RAIL SAFETY NATIONAL LAW (WA) BILL 2014

Second Reading

Resumed from 17 September.

MS S.F. McGURK (Fremantle) [7.01 pm]: I thank the Acting Speaker for the opportunity to speak on the Rail Safety National Law (WA) Bill 2014. The Minister for Transport in his second reading speech outlined the history of the bill. In 2006, the National Transport Commission developed the model rail safety law with the aim of ensuring a consistent co-regulatory approach to rail regulation across Australia. Apart from the Australian Capital Territory, all Australian jurisdictions at the time made laws based, to some extent, on the model law. Western Australia's legislation, the Rail Safety Act 2010, was, as the minister said, amongst the more consistent of the state legislation; however, it was acknowledged at the time that more could be done. As a result, in June 2009, the Council of Australian Governments voted to establish a single national regulator for rail safety.

I should at this stage go over an issue that other speakers on this side of the house have already pointed out—that is, the rather skewed chronology. The WA Rail Safety Act 2010 was enacted, as the name implies, in 2010, but in 2009, the year before, COAG had voted to establish a national regulator for rail safety. Now, in 2014, the Parliament is considering a replacement bill to provide for harmonised rail safety. It seems that that is the wrong way around. I would be interested to hear what the minister has to say about the government's handling of that chronology and why the 2010 bill was allowed to proceed when an agreement had clearly already been made that superseded what was contained in the 2010 bill.

The bill before us today is part of the Council of Australian Governments' National Partnership Agreement to Deliver a Seamless National Economy. The explanatory memorandum for this bill states the following about the agreement —

> The reform aims to decrease compliance costs to business by reducing the level of unnecessary regulation and inconsistent regulation across jurisdictions.

In 2011, the Council of Australian Governments signed the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform to establish a national system of rail safety regulation. At the time, however, the Western Australian state government noted upfront that WA would adopt a different approach to implementation with the aim of ensuring that the Western Australian Parliament could consider any amendments to the national rail safety law—that is, on the question of rail safety, the Western Australian government was upfront in saying, "We'll have a bit of an opt-out clause if we decide there are any items that we don't want to pick up in the national law." It seems to me that that approach is essentially having two bob each way in respect of harmonised safety laws.

Chief among the objectives that I quoted earlier is to decrease compliance costs to business by reducing the level of unnecessary and inconsistent regulation across jurisdictions. However, when we are harmonising laws and the state government turns around and outlines the elements of the WA legislation that will be at variance with the national laws, it seems to me, as I said, that the government is having two bob each way. Certainly, if there were characteristics of this state that differed from other jurisdictions, it would make sense for there to be variations from the national law, but I am not sure that that is the case with the exceptions that we are talking about in this legislation, through which Western Australia has opted to not adopt the national law.

It seems to me that one of the key goals of harmonisation is primarily not to reduce important safety laws to the lowest common denominator, but that is the challenge for federal, state and territory governments in getting together. It is a complex exercise but it is a challenge that needs to be met, and it is one that governments signed up for when they commenced the harmonisation exercise. As I said, unless there is good reason—perhaps a characteristic or operation in this state that is peculiar to us—I cannot see why Western Australia needs to have legislation that is at variance with that in other states and the national standard.

Chief amongst the reasons for a harmonised law would be, it would seem to me, that it makes it easier for employers who increasingly operate across jurisdictional boundaries. A very commonplace example is one in which individual companies have to deal with different laws and regulations for the same matter across state boundaries—that is a very good example of a regulatory burden that the government should address, given the coalition's rhetoric about assisting employers and reducing red tape. Any exceptions to the national harmonised law should therefore be the exception rather than the rule. I think the exceptions are difficult to justify.

Another significant concern I have about this bill is the exclusion under clause 8 of the Freedom of Information Act 1992. Clause 8(1) reads —

> Except as provided in subsection (2), the following Acts of this jurisdiction do not apply to the *Rail Safety National Law (WA)* or to the instruments made under that Law —

(a) the *Freedom of Information Act 1992*;

(b) the *Interpretation Act 1984*.

I was surprised that the minister did not make reference in his second reading speech to the exclusion of the Freedom of Information Act from the Western Australian legislation. The minister is looking at me with a quizzical expression on his face. I would be interested to know if I have this wrong. I had a look at his second reading speech, and there is no reference to the Freedom of Information Act not applying to this legislation. The explanatory memorandum in respect of clause 8 states, in part —

> Subclause (1) will provide that the *Freedom of Information Act 1992* —

That is, the state act —

> and the *Interpretation Act 1984* do not apply to the Rail Safety National Law (WA) or to instruments made under that Law. As to the *Freedom of Information Act 1992*, it is considered enough that the South Australian equivalent applies.

That is what the explanatory memorandum reads. However, when I go to section 263 of the Rail Safety National Law (South Australia) Act it reads —

> **263—Application of certain South Australian Acts to this Law**
>
> (1) The following Acts (as in force from time to time) apply as laws of a participating jurisdiction for the purposes of this Law:
>
> (a) the *Freedom of Information Act 1991* of South Australia;

Subsection 2 reads —

> However, subject to subsection (4), the Acts referred to in subsection (1) do not apply for the purposes of this Law to the extent that functions are being exercised under this Law by a State or Territory entity, other than a South Australian entity.

I may have that point wrong, but my reading of that is that it is explicit that the Freedom of Information Act applies only to South Australia; therefore, the wording of the Western Australian bill before us this evening is exempt from freedom of information provisions. I do not know whether there is any justification for that. I will be interested to hear what the minister has to say on that.

It is important that the new Office of the National Rail Safety Regulator—the body that will be set up under the Rail Safety National Law (WA) Bill 2014—is seen as open and transparent. That is especially so given that the objects of the harmonised laws are to promote public confidence in the safety of transport of persons or freight by rail; to promote the provision of advice, information, education and training for safe railway operations; and, to promote the effective involvement of relevant stakeholders through consultation and cooperation in the provision of safe railway operations. However, if freedom of information provisions will be ousted by way of this bill, that would clearly detract from the objects of the bill and create an unaccountable regulator in what is a dangerous industry. I would like to know from the minister why this exemption is justified and whether he can tell us the other states that seek to exempt the regulator from any FOI scrutiny. Why was this issue not brought to the attention of Parliament, being a variance to the national law, in the minister's second reading speech?

The Australian Rail, Tram and Bus Industry Union, which represents workers in the industry, is certainly concerned about and opposed to this development. It says it is very unfortunate, but there is a clear intent to undermine rail safety transparency, and that it is dangerous legislation for an already dangerous industry. It also says that there will be no accountability when it comes to rail safety investigations, which will place the public and employees at risk. The union stated that to me in email correspondence. That is one area for which it would be good to understand how we can justify WA not having the same sort of scrutiny for the National Rail Safety Regulator as applies in any other state, and, as pointed out by the union, operating in such a dangerous industry.

The second question highlighted by the minister where we are at variance to the national law, although in company with New South Wales, is again an area in which Western Australia has no different circumstances from anywhere else; that is, where the harmonised or model legislation allows for drug and alcohol testing. The Western Australian bill will allow for drug and alcohol testing using urine sampling. As I said, only the New South Wales and WA legislation have allowed for this, and it is clear that the national model law does not. The provisions are added to this bill by way of clauses 5(2), 5(3) and 20. In my view, no modifications should be made to sections 127 and 129 of the national harmonised laws, or model legislation, to allow for urine analysis. Significant authority has the view that oral fluid testing should be the primary means of testing for impairment after a prescribed notifiable occurrence as defined under the act. It seems to me that the independent industrial umpire's view on this issue is relevant. Earlier this year, Fair Work Australia upheld an earlier determination to

allow for drug and alcohol testing, but only to use the saliva method; that is, the decision of Fair Work Australia on the drug and alcohol testing practices of Endeavour Energy in New South Wales was specifically against urine testing. The original decision was appealed earlier this year, and the appeal was not upheld. It is amazing to me that the view of the independent umpire—that is, Fair Work Australia—on urine sampling for drug and alcohol testing has not been taken into account by the Barnett government; in fact, the government has taken the opportunity in the rail safety bill to move away from the national harmonised model to circumvent Fair Work Australia's view on the matter and allow urine testing.

There are arguments for and against whether urine testing is beneficial, particularly for drug and alcohol testing in the workplace. Of course, the most obvious point to make is that it is not used in road safety matters, but it is considered and promoted by a number of employers. One of the criticisms of urine testing is that it is not a good method for testing for impairment. A number of employers are on the record as saying they prefer urine testing because it tests for a broader range of drugs than saliva tests for, and that the testing can detect drugs taken a number of weeks prior. If you like, it tests for risk rather than impairment. In response, urine testing detractors say that it is not an improvement on other methods when it comes to impairment. They say that urine testing is intrusive. Usually, samples are taken with an observer present; for women, this is particularly offensive and problematic in the industries in which it applies. Oral fluid testing provided in the national harmonised model should be the primary means of testing for impairment after a prescribed notifiable occurrence. As I said, that occurrence will be defined under the act. I have concerns about urine testing being specifically provided for. As I said, I think the matter has been clearly tested by Fair Work Australia; nevertheless, this government has opted to move away from the national model.

[Member's time extended.]

Ms S.F. McGURK: I do not think there is good reason for that; I do not think there are any circumstances in Western Australia to justify that.

Another issue that has been raised about this bill—I raise it on behalf of the RTBU; the union that covers workers in this industry—is to clause 28. The union makes what seems to me to be a good point: there should be an exemption from the obligation of a rail worker to give blood on the grounds of religious or health reasons. When a blood sample is being sought for alcohol impairment, for instance, other methods can be used. Again, I would like to know whether the minister considered that in this bill. I would not have thought people asking to be exempt from blood sampling would be a common occurrence, but provision should be made. I think that would have some merit.

I could not present in a discussion about the Rail Safety bill without speaking about some matters that relate to Fremantle, particularly the Fremantle rail bridge early warning system. The early warning system for the rail bridge, which most members would know abuts the Perth metropolitan area's main, in fact only, container terminal, is a real concern. How the regulations were laid into that rail bridge is a matter of real concern. The Fremantle Port Authority's annual report states that last year 700 000 units went through the port, reaching a peak. As we know, there is significant traffic in and out of that port. Despite numerous calls for the implementation of an early warning system—that is, a series of movement and laser sensors that would alert train operators if the bridge moved or was hit—is long overdue and a critical issue for rail safety. Members might remember the recent history of this issue. The early warning system was only tendered in April, despite an incident in 2011 in which the barge *The Parmelia* struck the bridge closing it to traffic for, I think, a week. Just in August this year—not that long ago—the section of rail between Fremantle and North Fremantle stations was closed for two weeks when the container ship *AAL Fremantle* hit the bridge.

The government has known since at least 2011 of the real danger of that bridge being struck by a large ship moving in and out of the port; however, the tender for the early warning system was put in place only in April this year. There was no action between 2011 and 2014. Although the tender has now been put in place, it has not yet been awarded and is still out in the marketplace. I wonder how the minister can justify that sort of vulnerability applying to the rail bridge that abuts our main container terminal. Hundreds and thousands of containers on huge ships go in and out of the port. The incident in August just gone was due to a series of circumstances that we were told would never happen. We were told that boats would not be able to get over the naturally occurring shoal, but there was such a large movement of water that the *AAL Fremantle*, a significant ship, was pushed over and hit the bridge. We know, too, that despite severe weather warnings issued that evening for the metropolitan area for Sunday, the tugs at Fremantle port were not on standby that night and not available to deal with any emergency. Two ships broke away—one went west and was not a problem for the bridge system, but the other headed upriver east towards the rail bridge and hit the bridge. We were lucky that it was not more serious, and a train was not going across the bridge at the time. This is such an obvious question of primary safety and one that this government has failed to address on infrastructure for freight transport.

Other members, particularly the member for Cockburn, addressed the question of dangerous goods being transported in and out of the port. I am very conscious of the extent to which dangerous goods are transported by rail in and out of our port and the need for very stringent safety systems. A number of dangerous materials are transported, not the least of which is lead. I have had a number of meetings with the company that manages that contract. I still have concerns about it. I am not aware of anything that has occurred since I have been a member of Parliament. There have been a couple of small instances, but I do not think that they were significant—there was some material found outside one of the containers—and I am not aware of any significant leakages. There may have been lead leakages, but I am not aware of them. I do not think that I would be representing my electorate if I said that I did not think that most people around Fremantle are still concerned about the transportation of dangerous goods. After the experience in Esperance, people are concerned about what would happen if there was ever an accident of some kind. That it is an area in which vigilance and the highest possible safety standards need to be applied.

Finally, a number of members on this side of the house spoke about the impact of freight rail on neighbouring communities. I notice the member for Butler is —

Mr J.R. Quigley: Champing at the bit.

Ms S.F. McGURK: He is champing at the bit to get up and speak. I wonder whether he will speak about the impact of the new rail line on the nearby community.

I have concerns about some of the developments happening just south of Fremantle. The developments at North Coogee are the preserve of the Cockburn council, but the Emplacement and Robb Jetty developments are going ahead at, I think, the Watsonia site, and are very close to the rail line. These are new developments; they are not long-established houses the owners of which perhaps were not be aware of the amount freight to be transported along those lines. We now know how much freight will and we want to go along those lines; it is good infrastructure and we should make full use of it. Certainly, it has been raised with me by industry that there is real concern that particularly the residential development is too close to those freight lines. It might be that there can be other development just near the lines; there might be some development that is appropriate. There could be some commercial activity, perhaps not retail, that is appropriate knowing the extent of the freight going through. I do not think that the plans that I have seen for the developments in or just south of my Fremantle electorate have good or proper setbacks. I raised this question with the Landgate staff I met recently to go through the South Fremantle power station plans, and they said there are mandatory setbacks and it is all okay. But that is not what industry has said to me. Industry has concerns that if residents are too close to the freight line, pressure will be applied on how the freight line is used. I carefully looked at the plans for some of these developments—Robb Jetty and the Emplacement, the two North Coogee developments near Cockburn council—and they have noise testing and regulations and state that people will need double glazing. However, on the cover pages of the development brochures, the amount freight on the rail lines is not really captured. In fact, on one of the cover pages of, I think, the Emplacement or Robb Jetty there was a nice, sort of, Subi Centro–type image of people swanning around a beautiful development. In the middle of it are two little parallel lines that people were wandering along. That is the freight line. It is really absurd. That image of the development that people are buying into is still the image that is being used to sell properties in that area. The council has a responsibility. The developers will do whatever developers do and try to use as much land as they can but it is the responsibility of the state government to ensure that there are proper setbacks so that we can make full use of the freight infrastructure that we have. We might not agree on everything relating to the port of Fremantle and its future but I think we agree that we want to make good use of the infrastructure that is there one way or the other. That issue needs to be addressed. Harmonised health and safety laws seem like a good idea but the devil is sometimes in the detail. I look forward to hearing the minister's response to some of the issues that I have raised.

MR J.R. QUIGLEY (Butler) [7.31 pm]: I know that the Premier called me the member for Quigley the other day. I did not like to be rude and interrupt him but I like to be synonymous with my electorate. We all like that recognition.

Mr R.H. Cook: They could name it after you.

Mr J.R. QUIGLEY: There is a problem with naming it after me because the convention is that the member dies first, and I do not have an ambition to qualify in that regard. It was nice of the Premier to at least —

Mr T.K. Waldron: We have a Quigley Street in Narrogin.

Mr J.R. QUIGLEY: I would like to get into that. I know that my father went down there to stay with his relatives as a young lad. I never followed that up—he has passed from this world—to find out the Narrogin connection, but there is one. There is also a connection with my wife because there is Histrionics Street in Katanning, and she is histrionic!

Coming back to the Rail Safety National Law (WA) Bill 2014, I wish to raise a few things by way of concern. One of them, picking up on a point raised by the member for Fremantle, is the drug and alcohol testing, and also the national harmonisation laws and the New South Wales and Western Australian predilection for urine testing. I question the efficacy of that. I have been a defence counsel at law for many years, and I am aware in detail of the laws of prohibition against driving with alcohol or drugs in one's system above a certain level, and I will come to that in a moment. This bill proposes to provide for breath, bodily fluids, saliva and urine testing. Urine testing has been very problematic and is not used in road safety law at all. No motorist is asked to have a whiz in a bottle, which is then taken away for sampling. A blood test is a far more accurate reading of a person's ingestion of alcohol or drugs. The road traffic regulations prescribe the levels of alcohol in breath testing above which a person is deemed to have offended. I noticed from reading this legislation that there will be provisions for regulations stating how much alcohol a person can have in their body, above which limit an offence is committed, but I do not see the levels in this legislation. Perhaps the minister could explain that during consideration in detail. I will just pick that up, if members could bear with me for a moment. Similarly, I do not see in the bill any prescribed level of drugs, although I may have missed it.

Under schedule 1, "National regulations", the bill refers to, amongst other things for which regulations can be made, the allowable concentration of alcohol, although it does not state what the allowable concentration of alcohol is. I would hate to think that any of the train drivers whizzing by the back fences of house along the Clarkson–Butler line at 100 to 110 kilometres an hour would have in their blood any alcohol or any drugs other than prescribed drugs, and I would be worried even about those. There is provision in this bill to make those regulations and during consideration in detail I will seek from the minister further clarification on the matter.

Another concern, as the member for Fremantle also mentioned, is urine testing. Urine testing for drugs has always caused me a problem, especially since I have been a member of Parliament and not a defence lawyer. My electorate has a large population of fly in, fly out workers who are routinely subjected to urine testing on mine sites, which is the preferred method of testing by the companies. From interviews with constituents, it seemed to me that this pushed the workforce towards drugs that had a short half-life of 12 or 15 hours. I have read some papers on this—I might be out by some days—saying that the cannabinoid half-life can be 21 days or 28 days, or some such thing. A worker who had ingested a cannabinoid, who was no longer at the start of his week or 10 days off and who was in no way impaired by the drug that he had ingested 10 days before, would nonetheless return a positive urine sample to cannabinoid by the time he was due to return to work, even though he was not impaired. This would see him banned from the mine site. From the discussions I had—I realise it is anecdotal evidence—this tended to push workers towards drugs that had a much shorter half-life. As I said, this was 10 or 15 hours for amphetamines. So a person would have a clear urine sample the day after they had taken amphetamines. Whether they are in the right frame of mind or psychological headspace, if I can call it that, to be operating heavy equipment or, indeed, six-car trains travelling at 110 kilometres an hour through the suburbs, is another thing altogether.

We support the notion of train drivers being required to provide bodily fluids and breath for testing. It is interesting to note that clause 19(1) states —

> An authorised person may require a rail safety worker to submit to a drug screening test or oral fluid analysis (or any combination of these) —
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> (a) on a random basis—without suspecting a prohibited drug is present in the worker's body; or
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> (b) on a non-random basis—in either or both of the following circumstances —
>
> (i) a prescribed notifiable occurrence happens involving the worker;
>
> (ii) the authorised person suspects, on reasonable grounds, that a prohibited drug is present in the worker's body.

I can see where the government is coming from with that. We just see that as somewhat superfluous. I cannot imagine the circumstances under which clause 19(1)(b) would be active in any proceedings brought against a rail worker, because if the defence counsel or the worker appearing for himself challenged that there had not been one of the precipitating occurrences for a drug test under paragraph (b), the prosecution would just revert to paragraph (a) and say that it was a random test. It will have the authority to test people randomly. The bill even goes so far as to say "without suspecting a prohibited drug is present in the worker's body". I would have thought that that covered all bases and I cannot completely understand the necessity for clause 19(1)(b). There are very detailed protocols for the provision of blood samples, which we will go through in some detail during the consideration in detail stage.

One of the interesting points in the legislation is clause 32, "Calculating BAC at relevant time". Of course, this is a highly contentious issue in the Road Traffic Act. It found its way into the Road Traffic Act as long ago as when breathalysers were introduced. It was predicated on the science that alcohol takes a while to metabolise, unlike heroin, which is taken up and metabolised instantaneously once it is injected into the bloodstream, as

I understand from my readings—I have never put a needle in my arm. It is like pethidine and others that I was injected with in hospital during my cancer ordeal; the drug hits the person immediately the plunger goes in and they can feel the effect of the drug immediately. Alcohol takes a while to metabolise. It has been said that upon taking a sample of a person's breath, that is not the end of it, because the breath sample might have been taken a couple of hours after the driver was last in charge of the car or, in this case, the train; therefore, he or she has to be given a discount in the blood alcohol content. When I say "discount", it is a retrospective calculation. Clause 32 provides that the blood alcohol content increases at the rate of 0.016 grams of alcohol per 100 millilitres of blood per hour for two hours and, after that period, decreases at the rate of 0.016 grams per hour. This is a legislative fiction. I have cross-examined pathologists in the Supreme Court who say that it is a legislative fiction that there is a line that rises straight from the time of the ingestion of alcohol and the blood alcohol content increases by 0.016 grams per hour for two hours and then once that two-hour mark is hit, it starts going down again, and that even if the test is taken three hours later, the content at the time that the person was driving can be calculated. As I say, this is largely fictional. It is worrying in this sort of legislation when we are dealing with train drivers. A lot of commentators have criticised the breath testing of motor vehicle drivers; they say that if a driver blows over at the time they are tested, they should be prosecuted. However, this is a national scheme that is being introduced and we do not want to deviate too far from the national scheme.

One of the areas that I found particularly interesting is clause 155, which deals with the rail safety authority's power to compel answers from rail workers and repeats the language that has caused difficulties in other areas. Clause 154, "Power to require the production of documents and answers to questions", really covers that area. It provides —

> (1) A rail safety officer who enters a place under this Division may —
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> …
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> (c) require a person at the place to answer any questions put by the officer.

I think the capture there might be a little wide. I would have thought that that should be directed at rail safety workers and that there be a caveat that it apply only to rail workers, not to other citizens who might be on rail premises when a rail safety authority officer arrives. They should be able to compel only their employees and not require any person to be the subject of what is the equivalent of the powers of a royal commission—that is, to answer anything.

Having said that, I will now confine the next part of my comments to the use to which those answers can be put. Clause 155(1) states that a person is not excused from answering a question or providing information under this part on the ground that the answer might tend to incriminate him, but any answer given—this is an important part for the minister and his advisers—cannot be used in criminal or civil proceedings. That puts it on the equivalent footing to answers given before a royal commission or the Corruption and Crime Commission; that is, the person is compelled to answer a question, but the answer given cannot be used in a civil or criminal proceeding instigated against them.

[Member's time extended.]

Mr J.R. QUIGLEY: That raises the question, which clause 155 does not directly address: can it be used in a disciplinary proceeding? Can a rail worker be compelled to provide an answer that is to be used against him in a disciplinary proceeding? It cannot be used in a criminal or civil proceeding. There have been some cases on this, but the law is not clear on whether a disciplinary proceeding can be captured under the umbrella of civil proceeding. Although the civil standard of proof prevails in a disciplinary proceeding, I do not think that it excludes in this context the use of the answer in a disciplinary proceeding. I do not want to disappoint the chamber by failing to live up to expectation by not taking my comments back to the Clarkson to Butler rail line that runs through my electorate. Other members spoke about the impact of freight rail in their electorates, but here we have a brand spanking new rail line opened by the honourable minister a month ago that is causing not just inconvenience but also devastation to the lives of a number of my constituents. It is a very serious problem—that is, the vibration.

In the remaining few minutes I have this evening I want to once again refer to what has happened here. We have had a close look at the problem. The vibration coming from that rail line is not a problem that exists elsewhere in the metropolitan area, as far as I can see; I have never been aware of the problem before the Clarkson to Butler extension opened. There is no problem when my constituents are standing in the backyard of their house near the back fence. If they then walk further away from the railway line, enter their back door and go inside their house, there is a big problem, as Geof Parry from Channel Seven nightly news discovered to his dismay. The big problem is the reflection of the vibration off the limestone, or capstone, that is just beneath the surface. During my university days I lived in fairly close proximity to the Fremantle line, and there was not a great problem there. I had never heard of the complaint in the northern suburbs when the line went through to Joondalup. There are probably a couple of reasons for that. Those reasons are, I think, that when the line went through to

Joondalup, it went in large part straight along the middle of the freeway, so there were obviously no residents abutting it; and the second reason is the geology. Perth is built on a sand plain, as we all know. The literature I have read since this problem was brought to my attention and the literature coming out of the United States of America going back 20 or 30 years—this is not a new problem nor a new solution—states that when the track is largely sitting on a sand base, the vibrations dissipate and the energy is expended through the soil. In the area north of Clarkson, the line tracks in a little bit west. In the area from Clarkson through to Butler—I suspect also beyond on the rail reserve north to Yanchep, although I have not seen any report yet—there are coastal sand dunes, not primary dunes but second and third–system dunes, set back two and a half kilometres from the coast. These rolling sand hills are covered in coastal heath, which was sheep-grazing country, and have patches of limestone not far below the surface. I call it capstone. It is not like the limestone we see at the front of Parliament House; it is a bit smoother, a bit harder and comes up in nodules from beneath the surface.

When the vibrations hit the limestone, they reflect back in different directions depending on the shaping of the rock underneath the surface. As the rail line approached Butler station, a cutting into the sand had to be made because of the grades. The sand was cut into to make the embankments, as the minister knows, but in so doing of course it dropped the proposed rail bed lower and lower until it was between five and seven metres below the natural levels. Of course, that took the vibrations down very close to that underlying limestone, which reflects it back into people's homes and into their backyards. Officers from the Department of Transport might go over there in the following few weeks, because the minister said that they would do some research and conduct some inspections of the site that we have identified for the government. They might inspect the backyards of the people about whom the minister said, "What are these people worried about? They knew that they were buying land adjacent to a railway line and that they would hear the train." That is not what people are complaining about. They are complaining about the vibrations inside their house that come up through the floor from the concrete pad. The house acts like a bass drum. It amplifies that vibration in the same way that hitting the pedal on a bass drum and banging the hammer onto the rear of the drum causes the air inside the drum to vibrate, from which of course the sound emanates. Here we have vibrations being reflected off the limestone, up into people's homes and it is not until people are inside the house that they feel the vibrations coming up through their feet. The media visited the residents out there two Sundays ago, and one of the reporters was standing in Mr Richard Wells' bedroom asking, "How do you sleep?" That is because when a train went by, Geof Parry could feel it coming up through his feet and up through his bones. This is exceptional. This does not happen all over the metropolitan area.

What is the cure? A 2006 report was prepared. This goes back to the previous Labor government when the plan was that once it got the line to Clarkson, it would just keep going. In 2008 some preliminary works were commenced at Nowergup rail yards—not great works but they were starting—to facilitate the track going north. The Liberal government was elected and the Premier came out and said that he was going to pause for a moment and call for a report on transport and rail needs for the next 20 years. He said he would pause until he had that report. The report came out in 2011. In the interim, however, members of the community out there, who had bought their homes on the promise that the rail was going to be there, arced up. The government then reassessed what was happening, although I do not think it was because people were arcing up.

I will tell members about my electorate. I was looking at the electoral figures the other day. The Premier has in his electorate between 24 000 and 25 000 people. At the last election I had about between 23 500 and 24 000 people in my electorate and I am currently sitting on just under 33 000 people. It is the biggest electorate in the metropolitan area because people are flooding in. The government had all this land stock out there that it had to sell in a joint venture with various developers from Satterley Property Group to Peet Ltd to LWP Property Group. It was the government's asset and, as Mr Satterley explained at the time, unless the rail went out there, the land would become less desirable and less valuable. The government therefore announced that although it would continue with the report, it would in the meantime proceed with the seven kilometres of rail to Butler. We are very grateful and very pleased about that. We were at the opening where the minister and the Premier were that day and of course it was a happy day when rail got to Butler. However, the 2006 report—this is what the Labor government was going to do—recommended that anti-vibration matting be put under the rail all the way through to Butler. However, another report was done in 2010, but it did not come up with the same recommendation. The 2010 report missed out mention of the matting that was required just south of the Butler station; so that matting did go in further south of Butler near the Nowergup rail yards.

Because the second report did not mention the matting that would be required further north, when the tender was let, that did not happen. However, the earlier report of 2006, in which the geography of that area had been studied, said that anti-vibration matting would be required. So, the government did the right thing in that it changed its mind and recanted on its earlier decision not to proceed with the line. But, unfortunately, it ignored the earlier report and picked up a new report that did not mention the requirement for matting. That has left these people with the dreadful legacy that their houses are being shaken to bits.

We note that in Western Australia there is no capacity for people to take class actions, although there is a recommendation from the Law Reform Commission to introduce representative actions in Western Australia. Without the capacity to take a class action, the hundreds of people in Butler who have been affected by this rail line have no recourse for damages against the government, because they cannot afford to launch individual actions against what has happened. That is a very big concern for my constituents.

To get back to the bill, we will address the other areas in the bill during consideration in detail.

MR P.C. TINLEY (Willagee) [8.01 pm]: I thank members for the opportunity to contribute to the Rail Safety National Law (WA) Bill 2014. This bill is a voluminous document and it took some reading to get through. But it is reasonably straightforward in its intent. The overview of the bill, as outlined in the explanatory memorandum, and, more importantly, the minister's second reading speech, is quite clear. This is quite a process-driven bill. But it also speaks to the idea of having a single nation. At the core of the bill is the intent to unify, wherever possible, those things that will enable this nation to operate as a single economic entity and in so doing ensure that we are a more efficient and economically agile country.

This bill deals discretely with rail safety and the management of rail. However, the value of a second reading debate is that it allows us to range around to see what the second and third order impacts of any proposed legislation may be on the other activities of the state. I am a member of the Economics and Industry Standing Committee and we were fortunate to receive a significant amount of evidence during our recent inquiry into the management of Western Australia's freight rail network. That inquiry certainly took longer than we anticipated, and it was quite an eye-opener for me to see how our rail network operates. If we are metropolitan focused, we could easily end up thinking only about metropolitan rail lines, or local freight lines within the metropolitan area. But when we see the implications of the rail network on the whole state and the whole economy, as we did through this committee, we get a sense of why we need to approach this as a total freight system rather than look discretely at rail, because rail is only one aspect of it.

A lot of the evidence which was received by the Economics and Industry Standing Committee, but which did not make it into the report, related to the concerns of local communities about the safety of dangerous goods coming into the metropolitan area, in close proximity to built-up areas, and, more generally, the impact on the total rail network. After the grain freight network review, the grain freight network was divided into various tiers for the purpose of categorisation. The closure of the tier 3 lines has had a consequent impact on the capacity of the total freight network to be efficient, in this case, for the movement of grain. But it is not confined to the grain freight network. It is, therefore, important to look at the impacts as we move from one mode of transport to another.

The member for Cockburn has outlined a particular impact for the constituents in his area who live in new housing estates that have been built close to the existing rail line. The member for Butler has talked about the reverse situation—namely, the impacts for the constituents in his area who live in houses that were built before the rail line was put in. That is a very interesting insight.

Members may not be aware, but there is a historic reason—I stand to be corrected, but I have heard this from a lot of people who take their trains seriously—for the rail reserves that currently exist. For example, the Perth to Fremantle line rail reserve is of a certain width for a particular reason. In the days when those rail lines were built, the rail safety aspect revolved around fire risk. There was a risk that the combustible materials that were used in steam engines, such as coking coal, could be ejected from the exhaust of a train and reach the adjacent housing stock. Therefore, the width of the rail reserve was determined by the need to have a safety envelope. I do not think the principles of the original safety dimensions for rail, whether freight or passenger, should be any different now. I am not talking about that particular measurement. I am talking about the impact of rail lines on the quiet enjoyment that people are entitled to have in their homes. No one piece of legislation ever sits in isolation. In relation to trains and rail planning, the safety risk matrix is an obvious aspect that must be taken into account. However, it seems to me that there has been a gap between what the Public Transport Authority undertakes, and what is done by all the other relevant authorities, certainly the government of the day and the Department of Planning. There was obviously no consultation between the planning department and local government about the proximity of new housing estates, or the expansion of existing housing estates, so close to rail lines, as we have seen in the member for Cockburn's electorate, where there is minimal distance between people's houses and the rail line, and that is causing significant health issues over time because of the vibrations caused by the trains.

Another thing that needs to be contemplated in any rail planning arrangement is future flexibility in the weight, frequency and duration of any particular train set. It is important that we understand that any legislation and any planning arrangement must try as best as possible to contemplate any future flexibility requirements. That is a significant problem, because the city of Perth is not growing any smaller. My understanding is that the city of Perth is now about 175 kilometres long from south to north. We are bigger in land area than the city of Los Angeles in the United States. Each government has had an ambition, through Network City, and through

Directions 2031 in recent times, to the idea of a denser inner urban and urban area. As we intensify accommodation and other usages of inner suburbs around rail lines, we are asking for significant trouble. The particular issue that concerns me in my area is mooted increases to the capacity of the port of Fremantle. As it moves closer towards one million twenty-foot equivalent units, how much of that will and will not go on rail, and how much of that will and will not go on road? The particular interest is dangerous goods. We cannot keep using the Fremantle port in isolation without understanding its impacts on the total metropolitan area, principally around the use of road and rail.

I circle back to the fact that the evidence before the committee about the safety of the grain freight network was the second-order effects of modifying the uses of a particular piece of rail infrastructure. Safety was one of the major issues raised throughout the inquiry, so much so that the committee had to make a deliberative decision about what should and should not be used. A large amount of it was being used. In this example, as tier 3 rail lines closed, there was a concomitant impact on road transport. As a result, the projections in some areas for more trucks to move grain were also added. Although rail safety is discretely dealt with in the Rail Safety National Law (WA) Bill, that has a significant impact when we start modifying it.

I quote from the Economics and Industry Standing Committee's third report on page 27 —

> First, the closure of Tier 3 lines will result in greatly increased numbers of truck movements on the roads. Second, the roads and the measures being taken to upgrade them are not adequate to handle the increased truck traffic; that is, they are not fit for purpose.
>
> The Wheatbelt already experiences a high road toll. The Wheatbelt Railway Retention Alliance —

A localised group that is focused on this issue —

> … advised that for the period 2001–2010, '740 people have been killed or seriously injured in wheatbelt south …. A rate of 312.6 fatalities or seriously injured per 100 000'. This rate is 'the highest rate in Western Australia, way beyond any other region and also wheatbelt north has similar fatality rates'.

We took the wheatbelt region and broke it down. As members can see, the impacts on road safety cannot go unnoticed.

We had to look at this idea of a total system or a system of systems. Road, rail and any other method of movement need consideration. When we consider this type of bill, we have to look at the impacts and why we have a port of Fremantle that has 10 per cent growth capacity that does not take into account the enabling capacity of the supporting road and rail infrastructure. What is the future capacity of the enabling network to the Fremantle port? It is no good just talking about how many TEUs can be moved off the port without talking about how the goods are being moved in and out of the port.

The contemplation of spending an estimated $1.6 billion—I might add that has not been determined in detail—to increase the single road component of the supporting infrastructure for a port such as Fremantle without consideration of the impacts on rail modification, or inclusive of rail, is short-sighted. I might be speaking before time, but I hope that the detailed business case and the studies that the Minister for Transport might provide the house in due course related to the freight network will in fact allay fears that we will not have in-built failure in the total system. The Office of Road Safety identifies the impacts if we do not get it right.

I quote again from the committee's report —

> Statistics from the Office of Road Safety also demonstrate the very high rates of fatalities or serious injuries resulting from road crashes. Statistics for the Wheatbelt North, Wheatbelt South, Great Southern and Metropolitan regions are provided …

The statistics were provided in a table in the report. The important point is —

> Office of Road Safety data for 2013 also show that the Wheatbelt had a fatality rate of 28.8 people per 100,000 persons, with 15 fatalities on Wheatbelt roads during that year.
>
> …
>
> The WRRA —

Wheatbelt Railway Retention Alliance —

> estimate that the closure of Tier 3 lines will result in between 57,000 and 85,000 additional truck movements on the roads …

This is on top of a road system that already has the highest number of road fatalities in WA. The report continues —

> Mr Graeme Fardon, CEO of the Shire of Quairading, advised that there are 'an extra 9 000 road train movements leaving Quairading wheat bin and the associated smaller bins', which equates to

> 250,000 tonnes. While 30,000 tonnes of this is for the domestic market and will travel mostly into Perth, the balance is for the export market.

The point is made that in previous years up to 95 per cent of this would have been transported by rail. Continuing —

> Now, however, there is no rail option available. According to Mr Fardon, this will lead to extra 'burdens upon both the state and the local road system'.

When we talk about the freight system, it is important for members to understand that the road system of course is broken into local, state and national roads. It is up to local councils to levy funds for local roads and seek any additional or specific grants to maintain and/or improve capacity. When tier 3 rail lines in the wheatbelt closed, it created a safety issue, not as this legislation identifies in requirements for rail, but a safety implication in the whole system. When the committee looked at the remedial action, particularly on local roads—the state roads that received additional funding—it discovered that their upgrades were suboptimal, to say the least. It simply meant that on a standard road on which both vehicles headed towards each other, one or both would have to move off to the shoulder. That is unacceptable when pushing a B-double grain truck and/or potentially another truck is going the other way. It makes it very tight at any speed, even a slower speed. The remedial fix was to lay licorice strips, which is an additional belt of bitumen, on each shoulder at the various choke points where these things were seen as higher priority. It was not down the whole road; road widening was not undertaken. It identified pinch points in the road network and they were patched. There is a mixed result in the quality of that work, depending on which shire we spoke to and which piece of evidence one chooses to look at. Suffice to say, it is a patch-up rather than a comprehensive solution to how the Western Australian economy will deal with a seemingly ever-increasing yield in grain crops, notwithstanding the obvious routine droughts or low years.

I might dwell on that point. Members who have more experience than me might like to interject. The evidence the committee received during its trip to the wheatbelt was that grain growing and grain-growing technology is increasing at such a rate that in the last 10 years the yield from one millimetre of rain has doubled. It is instructive that we must understand that we do not operate any one piece of legislation in isolation; it has to operate inside a system of systems and seeing that there are these consequential impacts across the whole system when it comes to it.

[Member's time extended.]

Mr P.C. TINLEY: More specifically, going back to the Fremantle example, it is long past due that we consider the strategic position of the Fremantle port as a container port and for all of the functions it undertakes. I understand that when Captain Stirling pulled up —

Mr P. Papalia: Pulled up?

Mr P.C. TINLEY: Or threw an anchor or a rope—whatever navy people do.

Mr R.H. Cook: I thought they dropped anchors.

Mr P.C. TINLEY: When he dropped an anchor and C.Y. O'Connor blew open the port of Fremantle, the land use around the port, including the accommodation, was completely consistent with a mercantile town supporting a port, and it has remained like that for 100-plus years. The land use and densification of the greater Fremantle area is increasingly less focussed on the port. When I grew up around Fremantle and went to John Curtin Senior High School, the vast majority of my classmates' fathers and mothers were involved either directly or indirectly in the supporting industries around Fremantle port, including fishing, which was a significant component, and the other maritime workers around the port, both on board and alongside. In fact, of the fathers of the friends I knocked around with, the vast majority worked on as wharf lumpers. That is no longer the case due to not only the increase of container traffic and the advances in freight movements, but also a lot of workers have moved out of Fremantle to places further out, such as Kardinya and Samson. Of course, the rationalisation of industries, including the fishing industry, also took its toll. The changing demographic of Fremantle now has a residential component that is less focussed on the activities of the port and more focussed on other economic areas in Western Australia. We are looking at a change in the way that the port is used and will go about its business. When making projections, we focus on not only the port, but also the enabling infrastructure—the rail and road freight networks—which I have mentioned previously. Prior to losing office in 2008, the Labor Party's ambition was to get as much as 30 per cent of container traffic onto rail. I think we are at 11 per cent, unfortunately —

Mr D.C. Nalder: Thirteen.

Mr P.C. TINLEY: Thank you, minister. Imagine what would happen if we got to the stated ambition of 30 per cent? I am not sure what impact that would have had on the residential components around the wharf and the rail line. When we consider legislation, particularly this legislation, it is important to talk about it in the wider context, because this bill in particular is very mechanical. It talks about very linear processes and how they will come together.

The specific areas of the bill that I am particularly interested to hear from the minister about concern the participating jurisdiction arrangements for regulations. The minister's second reading speech states —

> Other jurisdictions have a majority disallowance clause whereby a regulation made under the legislation may be disallowed only if a majority of jurisdictions subsequently vote against it.

That is Federation played out in a total sense and I completely understand that. The second reading continues —

> The view that has been taken in this state has been that such a provision may compromise the sovereignty of the state. In contrast, therefore, the bill provides that national regulations are to be tabled in the Western Australian Parliament and provides Parliament with the power to allow, disallow or amend the national regulations in line with the Interpretation Act 1984.

I will be particularly keen to hear during the consideration in detail stage how the Interpretation Act will be applied to this legislation. What does the minister anticipate will be the parameters for which the minister might outright disallow a particular recommendation that is adopted by the rest of the country, and what is the rationale by which the minister might modify it? What are the circumstances that the minister will or will not undertake to do that? Also, as a result, over time how will that erode the spirit, or harmonisation, of this legislation with the national framework? The arrangements can be bent to our sovereign wish, but how far can that be done before it becomes redundant and they no longer meet the requirements of the Council of Australian Governments' rail safety national law arrangements?

The bill goes into a reasonable amount of detail on qualifications. I would like the minister to explain what recourse a rail operator such as Brookfield Rail will have to seek from the state some relief from the regulations if the regulator gives directions to the rail operator. This is an important arrangement, because the rail operator Brookfield has gone into significant discussions, negotiations and contracts with a range of providers such as Karara, for example, and may seek assistance from the government because of an instruction from the regulator. I am very keen to understand that. As I have said, I am keen also to understand what will be the qualifications. Has the minister talked to the appropriate agencies about the training, workforce planning and training adjustments that might be required as a transitional arrangement when this legislation comes into effect to ensure that this national law—the harmonising of these arrangements—will work in the favour of jobs and job seekers in Western Australia? I am keen to hear from the minister about the effects of this legislation on workforce planning, training and, of course, any requirements needed in education. One of the stated aims and objectives of the legislation is to establish the Western Australian component of a national scheme for the regulation of rail safety and also allow a greater portability for workers and management between rail jurisdictions. Will someone who is trained in Western Australia to operate or drive rail in Western Australia be able to, without any retraining or need to requalify, achieve employment in another jurisdiction, and what will be the inhibitors and circumstances around that?

That is my potted tour around some of the issues that I am concerned about. The particular concern I want to circle back on is that we do not talk about these things in isolation. We should be looking at the second or third-order effects on the network of freight and transport systems in Western Australia. This legislation has serious implications that we need to get to the bottom of and we must understand what we are undertaking before amending legislation comes back to this place to fix up something that we could have foreseen.

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House)**.