

FREIGHT RAIL NETWORK

Statement

HON DIANE EVERS (South West) [6.42 pm]: I rise tonight to address the lease and management of WA's freight rail network. Since the lease documents were signed off 18 years ago, it continues to be shrouded in secrecy. In divesting itself of the state's Westrail freight business, the Western Australian government sold the freight business, rolling stock, terminals and maintenance facilities, and leased the land corridor and below-rail infrastructure through a 49-year lease. At present, the Public Transport Authority is responsible for managing the freight rail network lease. Unfortunately, the lease instrument, the regulatory regime and the transport authority's management of the lease have not resulted in an efficient system and have not improved on the system that was managed by the state through Westrail. Many people would say that it is now much worse.

In 2014, the Western Australian Economics and Industry Standing Committee, under the chairmanship of the current shadow minister for agriculture, Mr Ian Blayney, investigated the management of the freight rail network and came up with several damning findings. Of these findings, I wish to focus on the issue of rail line maintenance. The inquiry found that although the revenue by the lessee must be taken into account in determining the economic or uneconomic status of less viable lines, the lease does not give the government any rights in the decisions to close some lines as being uneconomic. In addition, the report found that the decision by the original buyer-lessor, Australian Railroad Group, to split the above-line and below-line businesses resulted in the loss of the vertically integrated business arrangement that had allowed for greater efficiencies.

Let me explain below-rail and above-rail businesses. Below-rail business refers to the rail line, its maintenance and the lease of the land on which it travels; above-line business refers to the rolling stock and other infrastructure. The below-rail business, currently known as Arc Infrastructure after several name changes, has indeed deemed several rail lines to be uneconomic. Certain lines have been placed into a new category or standard referred to as "care and maintenance", which means that only the most basic of care, such as weed control, is undertaken. Under the terms of the lease agreement, access to WA's freight rail network is provided through a negotiate and/or arbitrate model in which businesses looking to use the network are able to negotiate terms, including price. The government becomes involved, through the Economic Regulation Authority, only if the negotiations fail. These negotiations may take years to reach an agreement, if at all, causing much frustration. This is currently the case with discussions between Co-operative Bulk Handling Ltd and Arc Infrastructure—an arbitrator is yet to make a decision.

We need to acknowledge this situation urgently, as lithium mining is growing and discussions are currently being held about reopening the Greenbushes–Bunbury line. If this line is not opened, the WA government will be expected to maintain and improve the alternative route via road. Based on the government's agreement to lease variations to date, it is highly likely that other line sections may be similarly placed into care and maintenance. If the government wishes to challenge the claim that lines are uneconomic, it needs to look at the financial operations prior to the split of the above-rail and below-rail businesses.

The 2014 committee inquiry also found that throughout the Public Transport Authority's role as the public authority responsible for managing the lease and ensuring that the lessee was meeting its lease obligations, it provided next to no supervision of the lessee's right to quiet use and enjoyment of the below-rail infrastructure. This approach has proven to be completely ineffective in ensuring the condition of the lines. The condition of the entire freight rail network remains below the standard that should be reasonably expected under the terms and intent of the lease.

Another major issue revealed during the inquiry was the lack of transparency around the lease instruments, the lease variations and the obligations of both parties to the lease. Several requests by the committee for evidence and documents were refused and deemed as closed. The committee found that such developments were a result of the absence of competition to the lessee and it advised that regulation of the freight rail network is essential. The committee also determined that as much information as reasonably possible should be released into the public domain. More alarmingly, it found that provisions of the lease agreement can seemingly be renegotiated and amended as desired. None of these issues has been adequately addressed.

In total, the inquiry made 35 findings and 22 recommendations. The report was almost 300 pages long and very well researched. Despite this, the ministerial response was short and seemingly perfunctory, with then transport minister Dean Nalder stating —

Consistent with the lease, the Government's position is that the maintenance of all leased railway infrastructure is the responsibility of Brookfield Rail.

Brookfield Rail is now known as Arc Infrastructure. He also said that investment in freight railways is primarily the responsibility of the private sector. In doing so, the previous government not only dismissed the

recommendations of an inquiry led by one of its own members, but also lost a golden opportunity to rectify some of the many problems it created with its poorly authored legislation.

I call on the government to reconsider some of the recommendations made by the inquiry into rail line maintenance, which has now gained impetus because of the expanding lithium industry in the south and the need to reopen the Greenbushes line to carry the freight burden away from roads that are in disrepair. The line in question is one of the many that have been placed in the care and maintenance category that I described earlier.

Might I also remind the government of its pre-election pledge to reopen tier 3 lines, which have been in limbo for many years despite continued calls by grain growers for their reactivation. I call to attention the following recommendations of the inquiry. I quote —

Recommendation 1

The Western Australian Government not allow any further lines to be placed into care and maintenance.

Recommendation 2

The Western Australian Government work with the lessee to include a trigger mechanism that will allow the recommissioning of lines already placed into care and maintenance.

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Recommendation 9

The Western Australian Government revises the lease instrument to ensure that lines are not able to be suspended from use without consequence.

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Recommendation 10

The definition of the term ‘care and maintenance’ should be amended to specify the obligations of the lessee and how lines placed into care and maintenance are to be maintained.

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Recommendation 19

The Western Australian Government undertakes urgent negotiations with Brookfield Rail to allow access to Tier 3 lines.

Recommendation 20

In the absence of an agreement allowing access to Tier 3 lines, the Western Australian Government investigates and pursues all means to recover those lines.

Recommendation 21

The Minister for Regional Development clarify whether Royalties for Regions funding can be made available for upgrades to the freight rail network and, if so, what process is in place to allow access to that funding.

The government cannot continue to be held ransom to a private operator that enjoys the benefit of the doubt largely due to being the fortuitous beneficiary of a poorly drafted agreement. There is clearly a duty of care on behalf of the lessee to ensure that all the rail lines in the freight network are kept in good working order, and regulation must be clearly legislated to achieve this goal. If the lessee cannot meet these conditions, it should run the risk of forfeiting the lease agreement.

House adjourned at 6.50 pm
