but at the time there was no interest, so then the government was in a position of, “Do we rely totally on the terms of the lease or is this one of those times where you do intervene on the market because you want as much grain as possible to stay on rail?” As I said, of the grain that was on there we are keeping around 93, 94 per cent of the grain on rail because of the intervention into the tier 1 and tier 2 lines. Certainly, I do not think the lease envisaged, the way it was drafted, what actually then happened. So government either then sits back and says, “We will rely totally on the lease or do we actually make a policy decision for the better outcome of keeping as much grain on rail as we possibly can?”

Mr R.S. LOVE: The assumption you have made that the shift between the above-rail operator and having both entities now represented has somehow fundamentally altered the economics of the situation is one that I am struggling to understand. There seems to be some sort of assumption in there that the previous operator may have cross-subsidised within their own business. I do not know that that is actually something you could rely upon. Good business will not cross-subsidise one for the other for very long before they realise there is a problem.

[10.40 am]

Ms McCarrey: It is not an assumption on cross-subsidy. The definition in the lease agreement said that if WestNet Rail at the time or Brookfield Rail was going to come to government and say that a line was uneconomic, the lease said they had to take into account any revenue that was being earned by a related entity who was an above-ground operator. That is actually what the lease said, so it was not an assumption about cross-subsidisation.

Mr R.S. LOVE: That is why you have made that distinct, not because of some economic assumption?

Ms McCarrey: It is because of the definitions that exist in the lease.

Mr R.S. LOVE: What assumptions do you make when you are trying to factor in what is a reasonable amount of money for the government to inject into a line? We have a situation beginning to develop at Miling where a business case or review is supposed to take place. How do you work on what is a reasonable input from the operator and from government? I guess to arrive at the amount of money you feel should be invested in the network you would have to have an understanding of the rate of return the operator was expecting from their own investment to understand what the shortfall was. How did you actually arrive at these numbers?

Mr Burgess: The numbers are based on the findings of the SGNC and SGNR that came out of the SGNC.

Mr R.S. LOVE: They are engineering figures of what it might be worth to put into bringing the line back to a standard, but did you have any injection from the operator?

Mr Burgess: Everyone was at the table at almost every one of those reports so, as David mentioned, the GNR report was one specifically done by CBH and ARG but the GIG review and the SGNC, where everyone was at the table in terms of pastoralists and graziers, CBH, the rail operator, were all at the table so the inputs would come to what was an independent group. It was not a PTA or GRT run group, it was an independent group reporting to the minister. I have read the report many times and based on what I read, they obviously had very significant inputs not just from all the local players in WA.

Mr R.S. LOVE: I am talking about money, not opinions. What is the expectation of the operator in terms of injecting capital into keep the network running? How much do you delve into the profitability of the operator to actually understand what the amount of subsidy is that you are going to give in terms of a capital injection?

The CHAIR: This is the operator of the rail network?

Mr R.S. LOVE: Yes, the operator of the rail network.

Mr Browne: That was the KPMG review. They went through and we did not just take Brookfield's or WestNet's as it was then, view on the world. We had KPMG who went over to Brookfield and spend some two weeks over there. They had open access to all the Brookfield's financial data and they made an assessment based on the data and based on the cost of resleepering that an investment that we have just put in through the tier 1 and 2 lines was required, so that those lines would not be uneconomic in accordance with the definition within the lease and that is what we are bound by. We are required to either make the lines not uneconomic or we take the lines back. As we have said several times we made the decision, or the government made the decision, at the time to invest in the lines so that they were not uneconomic.

Mr J. NORBERGER: What has changed now? You just said your two options are to either keep them economic or to take them back but have you created a third variable now because now they are not economic but we are not getting them back and now they are going into care and maintenance.

Mr Waldock: The lease allows—the lessee has to come to us on that basis.

Mr J. NORBERGER: Great outcome for Brookfield.

Ms McCarrey: Can I just clarify something about the Miling line, because it has been brought up and there is some confusion that the strategic grain network review, which resulted in the report, was a good piece of analysis that informed government. Government policy was then the cabinet submission and, yes, with a business case that actually went to cabinet. Obviously, in order to get the funding to fund the roads and the rail and the commonwealth funding, a business case was actually presented to cabinet on the funding that was required and the full reason as to why the suggestion was that we invest in tier 1 and tier 2 et cetera. So the government decision and the policy is the cabinet decision, not this. So when it comes to the Miling line, there has been no state government decision and, from a state government perspective, Brookfield Rail is responsible for operating that line at the performance standard in the lease, and there has been no agreement otherwise in relation to that rail line. I think people are sometimes reading this and saying absolutely everything that is written in there is government policy; that is not the case. It was a piece of work that informed the cabinet of the day with the business case that resulted for a cabinet decision to be taken—that was government policy. No decision has been taken in relation to the Miling line; they must meet the performance standards under the lease.

Mr J. NORBERGER: Thanks. Correct me if my understanding is wrong, but PTA has a direct influence over what we discussed before about the whole determination of whether the line is uneconomic or not. Apologies if I bore the entire press gallery with accounting talk, but it is around how depreciation is handled. My understanding is that PTA has given Brookfield permission to treat their capital expenditure—the depreciation that arises from it—in such a manner where they get to write it off in the very year it happened. So if you are spending \$50 million on something that will have a useful life of 10 years, rather than depreciating it \$5 million a year for 10 years, PTA has given Brookfield permission to write it off the very next year, and that allows Brookfield to say, “Oh well, that would make is uneconomical for us to do it so we will not do it.”

Mr Waldock: I might just pass over to David because, as I understand, that was raised in the KPMG report. My understanding is it was the write-off, or depreciation, over the term of the contract period, not over the year, but Mr Browne might want to further expand.

Mr Browne: Again, the lease is not a perfect document. There is no guidance on how the accounting methodology should be acquitted to determine whether a line is economic and over what sort of period you would amortise any costs. The agreement at the time in the KPMG report was that those costs were amortised over a four-year period, and that was actually greater than the customer contract period at the time. As we found, they actually have no access arrangement with CBH at the moment, so the period that they amortised the costs was only over the period over which they had certainty to recover those costs at that time. I just make the point —

Mr Waldock: That is a judgement call and our chief financial officer was actually supporting our view of the view that was taken. If you think back to the time when really it was struggling, it looked like there was no money, and tier 3s particularly were going very badly in terms of leakage. To say you can depreciate over 50 years or whatever just does not make sense in that market because you did not have customers in that market for 50 years. It is a judgement call and certainly that was the judgement call —

Mr J. NORBERGER: But they have control over the asset. If I have an office and I fit it out with furniture and I have a lease on that office for 10 years, I amortise my fit-out costs over 10 years but I do not say that although you have a contract with BHP for the next two years, I could be bankrupt in two years so I am just going to amortise it over two years.

Mr Waldock: But with a fixed asset, which is not able to be moved, it is really what the market is going to do, and certainly in this particular case there was no clarity that there would be any business in an extended period. It was just a market situation.

Mr Burgess: The office will probably have quite a few customers. If someone leaves and moves out it will be advertised and there are lots of people who want office space. These train lines did not have many customers. It is a very different situation.

Mr Browne: Can I just make the point that we have talked about how the scene has changed with CBH and Watco coming on board. What has not changed is that a significant amount of investment is still required into the tier 3s to make them operational, and it is not clear from my perspective where that money is coming from, which needs to be sorted out. I have seen a whole bunch of media on it, but yet some \$94 million—conservatively speaking—is still required to get those lines operational and no-one is saying that they will invest that money. Potentially, even though there is a lot of rhetoric out there, it may still come back to government to invest.

Mr Waldock: That is the issue.

Mr J. NORBERGER: I think that is spot on. It comes back to what you said earlier, Mr Waldock, that the very reason why the PTA is proud of its decisions back in 2009 and whatnot was because it was deemed that the tier 3 lines should be kept open, that the concept—the fear—that if the money was not invested that the tier 3 lines would basically be uneconomical, was sufficient to justify the investment. What has changed now? Now everyone has done a “hands off”, because in five days they are closing.

[10.50 am]

Mr Waldock: Sorry, I think I said exactly the opposite. I thought I said we had decided clearly to invest in tier 1 and tier 2 for very good reason after a detailed analysis over too long a period. When we decided to invest in that and we realised that that was \$187 million in investment plus the road package, it was a decision that we did not believe we could justify spending that sort of money on tier 3s, and that was the decision at the top. Now, as we have discussed today, the world has changed. CBH post that period decided with Watco to get into the vertical integrated business of moving product by rail. The dynamics have changed but certainly, from our point of view, we believe that was the right decision at the time and we believe now, with those dynamics changing, CBH and Brookfield need to get together to see what they can do, and that is what is happening. It has not been ideal, but that is what is happening.

Mr P.C. TINLEY: Can I just pick up on that then, because it is really the guts of what we are talking about. The real issue here is about how two commercial entities are going to get on and get it done and maximise the use of a state asset, effectively. I think in your submission you talked about the closure of tier 3 being the result of market realities—you have touched on that already in what you have said. There is nothing preventing CBH and Brookfield from getting together, except we have heard evidence consistently throughout this inquiry about the lack of transparency for any market applicant, if you like, or anybody who wants to use it, whoever they may be—we note the deregulation going on in the industry as well—in performance standards that Brookfield have to maintain. Do you see how that proposition that they need to come to a commercial decision between themselves puts it at risk because of the lack of transparency on the performance standards that Brookfield have to maintain?

Mr Waldock: Yes. Dave might want to comment on performance standards, but certainly the fit-for-purpose performance standards, as we all know—and I think you have been given details of them—were clearly laid out. You might not think that that is best. If we did it again, maybe we should have more clarity in terms of other performance standards, but they are the performance standards that we abide by and our audits have been based on, and they still are, whether it is actual loading or section times and all the rest. I am not sure if you are suggesting that because CBH and Watco do not know what those performance standards are explicitly that that affects their decision-making?

Mr P.C. TINLEY: Well, yes; it affects their capacity to negotiate.

Mr Burgess: Does it really? What we know is that there are some really old railway lines out there that are lightweight, non-welded, on gravel ballast and are very ancient and need to be modernised, and someone needs to pay for it.

Mr J. NORBERGER: That is right but look at it from CBH's point of view. What you are saying is that they have been put in a position to potentially be asked to put money on the table. Ultimately, that is what Brookfield would like to see happen—you guys pay for the upgrade—but there is no guarantee for them to know at what kind of standard that line will be maintained. They have nothing.

Ms McCarrey: Why not?

Mr J. NORBERGER: Because they do not have access —

The CHAIR: I want to move on from this —

Ms McCarrey: Can I just say in contract negotiations with —

The CHAIR: No, sorry. Shane has been waiting to ask another question, so I want to move on to the next question.

Mr R.S. LOVE: I shudder to tell you this, Mr Chair, but it is about performance standards. I cannot go back to that point, I am afraid. So, getting back to the Miling line, which is one of the original reasons for this inquiry, we have heard evidence that there was investment in the Miling line after the lease agreement was reached. That investment led to a higher level of performance on that line. Was that higher standard of performance ever written into a performance standard; and, if not, why not?

Mr Browne: Into the Miling line there was no increase in performance standard, nor has there been with the recent re-sleeping program. What they have simply done is kept them at the initial performance standards as at the time of the lease. That is what they are required to do. Where we have raised the performance standards is where the state or the federal government has invested in it and there has been clear increase, such as in the eastern goldfields railway where they have poured in full-depth concrete sleepers and through some of the other parts. We have said that that is a

significantly better line now and we will increase the performance standards as a result of that funding and as a result of those works.

Mr R.S. LOVE: The evidence we heard in that regard was that there was an increase in the length and weight of the configuration of trains on the Miling line after the re-sleepering took place in about 2004, or thereabouts, and that quite recently, 12 to 18 months ago, that was changed back to the level that it was before. What you are saying is that under the lease there was no revision of the stated performance standard, but, obviously, the regulator that determines the ability of a line to carry had recognised that that investment had raised the standard that could be carried on that train. My question is: why did you not review the performance standard at that point?

Mr Waldock: In a policy sense—the rail regulator certainly would look at that and make decisions—they could argue that the lessees, which they had, when they pay for anything, the performance standard is the performance standard and fit for purpose is fit for purpose, as laid out in the lease. It is different when the government funds things; we are able to negotiate an increase in those standards as a partner of variation. It is a different sort of package. Where we have put funds into upgrades, we have changed the performance standards. Where it is their business on their lines, the lease—again, we come back to the lease—that is the performance standard laid down that they have to meet.

Mr R.S. LOVE: But the investment that was made on the Miling line was part of the sale arrangements at the time, was it not?

Mr Waldock: Yes, but it was never envisaged that the standards would change.

The CHAIR: I have an observation. It seems to me as an outsider that the decision to put steel sleepers onto gravel ballast was a mistake because of the pumping action and the waving effect on the railway lines. Now the lines are starting to break. Whose decision was it, technically, to put steel sleepers onto gravel ballasts?

Mr Browne: The steel and timber sleeper combination is one that has been out there for a long, long time. The issue that you are talking about—pumping—is predominantly because it does not have issues with tamping underneath a steel sleeper, but that would only really present itself when you are going into a 100 per cent steel/timber configuration. You will have differences in the engineers' opinions about pumping and the configuration between steel and timber sleepers. Out there at the moment, it is one in four steel/timber, and it is coming back to one in two steel/timber. Our engineers and Brookfield's engineers say that there is no issue with a one in two steel/timber configuration in gravel ballast.

Mr Burgess: To put it into perspective, that was probably started 10 years before the sale by the government rail operators, Westrail, or perhaps more. Clearly, they had a very good team of engineers. Clearly, it is a case of, as David said, making sure you treat any particular issue in terms of ballast at a point in time, whether it is gravel ballast or otherwise.

The CHAIR: So you would not say that the use of steel sleepers does not fit with gravel ballast?

Mr Browne: No. Our engineers and Brookfield's engineers say that, clearly, it is a viable option that keeps them fit for purpose and that is why they have actually just done it.

Mr Burgess: It has benefits. In terms of maintaining gauge, that is why steel is put in there and in terms of long-term maintenance, it obviously has benefits.

Mr J. NORBERGER: There is no issue with the steel sleeper. I think the question that was raised was about gravel as opposed to blue metal. I am no rail expert, but we went out to Bruce Rock, and if this humble Joondalup backbencher could see the rail wobbling as the train went over it and you go up to the sleepers afterwards and see the steel ones totally buried and sunk into the ground—I do not know; I do not have an engineering degree, but it did not look good.

Mr Burgess: What we are saying is that this did not start recently. I am not saying that the issues you observed are not issues; I am just saying that this did not start recently. It was not a recent innovation. It started 25 or 30 years ago.

Mr Waldock: But there has been an issue with blue metal and gravel. I take your point; gravel is not as effective. I used to be a metallurgist many years ago and I have been in the rail business. You can actually write volumes on this and lots of technical people could argue for hours and hours. I think it is fair to say, though, that our best advice was our best advice.

Mr Browne: Exactly. Clearly, blue metal is a better ballast, but it comes down to cost benefit, and this is fit for purpose for the type of low-weight actual loadings that are going over it and the low volumes that are going over it. Both our engineers and Brookfield's engineers are happy with the configuration we have out there at the moment.

[11.00 am]

Mr J. NORBERGER: Mr Waldock, you mentioned before that when the government has injected money, we have been able to impact the performance standards, or we were able to renegotiate the performance standards. That is interesting, because according to the Auditor General's report of 2013, it indicates that the PTA, based on your own internal legal advice, had interpreted the lease to mean that in most situations the only usable standards are the initial performance standards, which were set in 2000. The PTA has provided an explanation of that to the committee and stated that you are comfortable with that interpretation of the meaning and intended operation of the clause relating to fit for purpose. Can you please explain your internal legal advice to the committee? How is it that the only standards applicable are those that were reached in 2000?

Mr Browne: It should be "and is subsequently changed". So, where we say "the initial performance standards", which were the standards in place at the time of the lease, it is "but as amended".

Mr J. NORBERGER: But why would that have even come up? That would make the whole point moot. I will re-read it. The Auditor General's report said that based on internal legal advice, the PTA has interpreted the lease to mean that in most situations "the only usable standards are the initial performance standards". If it were to read the initial "and everything subsequent", the whole statement would have been superfluous.

Mr Waldock: Not really, because there has only been a number of variations where money—public funds—have gone into upgrades. Clearly, as partners in upgrades we can look at changing—we actually have got a bargaining position; if we are going to upgrade, let us change the standards and improve the system. That is pretty axiomatic. From our point of view, if you asked me a question about—it is interesting that the Auditor General raised that, but when we had discussions with the Auditor General, which we did on a number of occasions, we still believed—and, as we say, we are comfortable with our interpretation of "fit for purpose" in what the lease says in terms of what needs to be done. Those standards are the standards. I am yet to see any other legal advice that would suggest that that is not the interpretation. The more suggestions you read about technology and the like, the more you realise that would have been impossible to put into a lease, particularly when the government was trying to sell an asset. Again, let us put our minds back—it is Dreamtime from our point of view.

Mr J. NORBERGER: Sure. When Brookfield approached the PTA for capital funding, what was the condition of the tier 3 lines? By that I am asking: were the tier 3 lines lower than the 2000 standards; and, if so, how was that allowed to happen?

Mr Waldock: I will pass over to David, but that was certainly picked up in the audits.

Mr Browne: In the audits—there was a 2005 audit done as part of the normal five-yearly audits; indeed, there were a couple of reports done in 2004 and 2005 prior to the extension of the grain line re-sleeper program. Both of those said that the tier 3 lines, particularly the lines covered by the grain line strengthening program, were still fit for purpose in accordance with the lease

requirements. At the time of Brookfield—or WestNet—coming to government for funding, some of those lines had actually already ceased operation—the Nyabing and the Gnowangerup lines—and that was due to market forces.

Mr J. NORBERGER: That is whether they are economic or not, but I am talking about the standard. Brookfield came to the government and said, “We need money—\$94 million.” You are telling me that in 2005, the standard of the tier 3 lines were still fit for purpose and still met the 2000 standard. Something clearly changed; four or five years later, they are coming in holding their hand out for tens of millions of dollars. I am assuming the state of the tier 3 lines by that stage—the condition, the fit for purpose—had slipped below that of 2000.

Mr Browne: Exactly right. They were coming up to a re-sleeping cycle. Like any physical entity, it does not just change from one day to the next; there is a gradual degradation in its performance, which is why you go into re-sleeping cycles, and it was coming up to that. Brookfield was telling us they were degrading to the point where they would no longer be fit for purpose. At the time they were.

Mr Waldock: In 2005, they were fit for purpose.

Mr Browne: Yes, certainly. They were coming down to the point where if there was not investment in them, they would no longer be fit for purpose.

Mr Burgess: And there was that threshold date on the lease, which I think is 2006.

Mr Browne: Yes, you are exactly right, and indeed —

The CHAIR: I actually want to go back a bit and I am curious about your internal legal advice that you received. You have referred to a couple of times. Can you tell us be more about that.

Mr Waldock: I can tell you that Michelle D’Adamo was our lawyer for PTA and is of the highest quality. She used to be a partner in one of the large four; she is now a very senior person in the State Solicitor’s Office and she is still very clear about what her interpretation of that lease is.

Proceedings suspended from 11.05 to 11.13 am

Mr J. NORBERGER: In your submission on page 6 the PTA, I guess, argues the fact that the management of the Western Australian freight rail network is best judged by the current status of the rail freight network, which except for tier 3 lines, is in a better condition than it was in 2000. Is it fair to say that the current status of the rail freight network is due in large part to the capital injection by the government as part of the re-sleeping project?

Mr Waldock: Over all lines? I think, no. I think the vast majority of investment has been based on private sector opportunities, including the upgrade of the Esperance line for iron ore and certainly the upgrade of the midwest line for Karara to Gindalbie—I mean there have been massive investments in those sort of lines for market reasons, so you have to say, as I say, huge investment. I have not got a number on it, but I think —

Mr Browne: There is \$500 million for Karara, compared to \$162 million for the grain freight plus the Esperance lines, plus the other lines.

Mr Waldock: Somewhere I read a \$2 billion figure, but that might have been a little —

Mr Browne: That was the total investment over the 14 years.

Mr J. NORBERGER: How should we view PTA’s management of the tier 2 Miling line, which is at risk of becoming non-operational?

Mr Waldock: Would you like to respond to that, Susan?

Ms McCarrey: I repeat: there is no reason why the Miling line should become non-operational. As I said, the strategic grain network review, the report that came out of it, informed a business case which informed government. The government decision is what is policy, and that was the decision

taken by the cabinet of the day. That cabinet decision dealt with the tier investment, as you saw it, in tiers 1 and 2, and the decision not to invest in tier 3. There has been no government decision in relation to the Miling line and Brookfield Rail is bound by the lease as it stands for the Miling line.

Mr J. NORBERGER: Are there any tier 1 and tier 2 line restrictions in place today that were not in place when the lease was signed in 2000?

Mr Browne: If you are talking about temporary speed restrictions or anything of an operational nature, I am not aware of. Operational restrictions occur almost on a daily basis on every line that is out there. Indeed, the PTA have them during hot weather. There could very well be some out there that I am not aware of. Indeed, speed restrictions were not things—there were multiple speed restrictions at the time of the lease in many of these lines. The government was very aware that these lines were not necessarily as they seemed. There were performance standards, but on top of that there were particular speed restrictions out there, but they were not included in the performance in the lease. Again, they looked a little better than they were.

Mr P.C. TINLEY: We have been looking backwards and I want to look forwards now to end of lease. It has been stated that you are working with the Department of Transport and other agencies as required looking at the end-of-lease arrangements. I would like to understand how far advanced that strategy is and what work on it has been done to date.

Mr Browne: Certainly. We are using technology. I am a big fan of technology. We are utilising GIS—geographic information system—linked into a whole raft of other technologies not only within the PTA but within other government agencies such as Landgate—nearmapping. We are looking at nearmaps so that we will be able to see the actual condition of the line as it is, as nearmap flies over it. We are going to fly over ourselves to get very high definition footage of the line, as well as the photos which we will get from the five-yearly audits. This is setting us up for the future so that in 20 or 30 years' time people will be able to see snapshots of every section of the line as it was at a point in time. Together with all of the decisions that are made in relation to the lines, indeed all of this information is going into that GI system so that we can sit down there and someone in 30 years' time can understand why decisions were made, where the evidence is, and have a very clear paper trail for that —

Mr P.C. TINLEY: Is that strategy agreed? Is it developed as a policy or as a position that you will manage the lease under?

Mr Browne: This is just an enhancement to the management of the lease. We have a lease management plan today, but we are enhancing that. Every year we get annual reports from Brookfield which show the volumes, that show the track kilometres on it in accordance with section 25 of the lease —

Mr P.C. TINLEY: Here is the question: are you satisfied through the life of this lease, particularly towards the end of life of this lease, that the lessees—whoever they may be at the time, because this could again move—have not squeezed the asset in relation to ensuring that we get back as an asset or have available as an asset to the people of Western Australia that we hand it over, or better it?

Mr Waldock: It is a question that we are all conscious of. Whilst we can talk about we have 36 years to go, we actually need to be thinking about that very clearly now. The fact of the matter is I am sure the current lessee might want to talk to government before, but we will need to be very clear what we expect in the next generation of lease and how it might work. To answer your question, I think we have done a lot of thinking about that. We have got a bit of time up our sleeve but we need to continue to look at that. We will get on with the enhancement state of talks. What you are talking about is: What are the lessons learnt from this? What are some of the things we can do to make sure we give ourselves some —

The CHAIR: I think the real question is in the rundown towards the end of the lease, you have to have a strategy in place so that the ongoing maintenance and keeping the thing up to scratch is done and that —

Mr Waldock: Without question.

[11.20 am]

Mr Browne: But that is already accounted for in the lease as well. The lessee is required, in the last five years towards termination, to put the last five years' maintenance into an escrow account. But that does not account for the issues that Mr Tinley and Mr Waldock were just talking about, about the ongoing investment into the lines towards the end of the term and the ability of the lessee to be able to recover that investment.

Mr P.C. TINLEY: Noting of course that the lessee may want to re-lease. There is a whole decision process there.

Mr Waldock: There are two dimensions, is there not? If the lessee thinks he is going to actually be continuing, he will want to make sure the asset is up to speed. There is a risk if it does not continue he will want to sweat the asset. We are very conscious of those issues.

Mr P.C. TINLEY: You have seen government giving an early —

Mr R.S. LOVE: While you were going through this, you mentioned the five-year audits. I assume the five-year review of performance standards goes with that. What do you do as an organisation towards the day-to-day active management of that lease in the five-year period between those snapshots to ensure that we are getting the best possible network management throughout that five-year period?

Mr Waldock: This is an issue that came up with the auditor as well. I think it is an issue we probably should spend some time on. Clearly, we have regular formal meetings as laid down under the lease. We certainly understand all the significant issues that are transpiring in terms of investment and the like. We believe, again, we are following the intent of the lease. We talk about quiet enjoyment. We actually have a number of things we do. We do abide by the lease in terms of what exemptions are laid down, what they have to provide. It has been suggested we should be far more micro in how we manage the lessee. I must say that has never been our interpretation. Whilst I think it is fair to say that certainly in recent times, because of what is happening, it has taken a far greater lease, but we believe, and still do believe, that these people, this lessee, should not be bothered and pestered by us on day-to-day issues. David, do you want to make any remarks?

Mr Browne: Certainly. As far as the day-to-day issues, we have a raft of them. We have a number of projects that we, as the state government agency, are responsible for in the provision of rail infrastructure in WA, and also as the lessee. We have just done the Esperance port access corridor project, which was essentially a Main Roads project, but because it involved the leased railway infrastructure we necessarily became involved in that. We are doing projects at Lloyd Street. Again, it is a grade separation, so there are realignments of the road. We get involved in that with Brookfield and Main Roads as well. We have got a raft of these types of projects. We also have land issues. When any of the utilities wish to cross the leased railway infrastructure in accordance with the lease, approvals need to come to us as well as Brookfield. There is a significant amount of correspondence in liaising with Brookfield on a day-to-day basis about the management of not only those projects but those day-to-day issues as well. We also have monthly meetings with them. We have quarterly strategic issues meetings, which Reece has just talked about, where we have DRT, PTA and Brookfield Rail. We have a very close working relationship to make sure that it does work for the state and the lessee. But keeping in mind, as Reece has said, that they have the right to the quiet enjoyment and use of the leased rail infrastructure.

Mr R.S. LOVE: I guess they do, but we have had evidence from individuals who have questioned sometimes the efficiencies that are being achieved by some of the network. Brookfield, I do not

think, are worldwide operators of rail infrastructure. Is there some sort of an independent assessment of their effectiveness as a manager in terms of facilitating the good management of the freight network beyond accepting what they tell you at face value?

Mr Burgess: I think one point to make there is that Brookfield bought the business. The bulk of the people who were there were all railway people. They did not bring in a whole new team. They were railway people from previous railway owners. I am not sure of Brookfield's rail operations in other parts of the world. They are certainly a big company. I would have thought they would have pretty good standing in terms of business acumen and, as I say, the staff that on the ground are the people who were running the business before.

The CHAIR: They have no other railway interests.

Mr J. NORBERGER: We are it.

Mr Burgess: We have dealings with lots of big contractors who buy out companies and they usually do not turn over all the staff. I have got a whole list of them. They usually do not turn over all the staff and they buy the business for reasons of their war chest. It does not mean that the business goes helter-skelter just because they bought the business.

Mr J. NORBERGER: I agree. But in this case you have got a monopolistic player that we are choosing to run —

Mr R.S. LOVE: If you do not mind, I just want to finish up on this. You represent the owner, basically. You represent the people of Western Australia. If you do not have an idea of what makes an effective rail network, then how do you possibly ensure that the management of the network is actually being conducted properly?

Mr Waldock: I think that is a bit unfair. I think we do understand the network pretty well. There may be some examples and we would always have a look at that but, certainly, as I say, it is laid down by the lease. You have got to respect the agreement in place. That is what they paid for. I am not any fan of Brookfield and I am certainly no fan of CBH. I am just telling you what we do as part of managing the arrangements. That is what we have been given. That is our job; that is our task. I would say, if I could just talk about sort of oversight, I look at lots of public sector privatisation around Australia and whether it is the airport or whether it is ports, I think there is probably—there is without question more oversight in this in terms of operations than any other privatisation that I am aware of. So if you are looking at comparisons —

The CHAIR: As there probably needs to be.

Mr Waldock: There probably needs to be, but I am just drawing comparisons.

Mr Browne: Can I just say my workings with Brookfield—and I am the primary contact for the PTA; I oversight the program of projects that we have out there, such as the recent grain line re-sleeper project, together with our financial people and our engineering people, and they are very pro-government. Our people are very, very pro-government. Many of them were against—we all have our own individual views that perhaps the state should not be investing in these things—but they have all been, without exception, fully supportive of the professional conduct and abilities of the Brookfield people we work for. They are very good people. They know what they are doing, certainly from a project management and an engineering perspective.

Mr J. NORBERGER: Thank you. Has the PTA obtained any legal advice in relation to amending the lease to allow sections of the network to either be subleased or resumed so as to be made available on the market?

Mr Waldock: Yes, we have.

Ms McCarrey: We have. I guess the answer is we cannot unilaterally just change the lease. In order to change the terms of that lease agreement with Brookfield Rail to allow something to

occur, they do have the ability under the lease currently to sublease. If Brookfield make the decision to sublease, they have that ability under the current lease arrangement. If we wish to change the terms of it, like any other contractual arrangement, you have to have agreement of both parties to change that. So, Brookfield have to agree to change to whatever we do, so it would be a negotiation.

Mr Browne: In fact, that is an issue that has come up; one that has not been progressed much further, given the current proceedings. Brookfield are potentially keen to have a look at it, as we would be, because, again, we have had 14 years of experience with the lease. We see things that could be improved. Undoubtedly, they see that there are things that could be improved. It just comes down to getting an agreement and what is for the benefit of us and the taxpayers of Western Australia.

Mr P.C. TINLEY: The Auditor General's report notes that a \$400 million capital investment commitment by the successful bidder was not included in the lease. The Auditor General also noted that none of the documents examined provide an explanation of why this occurred. Can you shed some light on it?

Ms McCarrey: I can, only because I had the wonderful job of researching it at the time. Like a lot of these privatisation processes, the original draft of the lease agreement actually went out as part of the tender documentation. It was obviously drawn up in advance and it was put out. The \$400 million commitment was made after they had been through that process, the winning bidder had been determined and an announcement was made by the government. A media release included that information from the consortia at the time. ARG said, "Well, we are going to come out and we are going to invest \$400 million." It was part of a media announcement and the launch at the time. All the agreements had been signed by then. It was never intended, obviously, as a result of that for it to be built into the lease. Obviously, Brookfield would argue that they have now invested lots more than that. That is their argument. But it was actually part of the whole announcement and media release that that statement was made.

[11.30 am]

Mr Burgess: I do not think it would be part of an argument. It is actually a fact; they have invested a lot more —

Ms McCarrey: That is it; I am just trying to —

The CHAIR: You could say Brookfield have invested quite a bit of money in it, but let us be specific. You are going back to who won the tender. They put out a press release and say, "We are going to put \$400 million into this network", which, from what you just said, was not in the lease documents that had already been signed, and I suspect that winning bidder never put \$400 million into the network. Brookfield may have done since they acquired it but did Genesee & Wyoming and Wesfarmers put \$400 million into the network?

Ms McCarrey: ARG certainly put a certain amount of investment over the years. I would like to also adjust my statement. Brookfield has put investment into the rail but a lot of that has been negotiated with private sector operators. As mentioned, into Geraldton—it was negotiated with Karara regardless of which way you see it going —

Mr Burgess: As it always would be.

Ms McCarrey: And same with Esperance. The intention was—I guess, the decision taken to privatise, as David said, whether you agree or disagree to privatising the asset—at the time a decision was taken, the idea was: let us put this out to market forces and allow the private sector to negotiate, and if there is a mining interest that needs it upgraded because they are now carrying iron ore as opposed to grain, which is a heavier product, then let the negotiation happen. Now, parties might then argue that they got a better deal than the other, but the whole point of it was to actually put it out as part of—generally, on the whole that has worked. Same with Esperance. I am sure the company, Cliffs Natural Resources, would actually argue that they have invested a fair bit of money

into the Esperance line as well as part of the arrangements that they have got with the rail network owner.

Mr Burgess: Anyone who was going to invest money was clearly going to seek a return somehow, whether it was in access fees or whether it was a contribution. No-one is going to put the money in and not expect to get a return.

The CHAIR: Except the taxpayer.

Mr Burgess: I think people argue that they do get a return. There is an argument that there are benefits in terms of trying to keep various rail lines open. I think people would see that traffic off the roads is a good thing.

The CHAIR: Just a final question, the PTA has provided a number of documents, including minutes of meetings, management plan, verification of audit report and the like. No application has been made to the committee to consider these as closed evidence. Is the PTA aware of any reason why these should not be made public?

Mr Burgess: Can you repeat that?

The CHAIR: Minutes of meetings, management plan, verification of audit report and the like—I wanted to ask you a question also about the second. Every five years you do a —

Mr Waldock: Brookfield would not enjoy seeing their minutes of meetings, I think, in the public domain.

Mr Browne: Certainly their view would be that all of this is in relation to leased railway infrastructure and it is confidential information in accordance with the lease.

The CHAIR: Okay. The five-year audit report—we have the report that was done after five years by Gary Lewis.

Ms McCarrey: The first one? WorleyParsons.

Mr Waldock: Martin Baggott, yes.

The CHAIR: So there was another one done five years after that?

Mr Browne: Yes, May 2010.

The CHAIR: Which we do not have a copy of.

Mr Browne: We can send that across. That is no problems whatsoever.

The CHAIR: Thanks; I appreciate it. With that document—can that be in the public realm or not?

Mr Browne: Again, because it has got information specifically in relation to performance standards, Brookfield would object to that. They would class that as confidential information.

Mr J. NORBERGER: The first one was tabled.

Mr Waldock: I think the first one was tabled this —

Mr Burgess: I think it was tabled by the minister.

The CHAIR: Right. I would like to thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added by these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your transcript of evidence. I think we all had some follow-on questions from today so is it okay if we write to you?

Mr Waldock: Yes.

The CHAIR: With that, I thank you very much for your time today.

Mr Waldock: If I could perhaps make a closing statement. It would just, perhaps, tidy up, I guess, some of the issues that Ms McCarrey raised. There is no doubt that the breaking away of the vertical separation did, in fact, create issues in terms of uneconomic lines et cetera, but I think that we should not necessarily see that as a bad thing. Generally, when you are looking at privatising, the models around the world, particularly when it is non-passenger, you do separate the above rail from the below rail. It does make it far cleaner, far more transparent. Whilst CBH and Brookfield might argue about rates and ceilings and floors and all the rest, the reality is that at least there is an open access and there is no sort of hidden subsidies, as we talked about earlier, which can happen in a vertically integrated situation. I think the model is about right. The issue, of course, is about making it work. Thank you.

Hearing concluded at 11.36 am
