RAIL SAFETY NATIONAL LAW (WA) BILL 2014

Second Reading

Resumed from 22 October.

MR M.P. MURRAY (Collie–Preston) [3.46 pm]: I have been caught short with a mouth full of lollies. I will try to pick up where I left off previously.

Mr C.J. Barnett: Spit it out, as you normally would!

Mr M.P. MURRAY: Bear with me for a minute and I will get rid of it.

Before we adjourned last time I was talking about the interaction between the lessee of the rail lines and the public itself. People are being charged in the region of thousands of dollars to use areas such as rail reserves and firebreaks, which is totally unreasonable. These reserves are on unused rail lines. That is just reiterating what I said previously. It is unfair, and the Minister for Transport should look at that. He should try to take the impost off people who have to pay to use their own driveway.

We also have rail lines in the south west that are closed. To be quite honest, while they are not being used, they are starting to become unusable for things such as tourism rail projects. A very active group in the Boyanup area are steam train buffs, and probably history buffs. They have diesel and steam engines and some very well preserved, rehabilitated or refurbished railcars that could be utilised on the line at a very slow speed. No-one wants to see them travelling at an unsafe speed, but the line itself should be preserved if it is to come back into viable use to cart goods and services in the future. Why let the lines run down when these people will maintain them? They will look after the lines and enjoy them at the same time, and they will be able to be utilised to the fullest for the tourism industry. I think that is something that the minister could look at and he could say yes to these people, provided that all safety aspects are abided by. There would have to be some engineering checks on bridges, culverts and those sorts of things, but I know that the Boyanup people would be very happy with that.

There is a disused rail line in Collie that could be utilised for something very similar. Collie has a very active men's group that restores carriages of all types from the past. The men in that group have a diesel engine that they fire up that could tow people along the rail lines to enhance a country town. It would give people an opportunity to come into town and recreate and it would create jobs in the town. It is incumbent on the minister to ensure that those opportunities are not knocked out. At the moment, the owners of the rail line are very reluctant to do that because of the insurance problems. That is a problem, and I certainly understand that, but I do not think that should rule out any groups of volunteers or others who may wish to use the lines. It is very important to think of that. There is a very well used line in Pemberton, and thousands of people get to ride through the forest over the many bridges that were built quite some time ago on a line that was previously going to go to South Australia, but they found it too difficult to go through all the gullies there. It is something that I think should be looked at, and the safety issue would certainly be addressed under this bill.

Clause 108, "Interface coordination — rail infrastructure and private roads", requires a rail infrastructure manager to identify and assess risks to safety arising from railway operations carried out on the manager's rail infrastructure due to the existence of any rail or road crossings. It is fine to have that in the bill. Again, it must be fair and equitable to both rail and road users, but I do not see that happening at this time. It is not fair for parts of the community if someone looks at a disused line and says that people will have to drive along the railway line for a kilometre or so before they can cross it when that line is not being used. If the line were being used, we would have a different scenario, but I do not see why people should be expected to drive a couple of kilometres to their farm gate when they have their own gateway that directly accesses the main road. That is another aspect of this bill that I think should be looked at.

Clause 109 deals with the identification and assessment of risks. It is very dangerous when people just do a visual assessment of a bridge; it could cause problems in the future, because people might think it is safe to use the line but then find out that it is not. I know some people who have made up kalamazoos, which I suppose they are called; they are ex–railway gangers' platforms to which machinery has been hooked up so that they can be driven up and down the line illegally. However, if a bridge has not been deemed safe, there should be a sign on it, and not one that just states that the bridge is not being used. One particular story is that a group of guys in one of the outer areas decided to bring their kalamazoo, which had a five-horsepower Honda motor on the side, into town. Obviously, they were having a party and on the way into town they found that someone had pinched the rail lines, so there was a very nasty crash. Of course, it was not reported, but it has created much mirth around barbecues in time gone past. It just shows what can happen if the checks are not up to scratch. The rail lines themselves—the actual steel—are treasured by many of the groups that do restoration and the like to hook up the rail line for their restoration projects and maybe just run it out for a couple of hundred metres. It is very

expensive rail line and much sought after, I must say, by farmers to put in cattle grates. I always wondered where a lot of that new looking rail line came from and I guess it is missing rail line sourced from the old lines.

To finish, I again go back to the history of these railway lines, the safety aspects of the buildings along them and their future. They are part of the history of many places and I am sure the minister would have seen some of those buildings, including the Badjaling siding building or the roundhouse in Collie. They are buildings in different areas that have now gone to rack and ruin and are in disrepair because companies are saying they are on their land and cannot be used for anything. They do not want to sublease them, but they are not putting in the money to look after our history. I believe that is a very important role that they should be playing under the community obligations in their contracts. If that is not done, in time, as with many other buildings around the place, we will say, "Remember when that was there? We should have looked after it." Every one of us in this place can say that about something in their lives. When people get a few more years on, like me, they say it more often than they should! That is one of the problems.

I have seen some disagreements. There was a mediation meeting held with Brookfield Rail about where it was parking its engines, which were idling all night and keeping people awake. At least, I thought it was a mediation meeting, but Brookfield turned up with all the heavyweights and the lawyers. There was the local guy who made the complaint, saying that from two o'clock to five o'clock in the morning the train was idling outside his windows, and there was this very heavy contingent of legal people. That is not the way to do business in the public eye, and I do not believe it is right that Brookfield should try to bluff people by bringing in the heavyweights. I certainly gave the lawyer the short shrift, and he sat out while we tried to sort out this problem. It took a lot of effort to put the community's side of the story forward to help people in the town who have a big loco idling for four hours 50 metres away from their door. It is just not on. The minister should be able to ring the company and ask for that to be stopped, because it is not in the company's realm of community obligation. He should be able to ask the company to fix the problem. It ended up being a nasty situation, with rocks being thrown at the train and the train drivers throwing rocks back! I must say it was not the sort of thing that we like to see and it was not very professional by both parties. These are some of the troubles that come out when a company says no to everything—no to changes that could have been made without the situation going that far. In today's world, with shift work and those sorts of things that come into play, the company has to be more responsive to complaints that come from the public. I hope that is done through this bill. As many other members might be able to address the technical side of the bill more than I can, and might wish to, I will now sit down!

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [3.59 pm]: I thank the member for Collie–Preston for that anecdote about throwing stones at train drivers. It reminds me of when I was living in the West End of Fremantle. As the member would know, the goods trains in Fremantle wind around past the Round House. Sometimes those trains would be required to stop and because they were quite long trains, they would occupy about three different rail crossings. Very early in the morning, for about 40 minutes on end, we would hear this "ding, ding, ding" at 5.30 or six o'clock in the morning. I must confess that, on occasions, I wanted to pick up a rock. Clearly, it was not as bad as that.

Before I go on, I draw the attention of the house to the member for Kingsley's jacket. She is wearing blue today to acknowledge World Diabetes Day, which is tomorrow. I commend all members of Parliament to look at the website of Diabetes WA and also look at Parliament House tonight as it will be lit up in blue. This is due to the work of the Parliamentary Friends of Diabetes, which is led by the member for Kingsley. I very much look forward to joining her tomorrow in continuing to help raise awareness of diabetes in Western Australia. I thank the member for Kingsley for her sartorial elegance today. I managed only a blue shirt, so I apologise.

I rise to make some brief comments on the Rail Safety National Law (WA) Bill 2014. Obviously, this bill is necessary. It is important that we harmonise these laws to ensure that we have a uniform approach to rail safety across the nation. The issue of rail safety is very relevant in my electorate. I have a number of railway lines, both local passenger rail and also a significant amount of goods traffic through trains accessing the CBH Grain Pty Ltd facility, bauxite trains coming down to Alcoa's refinery and also the odd coal train, I think, coming up from Collie; well, it certainly did in the old days. As I said, I have about half a dozen rail crossings in my electorate as well as, I think it is fair to say, some not as well policed crossings that are of particular concern to me because of the way they impact on the community. There are the odd marshalling yards in my electorate. I say to the Minister for Transport that hopefully at some point we will see an intermodal transport hub facility developed slightly to the north of my electorate; that is, in the electorate of the member for Cockburn. The current and future rail traffic will bring into sharp focus the safety issues around rail, particularly that interaction between rail and road at those railway crossings. One particular crossing that comes to mind is the one adjacent to Mandurah Road or, more accurately, the one that crosses Gilmore Avenue in the southern portion of the City of Kwinana. This is a particularly busy intersection. It will start to become even busier once the dual carriageway for Gilmore Avenue is pushed through from its current point of termination at the junction of

Runnymede Gate as it runs down to the junction of Mandurah Road and then ultimately turns into Dixon Road. Gilmore Avenue is becoming a major thoroughfare for traffic travelling between Rockingham and Kwinana.

I am concerned that we are not paying full attention to the safety issues at this intersection. I noticed the other day that the whole intersection had been blocked by a very serious crash. When Gilmore Avenue becomes a dual carriageway, there will be increased traffic, and that will increase the safety issues surrounding the interaction of traffic with the rail crossing at that intersection. I will be interested to know whether the minister has any working knowledge of the upgrade of this rail crossing and whether the safety issues have been taken into account. That intersection is already under extreme pressure. Because that rail crossing is used by goods trains, which are long trains, there are lengthy interferences in the vehicle traffic flow, and that is putting even greater pressure on the safety issues at that intersection.

This legislation is particularly important, in my understanding, in regulating the safety issues for the crews that work on trains. Obviously, a national safety regime will take into account how the crews, and the drivers in particular, are regulated to make sure that they do not operate locomotives when under the influence of drugs or alcohol. Measures put in place in this legislation allow for the testing of those crews. I note that the testing process includes the taking of urine samples. The only two states in which that measure is being contemplated are New South Wales and Western Australia. The member for Mirrabooka, who knows much more about the industrial relations dimensions of this issue than I do, went to some lengths to explain to the Parliament that although urine testing is not discredited, it is widely regarded as a less reliable way of testing for the presence of drugs in a worker's system when they clock on. In particular, I think the member for Mirrabooka noted that it is an unacceptable level of intrusion on the rights of workers in the workplace. There is a time and place for making sure that all workers are held accountable for their risk profile, and drug or alcohol testing may be part of that process. But I also take on board the comment from the member for Mirrabooka that urine testing is now widely regarded as an unacceptable form of testing and an intrusion on the rights of workers. Therefore, I will be interested to hear the minister explain why Western Australia has decided to go down this route, when other states have decided not to do that, and when it is not part of the regime under the national model legislation.

I think that all members of this house understand and appreciate the importance of rail safety. All members of this house appreciate that, particularly in the outer suburbs of Perth where there is a very high flow of vehicle traffic and a very high interaction with large goods trains coming into the metropolitan area, it is very important that we remain vigilant and take every opportunity to ensure the safety of the public and, indeed, the safety of the people who work on the trains. As I said, I am particularly concerned about the safety issues around the Gilmore Avenue intersection, especially as that intersection is to be upgraded to a dual carriageway. That gives rise to further concerns about safety, and these concerns have been raised with me by people in the community.

I want to make one other comment about safety in relation to rail crossings and the ways in which they impact on other road users. It seems to me that at a lot of rail crossings, particularly in Kwinana, the quality of the bitumen or tarmac around the tracks makes them very dangerous. As a cycling enthusiast, I am sure that the Minister for Transport will appreciate that the upkeep of these crossings is also important to ensure that they are safe for not only road vehicles but also bicycles and other modes of transport. As the tarmac around the rail crossings starts to deteriorate, the crossing becomes increasingly dangerous for other road users. I know of one particular crossing in Kwinana that is now avoided by cyclists because it is simply too dangerous; many cyclists have been dislodged from their bikes at that crossing. However, that is by the bye; I have taken it up with local government and we will try to have these things remedied.

Rail safety is an important issue and it is important that we are continually vigilant about it, and not only in relation to whether rail crews are operating equipment under the influence of drugs or alcohol. We need also to pay careful attention to rail crossing safety issues to ensure that the infrastructure around the rail system is such that it does not endanger the lives of motorists in the sections that interact with vehicles and other forms of transport. I will be very interested to hear from the Minister for Transport in his reply to the second reading debate about how the Barnett government will continue to ensure that in our growing metropolitan area rail safety remains a priority. Given our growing metropolitan area, we do not want rail safety around these crossings to be compromised.

MR D.J. KELLY (Bassendean) [4.12 pm]: I rise to make a contribution to debate on the Rail Safety National Law (WA) Bill 2014. I say at the outset that rail is an important part of the transport system in Western Australia, and I am very proud of Labor's record in support of rail in this state. We can talk about having safe rail, but if we actually do not have any rail, it is a bit of a moot argument. Labor has a tremendous record in Western Australia for supporting the rail system.

I can remember when the suburban rail network in Perth was nothing more than a bunch of old diesel trains, chugging up and down the lines; they were very unpopular, very uncomfortable and not particularly reliable, and the suburban rail system was very much a system in decline. One of the first state political issues that

I remember as a teenager was the controversy around the then Liberal government's decision to close the suburban Fremantle rail line.

Ms L.L. Baker interjected.

Mr D.J. KELLY: I was a teenager at the time! What a ridiculous decision that was. The then Liberal government said it was going to replace the rail line with a more convenient and safer bus system that was going to run up and down Stirling Highway. The very modern and very comfortable bendy buses were the Liberal government's transport system of the future! It closed that line and replaced the rail line with bendy buses that ran up and down Stirling Highway. Even in those days, Stirling Highway was very congested. Anyone could see, even then, that the prospect of taking all those customers off the trains and putting them onto Stirling Highway was a step backwards, but that was what the government did. It was to the great credit of the next Labor government that one of the first things it did was promise to reopen the Fremantle–Perth train line. The rest is history.

The other important transformational decision that Labor made that I distinctly remember was the decision to electrify the whole network. I—not as a teenager but a little later on—went and lived in London for a couple of years. I was just amazed at the ability of a city of that size to function. I did not drive a car for three years. Because of the sophisticated aboveground and underground rail and buses, people can function in that city without a car. When I became back to Perth—having left when there were the old diesel trains—Labor had electrified the network. What a difference that made. The train system went from being incredibly uncomfortable and unpopular to being reliable, modern and safe. The decision to electrify the train line was transformational to the system.

I could go on at length about the decision to build the Joondalup–Mandurah line, but I will not. Labor certainly has an extremely proud record of supporting rail, whereas the other side has a hotchpotch of a history that shows that it has always had a negative view of rail. Its history in the metropolitan area is appalling, and there is the current mess it is in with the tier 3 rail in regional areas. Despite the minister trying to claim that somehow the government has done the right thing in that sector, it clearly has not; it has clearly left regional areas that had previously been serviced by those tier 3 rail lines in the position of using the alternative of a very unsafe road network. I suppose it is ironic that in the midst of this government's mistreatment and mishandling of the tier 3 rail issue it has brought the Rail Safety National Law (WA) Bill 2014 to this house. The bill is designed to improve rail safety at a time, as I say, when the government is taking goods off rail and putting them onto roads. It is very unfortunate timing indeed.

I would like to say a couple of things about this bill. One of the concerns raised is the specific exclusion in the legislation of the Freedom of Information Act 1992. Clause 8—"Exclusion of legislation in this jurisdiction"—reads —

> (1) 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 am immediately concerned whenever I see legislation before this house that establishes that any part of government is excluded from the jurisdiction of freedom of information legislation. The effect of clause 8 of this bill is that the new Office of the National Rail Safety Regulator is outside the jurisdiction of the Freedom of Information Act 1992. I have not heard a suitable explanation from the minister why this should be the case. Freedom of information legislation is there for very good reason. Prior to the enactment of that legislation there was a time when governments went about their business largely shielded from the general population. It was often the case that members of the public who wanted to find out about government decisions were prevented from accessing documentation that made more transparent the decisions of government. That was a continuing frustration. The freedom of information legislation enacted in this state gave effect to the desire that most people have for open and transparent government in Western Australia. Although that legislation has its flaws—it is still a protracted process to access documentation and in the end one often wonders why the government was trying to hide it. Although the processes under that legislation are still, in my view, somewhat cumbersome, it is far better than not having freedom of information legislation at all. If this bill is passed, it will mean that the freedom of information legislation does not exist for the new Office of the National Rail Safety Regulator. I would like to hear a very clear explanation from the minister. Not right now, minister. The minister can go and do whatever it is he is doing. I did not mean for the minister to stop, but I am glad he is listening. The minister is wandering. Sorry, it is a distraction.

The DEPUTY SPEAKER: Order, members. Member for Bassendean, please continue.

Mr D.J. KELLY: I was talking about the importance of freedom of information legislation. If this bill is passed, it would mean that for all intents and purposes the Office of the National Rail Safety Regulator would operate as though the freedom of information legislation was never enacted. I cannot for the life of me see why that should be the case. This new regulator is there to contribute to making our rail system safe. What possible utility is there in having that agency operate outside the scrutiny of the Freedom of Information Act? That concern was raised with me and I am yet to hear an explanation from the government as to why that should be the case.

By virtue of clause 8 of this bill another piece of legislation would be excluded by this legislation. The State Records Act 2000 is listed at clause 8(3)(e) and it would be excluded from operating within the jurisdiction of this bill. I would like the minister to clearly explain at some point why the State Records Act should not apply. I have not heard the reasons for that in the debate or from the minister, and I think it is incumbent on the minister to make the case for the jurisdiction of that act to be excluded.

In the context of rail safety, I raise one particular issue that relates to my electorate. It is an issue on which I have written to the minister and concerns access to Bassendean train station, particularly for passengers who are frail or have a disability. For those members of the house who are not familiar with the configuration of the Bassendean train station, the train station was rebuilt in, I think, 2005. It has a central platform.

Mr D.C. Nalder: By the Labor government.

Mr D.J. KELLY: That is right; by a Labor government.

Mr D.C. Nalder: They didn't put a disability ramp in.

Mr D.J. KELLY: The minister says that they did not put in a disability ramp. Perhaps the minister would like to listen to what I have to say. Labor put money into rebuilding that train station. For the first time it installed lifts at that station so that now its configuration includes a central platform that is accessed by three lifts. One on either side of the railway line takes passengers up to a walkway, which then, regardless of which lift a person accesses on either side to get to the platform, gives passengers access to a lift that goes down to the central platform. There was consultation at the time with the community and that configuration of the train station was seen to be a great improvement, and the community was very happy with the new station as it was designed and funded by the then Labor government. As I said, that was in 2005—so it is nearly a decade since that was done. Since I have been elected, people have raised with me issues about the safety of the configuration of that station for people who either are frail or have a disability, or, for example, for parents with prams. After 10 years' experience of how the train station has operated, people are now saying to me that although the lifts are great, often they are not working. If they operated 100 per cent of the time, as people envisaged they would when Labor built them, there would be no problem. But whether it is because they are now 10 years old or whether there is some other reason, the minister acknowledges in his correspondence that they operate about 91 or 92 per cent of the time. Even if that is the case, it means that approximately one day out of 10 a lift is out of action, and if a lift is out of action, the only option for passengers to get to the central platform is to battle the stairs. The stairs are steep and are completely unsafe for someone with a disability. One person who contacted me is visually impaired and uses a guide dog, and in his case the stairs are completely unsafe. The elderly people who have contacted me say that the stairs are unsafe. Imagine someone pushing a pram attempting to negotiate the stairs. I have not counted them, but there are probably 20 steps.

[Member's time extended.]

Mr D.J. KELLY: There are probably 20 steps going up to the concourse and then 20 going down to reach the platform. It is completely unsafe for some people to use the stairs to access the platform when the lifts are not functioning. The minister has said that, if the lifts are not functioning, a person with a disability can pick up a telephone, ring a number and a taxi will be arranged to take them to the next station with suitable access, and they can start their train journey from there. That policy has two flaws. The first is that it does not apply to parents with prams; it only applies, as I read it, to people with a disability. Parents with prams cannot access that policy, so the only option is the stairs. The second problem is that it is extremely inconvenient for a person with a disability to get down to the train station—they may have an appointment or a job interview—to find that the lift is out of order and the person then has to make a phone call and arrange for a taxi to take them to a station with disabled access. Coming the other way, a person on the train gets to Bassendean, gets out onto the platform and finds that the lifts are not working. The person is stuck on the platform and has to get on the next train and go to another station, and make a phone call to try to arrange a taxi to get back to Bassendean. As well-meaning as that policy is, it is simply impractical for many people with disability. One woman expressed to me her frustration when, going for a job interview, she found that the lift was not working and she missed her job interview. It is very disheartening, especially given how difficult it is for people with disability to access employment.

Having said that, the solution that we raised with the minister was why could there not be—I am not even sure what it is called—a disability ramp off the end of the platform to a maze crossing similar to the one that I am familiar with at the Bassendean train station? The crossing automatically closes when a train approaches. If that was built with a gradient that was suitable for wheelchairs and the like, it would be a much more suitable alternative for people with frailty or disability when the lifts are not functioning. There may be other solutions to this problem. I was discussing this the other day with an electrician, who said that the easiest way to fix it was to make sure that the lifts do not break down. It is a mechanical problem; the Public Transport Authority should just spend the money and make sure that the lifts do not break down. I do not have a mechanical background. It may be that simply fixing or upgrading the lifts is the easiest solution and we do not have to fiddle around with another exit point for the station. I am sure that if the lifts were fixed to a standard at which they operated almost 100 per cent of the time, the community would be incredibly happy. However, if that is not possible for some reason, it is unacceptable; someone will have a serious accident at that train station. The stairs are very steep and one day someone will go to that train station, find that the lifts are out of order, tackle the stairs and fall down them. Clearly, the potential for someone to die is obvious because the stairs are formidable. The minister's response to my letter was that the lifts operate 90 per cent or 91 per cent of the time, and for some reason a ramp is not practicable. I say to the minister that that response is simply not acceptable. I would be happy to host the minister in the electorate if he wants to look at the train station. I will even buy him a cup of coffee from the coffee shop that has opened across the road from my office. I am sure they would be happy to have such an important person in the government visit their fine establishment. Seriously, I make that offer to the minister. I would be happy for the minister to see for himself the problems at that train station.

I also say to the minister that the next train station down the line is Ashfield. A lot of debate took place about moving that train station and creating an Ashfield precinct redevelopment. That appears to have gone nowhere in the last six years of this government. One of the consequences of that precinct plan not going anywhere is that the Ashfield train station has not been upgraded. The only access for patrons to the Ashfield train station across Guildford Road is a walkover. My understanding is that that footbridge does not meet modern standards for disabled access and the only reason it is still there is that it is an existing structure, and there is a get-out-of-jail-free-card clause within the disability legislation that exempts existing structures either indefinitely or for a period. While that structure is not touched, it does not need to meet the relevant legislative standards.

We have a very unsafe situation there and it is completely unacceptable. The community has petitioned; I believe the petition went to the Minister for Transport. It may have been to the previous Minister for Transport, the former member for Vasse, but the community has certainly petitioned the government about making access to the train station safer. Part of that petition included putting lights at the corner of Colstoun Road and Guildford Road. The lack of lights in combination with a footbridge that does not meet disability access standards means that the whole area around Ashfield train station does not meet modern standards. Of course, because Ashfield does not have disabled access, it compounds the problem at Bassendean that I mentioned. I think the nearest train station that has proper disabled access is Bayswater. The lack of proper access at Bassendean is therefore compounded when the lifts are not in order by the fact that Ashfield is also not suitable for disabled access.

Going back to the specific provisions of the bill, my understanding is that part of the regime contemplated by this bill is the question of compulsory urine samples for safety checks. I would like to say straight up that I am a strong supporter of there being rigorous safety standards in workplaces. Everybody should be able to go to work, do their job and come back to their family in one piece safe and sound. Sadly, that is not the case because many workplaces do not meet modern safety standards. Testing for drugs and alcohol has its place in the modern workplace because workers do not want to have their safety put in jeopardy by their colleagues coming to work in an unsafe condition. However, having said that, there are concerns about urine sampling. My understanding is that only two states, New South Wales and Western Australia, are proposing to go down this path. Urine testing is very intrusive. If we are to go down this path, we must ask ourselves is it really necessary? Does it really make the workplace safer? Is it really effective? Are there other ways of achieving what we want without subjecting employees to a quite intrusive test? I am not convinced that it is justified but I am happy for the minister to put information before this house to justify it. That is simply what I am asking the government to do. I do not think the government has made the case yet, and I understand the concerns of those who have raised the issue of whether the benefit is justified by the cost to employees. I will simply finish on that point.

MR D.C. NALDER (Alfred Cove — Minister for Transport) [4.42 pm] — in reply: I thank members opposite for their contributions to the debate on the Rail Safety National Law (WA) Bill 2014. This afternoon I will attempt to respond to the many issues raised and to provide a comprehensive response to those issues to avoid further issues being raised throughout this debate.

The first contribution was from the member for West Swan regarding the employment of existing local staff. For the record, all employees of the current Office of Rail Safety in WA will retain their employment and be accommodated in the following ways. Existing permanent Office of Rail Safety WA staff will be offered secondment to the Office of the National Rail Safety Regulator, which will protect their permanency, existing entitlements and rights. Some permanent staff may choose to transfer permanently to the Office of the National Rail Safety Regulator and to work under its terms and conditions. If a permanent staff member chooses not to take a secondment or to transfer permanently, they will continue to be employed within the WA public sector. All contract staff will have existing contracts honoured.

Regarding the cost implications, the Office of the National Rail Safety Regulator is currently estimating the cost of rail safety regulation to be prescribed in the 2015–16 fee regulations. The fees applicable in WA will be considered by the Transport and Infrastructure Council in May 2015, and approved fees will be prescribed in state regulations made by the WA Governor. Fees are proposed by the Office of the National Rail Safety Regulator for annual consideration and endorsement by the Transport and Infrastructure Council. The prescribing of fees applicable in WA occurs as a regulation amendment, which is subject to the scrutiny of the WA Parliament. Variable fees will continue to change annually to reflect the actual amount of rail regulation. There may be some additional cost of regulation associated with enhancements to the safety program such as the drug and alcohol testing to be undertaken by the national regulator. Under the national regulator, costs will not be subsidised across jurisdictions. The Transport and Infrastructure Council approved the cost-recovery model for the Office of the National Rail Safety Regulator to apply for the first three years of operation, after which it will be reviewed. The Office of the National Rail Safety Regulator has commenced scoping for the cost-recovery review to be undertaken in 2016, after three years of operation.

In response to issues raised by the members for West Swan, Cannington and Mandurah regarding tourist and heritage operators, it is recognised that tourist and heritage operators have unique operational requirements that are different from commercial rail operators and that they have an important role to play within the WA rail industry. The following measures have been put in place to assist tourist and heritage operators in complying with the Rail Safety National Law (WA) Bill and to continue to operate in WA under the Office of the National Rail Safety Regulator. Firstly, there will be assistance with fees and the fixed accreditation fee will be reduced to $2 000. This compares with $15 000 for commercial operators. Secondly, the government will pay the $2 000 fixed accreditation fee for all participating tourist and heritage operators in WA as a community service obligation. Thirdly, tourist and heritage operators will be required to pay only 10 per cent of certain other fees, including application for accreditation, variation, registration and exemption fees.

Existing accreditations under the Rail Safety Act 2010 are recognised under the transitional provisions in clause 40 of the Rail Safety National Law (WA) Bill. The level of regulatory effort will continue to be commensurate with the operator's size and risk profile. The level of oversight applied to tourist and heritage operators will be limited to that which is required to ensure safety. Existing safety management systems are recognised under the transitional provision at clause 46 of the Rail Safety National Law (WA) Bill.

The Department of Transport recently contacted the eight tourist and heritage operators in WA to discuss the transition to the Office of the National Rail Safety Regulator. They all indicated support for inclusion under the Rail Safety National Law (WA).

In response to questions raised by the member for Cannington about the Regulatory Gatekeeping Unit, the proposed Rail Safety National Law (WA) has met the requirements of the state's Regulatory Gatekeeping Unit. On a national level, an extensive regulatory impact statement process for the Rail Safety National Law proposal was completed by the National Transport Commission and was endorsed by ministers of the Transport and Infrastructure Council.

In response to questions raised by the members for Cannington and Mirrabooka about why WA is implementing the national rail safety reform and not the national heavy vehicle reform, on 19 August 2011 the Premier signed the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform but did not sign the Intergovernmental Agreement on Heavy Vehicle Regulatory Reform. It was noted that WA would enact the Rail Safety National Law by mirror legislation rather they using applied legislation, which refers to legislation in another jurisdiction. The "mirror" approach ensures that WA parliamentary sovereignty is upheld by retaining powers to make and amend the national law in WA. The WA rail industry supports the national rail safety regulation and investigation reform which builds upon earlier national reform initiatives. Legislative and operational mechanisms have been established to ensure that the national regulatory regime does not impact on the viability of tourist and heritage railways.

The Premier indicated to the Council of Australian Governments that a number of outstanding issues needed to be resolved before he would sign up to the heavy vehicle reform. These include a final determination of the benefits that will accrue to WA as a result of participating in the heavy vehicle reform and consideration of the

funding models established under the intergovernmental agreement, including the cost impact to both government and industry. Resolution of these issues is still pending. The WA heavy vehicle industry does not support the national heavy vehicle regulatory reform and, at the commencement of the National Heavy Vehicle Regulator early in 2014, a number of operational issues were experienced that are still being addressed.

The Office of the National Rail Safety Regulator is not a commonwealth body, but an independent body corporate established under the Rail Safety National Law (South Australia) Act 2012. The Office of the National Rail Safety Regulator is established under the Rail Safety National Law as a single national entity that represents the Crown. The Office of the National Rail Safety Regulator has responsibility for regulatory oversight of the Rail Safety National Law in the participating jurisdictions in which the Rail Safety National Law is enacted.

In response to the questions asked by the members for Cannington, Fremantle and Mirrabooka about why the Rail Safety Act was passed in 2010 when a Council of Australian Governments decision had been made to move toward a national rail safety regulatory scheme in 2009, the model rail safety law was developed by the National Transport Commission in 2006. Western Australia's adoption of the model laws occurred in 2010 with the passage of the Rail Safety Act 2010. Although COAG agreed to progress further national rail safety reforms in June 2009, the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform, which endorsed the development of a single national rail safety law, was not endorsed by COAG until August 2011. Passage of the model law was the first step towards national consistency in rail safety regulation, and these model laws form the basis for the Rail Safety National Law. WA's consistent adoption of the model laws in 2010 will assist the transition to the Rail Safety National Law, with minimal impact on WA operators.

In response to the issue raised by the members for Cannington, Gosnells, Southern River and Mirrabooka about access to railway reserves, accredited rail infrastructure managers have responsibility for controlling and monitoring how railway reserves are accessed for legitimate reasons, such as utilities conducting inspections and maintenance of services that run alongside, above or under a railway. Currently, under the Rail Safety Act 2010, the Office of Rail Safety does not have powers to control illegal access, such as trail bike riding on access roads, vandalism, graffiti or trespassing, which are the responsibility of the rail infrastructure manager. The Rail Safety National Law does not introduce any new powers with regard to access to railway reserves. The Government Railways Act 1904 provides for trespass offences.

What are the specific variations between the Rail Safety Act 2010 and the Rail Safety National Law 2014? The Rail Safety National Law builds upon the model rail safety laws that the existing rail safety legislation in WA is based upon. The majority of the clauses are identical or have been amended for the purpose of clarity, without changing the policy intent.

The first key difference is the governance provisions. A number of new governance provisions have been included in the national law to provide for the establishment of the national rail safety scheme, including the formation of the Office of the National Rail Safety Regulator.

The second key difference is the alignment with model work health and safety legislation. A number of provisions have been harmonised to align with the national model work health and safety legislation to ensure that overlapping duties and obligations are consistent.

The third key difference is the national penalty framework. The Rail Safety National Law introduces a national penalty framework that aligns with the penalties in the national model work health and safety legislation to achieve consistency between the two overlapping areas of law.

The fourth key difference is the duty for freight loaders. The Rail Safety National Law introduces a new safety duty for personnel who load and unload freight by providing that loaders and unloaders are required to ensure that, so far as is reasonably practical, these duties are performed safely. This overcomes previous limitations whereby there was a lack of any duty for loaders and unloaders who were not rail transport operators. The inclusion of this duty enables the national regulator to regulate these activities.

The fifth key difference is the strengthened risk management. Safety management and interface agreement provisions will be amended to prescribe risk management principles, including risk identification, assessment and control. The amendment introduces clear safety benefits, as well as savings, by articulating the risk principles in legislation to provide a common basis for undertaking compliance and enforcement activities.

The sixth key difference is enhanced drug and alcohol testing. Drug and alcohol testing provisions allow for testing provisions to align with the local road traffic legislation. Allowing for local variations between the jurisdictions in alcohol testing ensures that local police, who are one of the parties authorised to conduct testing, have the same testing procedures in both the road and rail contexts. The Rail Safety National Law introduces an offence relating to the prescribed concentration of alcohol or prescribed drug, with a maximum penalty amount of $10 000. The Rail Safety National Law lowers the maximum prescribed concentration of alcohol in a rail safety worker's blood from .02 per cent prescribed under the current Western Australian rail safety legislation to

zero per cent. This is consistent with zero blood alcohol content restrictions for selected drivers under the Road Traffic Act 1974, covering buses, taxis and heavy vehicles with a gross combination mass exceeding 22.5 tonnes, just to name a few. Under the Western Australian local drug and alcohol testing provisions, post-incident urine testing remains as an option, and I will refer to the member for Bassendean's comments later. This is consistent with the provisions under the existing rail safety and road traffic legislation in this state.

The seventh key difference applies to ministerial exemptions. The Rail Safety National Law introduces the power for the minister, in consultation with the regulator, to issue short-term exemptions from provisions. This power is introduced to enable exemptions to some of the more prescriptive provisions—for example, requirements on all railway transport operators for managing rail safety, worker health and fitness, and elements of the drug and alcohol and fatigue risk management programs. It is recognised that some of these requirements may impose an excessive regulatory burden while only having a minor or negligible benefit to safety, depending on the risk profile of the operator. In these cases, the exemption may be granted to reduce the degree of regulation for some railways, commensurate to their level of risk, without reducing existing levels of rail safety.

The eighth key difference is consistent oversight laws. The Rail Safety National Law provides that certain South Australian oversight laws—for example, regarding freedom of information, state records, Ombudsman and public finance audit—to ensure that only one set of oversight laws applies to people performing duties under the Rail Safety National Law, such as Office of the National Rail Safety Regulator employees, regardless of their physical branch or location. However, these provisions do not extend to officers who undertake rail safety duties in their own right—for example, jurisdictional police officers who are authorised to perform certain activities under the Rail Safety National Law in their capacity as police officers in Western Australia.

I have a further response to the issues raised by the members for Cannington, Southern River, Cockburn, Fremantle and Midland about dangerous goods. The transportation of dangerous goods is regulated under the Dangerous Goods Safety Act 2004 and is not in the scope of the Rail Safety National Law (WA) Bill 2014.

In response to the issue raised by the member for Cockburn about the emergency management plan, it is consistent with the existing Rail Safety Act 2010 safety management provisions. Under the Rail Safety National Law (WA) Bill, rail transport operators are required to have an emergency management plan in place for their accredited railway operations. These plans are prepared in conjunction with relevant emergency service agencies.

In response to the issue raised by the members for Cannington, Cockburn, Willagee and Midland about the freight rail network, the government will review the report into the management of Western Australia's freight rail network and consider the potential impact of the recommendations.

The members for Cannington, Southern River, Cockburn, Gosnells, Butler and Willagee raised the issue of emissions, noise and vibrations. Emission, noise and vibration issues are regulated under the Environmental Protection Act 1986 and are not within the scope of the Rail Safety National Law (WA) Bill 2014.

In response to the issue raised by the member for Fremantle about the mirror legislation approach, regarding the adoption of the Rail Safety National Law by mirror legislation, it was considered in the best interest of the WA community to retain parliamentary sovereignty. In August 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 and investigation. It was fundamental to the national system that there should be some core text that the relevant jurisdictions could all agree upon and that that text was the Rail Safety National Law that was enacted in South Australia. For the most part, the other jurisdictions proceeded by adopting that text, as enacted by South Australia, and by committing to adopt amendments to the Rail Safety National Law agreed to by the Transport and Infrastructure Council. The council is composed of the transport ministers from each of the participating jurisdictions. It was noted, however, at the time of agreement that Western Australia would adopt a different approach to implementation with the aim being to ensure that the Western Australian Parliament could consider any amendments to the Rail Safety National Law. WA is using the mirror legislation approach to ensure that WA parliamentary sovereignty is upheld by retaining powers to make, amend and scrutinise the Rail Safety National Law, as enacted in WA. The mirror approach being used in the Rail Safety National Law (WA) Bill 2014 retains WA parliamentary sovereignty and allows for local modifications to be made.

Freedom of information legislation is not being removed from the Rail Safety National Law. Freedom of information does apply to the National Rail Safety Regulator. The South Australian Freedom of Information Act will singularly apply directly to the Office of the National Rail Safety Regulator, otherwise each jurisdiction would have differing freedom of information and other oversight laws.

Clause 8 of the bill provides that certain WA oversight legislation—the Auditor General Act 2006, the Financial Management Act 2006, the Parliamentary Commissioner Act 1971, the Public Sector Management Act 1994 and the State Records Act 2000—does and does not apply in the context of the Rail Safety National Law in particular circumstances. Section 263 of the Rail Safety National Law provides that certain South Australian oversight laws apply—for example, freedom of information, state records, Ombudsman and public finance and audit—to ensure that only one set of oversight laws applies to people performing duties under the Rail Safety National Law, for example, Office of the National Rail Safety Regulator employees, regardless of their physical branch location. However, these provisions do not extend to officers who undertake rail safety duties in their own right. For example, jurisdictional police officers are authorised to perform, as I have discussed previously.

I turn now to the exemption for rail workers to give blood for religious or other reasons. An exemption from providing blood on the basis of religious or other reasons does not currently exist in the WA Road Traffic Act or the Rail Safety Act and is not provided for under the Rail Safety National Law.

In response to issues raised by the members for Fremantle and Butler regarding drug and alcohol testing, the mirror approach being used in the Rail Safety National Law (WA) Bill 2014 retains WA parliamentary sovereignty and allows for local modifications to be made. The participating jurisdictions acknowledged from the outset that local provisions would be tailored to suit specific situations within these jurisdictions. Specifically, the relevant jurisdictions agreed that they would retain drug and alcohol procedures consistent with local practice.

It was agreed nationally that testing provisions would align with the local drug and alcohol testing provisions under the Road Traffic Act 1974. Therefore, the bill was drafted to accord with the drug and alcohol provisions under the Road Traffic Act 1974. This was done to minimise the possibility of police being faced with any additional operational burdens. This approach also takes into account the possibility that a significant incident on a railway might involve road traffic. The original reforms based on the 2006 model allowed for drug and alcohol testing by way of urine sampling and analysis. New South Wales and Western Australia were the only jurisdictions to provide for it and have opted to continue to do so. The experience of Western Australia Police has been that urine testing, although perhaps not essential, can be a valuable investigation and enforcement tool. Further, it is possible that there will be advances by which urine testing becomes a more attractive option in that respect. Accordingly, the bill includes terms specifically directed to ensuring that it remains available as an option.

Drug and alcohol testing provisions allow for testing procedures to align with local road traffic legislation. Allowing for local variation between the jurisdictions in relation to drug and alcohol testing ensures that local police who are one of the parties authorised to conduct testing have the same testing procedures in both the road and rail contexts.

Under the Western Australian local drug and alcohol testing provisions, urine testing remains as an option in post-incident testing, which may be taken to assist as a screening test for laboratory testing purposes. This is consistent with the provisions under the existing rail safety and road traffic legislation in this state. Blood, breath and oral fluid testing will also continue, as is usual practice in WA. Whether an authorised person carries out urine testing or one of the other tests available to them will be a matter of operational discretion.

In response to issues raised by the member for Mindarie about set alcohol limits for rail safety workers, section 128(5) of the Rail Safety National Law sets the "prescribed concentration" of alcohol as any concentration of alcohol in the blood unless a higher limit is prescribed in the national regulations. There is currently no higher limit prescribed in the national regulations. This section also prescribes that any of the following substances are a prescribed drug—delta-9-tetrahydrocannabinol, methylamphetamine and 3,4-methylenedioxymethylamphetamine. Under the Rail Safety National Law, the maximum prescribed concentration of alcohol in a rail safety worker's blood will be lowered from 0.02, as prescribed under the current Western Australian Rail Safety Act, to zero. This is consistent with the zero blood alcohol concentration restrictions for selected drivers under the Road Traffic Act 1974, as previously mentioned, covering bus, taxi and heavy vehicle drivers, to name a few.

In response to the comments of the member for Mindarie with regard to disciplinary proceedings, no disciplinary proceedings are anticipated under this bill. Clause 155 of the Rail Safety National Law provides protection to a person required to answer a question or produce a document pursuant to clause 154. The answer given or the document produced cannot be used in criminal or civil proceedings against that person. Clause 140 provides that, among other things, rail safety officers have a primary function of investigating contraventions of this law and assisting in the prosecution of offences. Further to this, clause 244 provides protection for information obtained in exercising any power or function under this law. Information may be released only under certain limited circumstances.

In response to the issues raised by the member for Willagee and the member for Mirrabooka with regard to disallowance provisions, in order to uphold parliamentary sovereignty, clause 8(2) of the bill provides that sections 41 and 42 of the Interpretation Act 1984 WA apply to regulations made under the Rail Safety National Law in Western Australia. This provides for either house of Parliament to pass a resolution to disallow or amend the regulations made under the Rail Safety National Law. It is anticipated that a resolution to disallow or amend regulations will be passed only where Parliament considers that passage of the proposed regulations would represent a disadvantage to the state or would have a negative impact on Western Australian rail operators.

With regard to national regulator directions and state powers, the state will retain some powers with regard to directions given by the National Rail Safety Regulator. Under the Rail Safety National Law, responsible ministers of participating jurisdictions will be given certain powers in relation to the Rail Safety National Law. For example, clause 203 of the bill provides that the minister may, after consulting with the regulator, grant short-term exemptions from the Rail Safety National Law or specified provisions of the law in respect of railway operations carried out or proposed to be carried out in the responsible minister's jurisdiction.

In response to the comments of the member for Willagee and the member for Mirrabooka about workforce planning, the Rail Safety National Law (WA) Bill includes a number of provisions to assist Western Australian rail operators to transition to the National Rail Safety Regulator. The bill provides for existing accreditations, registrations and safety management systems under the current WA rail safety legislation to continue to be recognised and have effect under the Rail Safety National Law. Further, the ability for rail safety workers to gain employment across jurisdictions will be assisted by the introduction of the nationally consistent Australian Quality Training Framework qualifications for rail safety workers proposed under the Rail Safety National Law. The uniformity of the required competencies for rail safety workers will enable employers to more easily recognise and assess worker's qualifications, thereby improving employment opportunities for rail safety workers nationally.

I would like to acknowledge the contributions and the queries raised by members opposite and I hope they will accept the full and detailed responses that I have provided.

Mrs M.H. Roberts: Are you going to move the Midland freight rail line any time soon through Woodbridge, formerly known as West Midland? You did not answer that.

Mr D.C. NALDER: What I have attempted to do is respond to the questions that relate directly to the National Rail Safety Law. With regard to particular grievances that members may have, I would rather save that for grievances in Parliament at another time. So I thank members opposite for their support of the bill—they acknowledged at the outset of the debate that they do support this bill—and I trust that they find these responses adequate.

Question put and passed.

Bill a second time.

Leave denied to proceed forthwith to third reading.

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

House adjourned at 5.09 pm