



PARLIAMENT OF WESTERN AUSTRALIA

SIXTH REPORT

OF THE

**STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS
AND STATUTES REVISION**

IN RELATION TO

**A PETITION CONCERNING THE EXPORT OF IRON ORE
THROUGH ESPERANCE**

Presented by the Hon M D Nixon (Chairman)

6

APRIL 1994

**STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS
AND STATUTES REVISION**

Date first appointed:

21 December 1989

Terms of Reference:

The functions of the Committee are to consider and report on -

- (a) what written laws of the State and spent or obsolete Acts of Parliament might be repealed from time to time;
- (b) what amendments of a technical or drafting nature might be made to the Statute book;
- (c) the form and availability of written laws and their publication;
- (d) any petition;
- (e) any matter of a constitutional or legal nature referred to it by the House.

A petition stands referred to the Committee after presentation.

Members as at the date of this report:

Hon M D Nixon MLC (Chairman)
Hon A J G MacTiernan MLC
Hon B M Scott MLC

Staff as at the date of this report:

Mr J F Edwards, Advisory/Research Officer
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Previous reports:

See Appendix 2

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**STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS
AND STATUTES REVISION**

**REPORT ON PETITION CONCERNING THE EXPORT OF IRON ORE
THROUGH ESPERANCE**

PART A: INTRODUCTION

The Petition

On 22 September 1993 the Honourable Bruce Donaldson presented a petition (#590) from 151 citizens and ratepayers of the Shire of Esperance in the following terms:

"We do not support the export of iron ore through the Esperance Port unless the proponent can guarantee that absolutely no iron ore dust will escape the boundaries of the port facility, and no iron ore will contaminate the sea. We stress that no dust, implies no airborne dust. Not the accepted standard of dust laid down by the Environmental Protection Authority, being 260 ug/m³ High Alert and 90 ug/m³ Low Normal."

PART B: RECOMMENDATIONS

The Committee is firmly of the view that the protection of the environment of Esperance and the existing social and economic benefits that accrue therefrom are of primary importance. Of secondary importance is the economic benefit that will accrue to the town and the region from the export of iron ore through Esperance. If the export of iron ore through the port cannot be achieved without protecting the environment, then it should be abandoned, irrespective of the commercial consequences to the parties involved in the project.

The Committee believes that, at this stage, all parties involved in the project are committed to achieving the dual objectives of protection of the environment and economic development. It is absolutely essential that the commitment which now exists continues throughout the life of the project.

However, because the technology involved in the project with respect to the control of iron ore dust emission has not previously been tested elsewhere on a similar scale, the petitioners have lingering concerns. Those concerns are shared by the Committee.

In order to achieve the prime objective of protecting the environment, the effectiveness of the monitoring systems put in place, particularly with respect to the emission of iron ore dust, must be guaranteed. For the community to have confidence in those monitoring systems, they must be carried out by an independent person with the results being readily made available to all interested persons or bodies. Further, it is critical that the results of all monitoring tests can be acted upon promptly so as to prevent and minimise damage.

Residents are likewise concerned as to who will be liable to compensate for damage to property or consequential loss arising from failures to comply with the environmental conditions. This issue should be addressed before the ore handling operations commence.

Accordingly, the Committee recommends that:

- (i) all monitoring required to be carried out in compliance with the environmental conditions placed on the project be performed by an independent consultant;**
- (ii) all monitoring test results be made available by the independent consultant directly to the Department of Environmental Protection, the Shire of Esperance and interested community groups at predetermined regular intervals;**
- (iii) the power to shut down the ore handling and transport operations within the town be delegated to a duly qualified officer of the Shire of Esperance with the authority to exercise that power when an officer of the Department of Environmental Protection is not present;**
- (iv) no ore handling operations be permitted unless an officer of the Department of Environmental Protection or a duly authorised delegate of the Department is present.**
- (v) before the ore handling operations commence, a clear statement be provided to the local authority and to the residents of Esperance as to what legal remedies will be available for them in the event of damage to private or public property or of consequential economic loss arising from non-compliance with the environmental conditions.**

PART C: REPORT

Background to the Petition

The Koolyanobbing iron ore mine and township is situated 420km east of Perth. Between 1950 and 1983 Broken Hill Co. Proprietary Limited ("BHP") extracted more than 25 million tonnes of ore from the deposits. About one half of the ore was treated at BHP's blast furnaces at Kwinana whilst some went to the Wundowie pig iron furnace and some to iron making facilities in the eastern states. Almost one million tonnes were exported. BHP ceased its Koolyanobbing operation in 1983 because it became uneconomic.

Late in 1991 the State Government advertised the Koolyanobbing ore deposits for development. After numerous initial enquiries, four actual submissions were received. Upon consideration of these submissions, the proposal presented by Portman Mining

Limited ("Portman") was accepted in February 1992.

The Portman project involves the extracted ore being exported through Esperance. The Esperance Port Authority ("Port Authority") will be responsible for the ore handling facilities at the Port. Iron ore has not previously been exported through Esperance.

Perhaps not surprisingly, the proposal for the export of iron ore through Esperance sparked considerable controversy amongst the residents of the town. They feared that the export of the ore would cause environmental damage to the town thereby detrimentally affecting the attractiveness of the town, which in turn, would adversely affect the tourist and other industries based there. Their concerns led to the presentation of the petition.

The Committee, having recently visited Port Hedland and witnessed first-hand the discolouration caused to that town by the export of iron ore, could not help but share the concerns of the petitioners. The environmental issues raised by the proponents of the petition are outlined in more detail later in this report.

Review of the Petition

In reviewing this petition the Committee undertook the following inquiry action:

1. Consideration of the following written materials:

- . a brief written submission on behalf of the petitioner;
- . the report and recommendations of the Environmental Protection Authority ("EPA")¹ entitled "Iron ore export through Esperance" Bulletin 701 published September 1993 ("EPA Report");
- . the "Statement that a Proposal may be Implemented (pursuant to the provisions of the Environmental Protection Act 1986)" issued by the Minister for the Environment, the Honourable K Minson, MLA, ("the Minister") to the Port Authority on 25 October 1993;
- . "Works Approval 1028" issued to the Port Authority by the EPA on 21 December 1993;
- . the submission by 'Residents for Esperance Development' on Esperance iron ore port facility proposed by the Port Authority as outlined in the consultative environmental assessment no.781;

¹

With effect from 17 January 1994, the Environmental Protection Authority became known as the Department of Environmental Protection. For convenience, the Department is referred to in this report as the "EPA".

- . relevant ministerial media releases;
 - . various press articles;
 - . the December '93 - February '94 issue of "Prospect", published by the Department of Resources Development.
2. The Committee took formal oral evidence from:
- Dr P J Murphy,
Director - Resource Industry Development,
Department of Resources Development;
 - Mr I Mencshelyi,
Assistant General Manager,
Co-operative Bulk Handling Limited ("CBH");
 - Mr P Douglas,
Consultant in marine matters;
 - Mr C R Keast,
Kwinana Manager;
BHP Transport Ltd
 - Mr P J Gransden,
Superintendent, Business Development,
BHP Transport Limited.
3. The Committee visited Esperance and inspected the Port Authority's current facilities and the plans for the iron ore handling facilities. Discussions were held with representatives of the Board of the Port Authority, representatives of the petitioners and a representative of the Goldfields Esperance Development Authority.
- Whilst at Esperance, the Committee also met with Dr A Baker, Director, Pollution Control Unit, EPA.
4. The Committee took notice of certain non-contentious background information provided to the Advisory/Research Officer by representatives of the EPA, Westrail and the Department of Resources Development.

The Koolyanobbing - Esperance Iron Ore Project

The project is a joint venture ("the joint venture") between Portman (60%) and Anshan Iron and Steel Complex ("Anshan") of China. Three ore bodies, estimated to yield around 66 million tonnes, will be re-opened. The annual output will be approximately 1.5 million tonnes. Anshan have contracted to take 825,000 tonnes per annum (ie 55% of the estimated annual output) and negotiations are under way in respect of the balance.

The extracted ore will be railed by Westrail to Esperance for export. From there it will be shipped directly to its destination in China.

Mining will be by a "modest open-cut operation" with a work force of approximately fifty. The major capital works at the site involve the building of a new crushing plant and a 'balloon loop' railway siding which will avoid the need to uncouple locomotives. Some town cottages are being refurbished and a single men's quarters is being constructed.

At the port, the joint venturers will be installing a 'rotary car dumper' and the Port Authority will be constructing a stockpile storage shed and other special ore loading facilities.

As part of the project, Westrail will carry out substantial works improving the Leonora-Kalgoorlie-Esperance line, a significant part of which, has already been completed. These works will include the up-grading of the line from a 2,000 tonne to a 4,000 tonne haulage capacity, general track maintenance and the construction of a Kalgoorlie bypass from the Perth-Kalgoorlie line to the Kalgoorlie-Esperance line. Some upgrade work will also be carried out on the ore wagons.

The Cost of the Project

The total estimated "getting-up" cost of the project is:

	\$m
Koolyanobbing Mine Site - by joint venture	\$17.0
Esperance Port - by Port Authority	5.0
- by joint venture	7.0
Rail upgrade - from the Australian Land Transport Development Program ²	16.5
- further funds required from State 2.8	2.8

	\$48.3
	=====

Esperance

Esperance is situated on the coast approximately 725km south-east of Perth. It is 500km east of Albany and 410km south (almost directly) of Kalgoorlie. It is the most eastern major town situated on the south coast of the State. The town has a population of approximately 11,500 and is "noted for its white beaches, blue water and spectacular, rugged coastline"³.

² Federal funding administered by the federal Department of Transport & Communications.

³ See EPA Report at para 1.2.

The main activities of Esperance are servicing the surrounding rural districts, commercial fishing and tourism. It is also popular for retirement living. Tourists are attracted both from within and outside the State. It is a popular holiday spot for Western Australians, particularly with those residents from the rural and mining districts to the north.

Esperance has been a port since 1895 with the modern port facilities being developed between 1958 and 1985. During the year ended 30 June 1993, 288,000 tonnes of cargo were imported through its facilities and 716,000 tonnes were exported. In that financial year, petroleum represented over two-thirds of the imports with the balance being mainly fertiliser products. Exports were comprised of grain products (over 97%) and nickel. When fully operational, the export of iron ore through the port will more than double the trade tonnage handled by the Port Authority.

The Scope of the Petition

The petition is specifically framed in terms of the environmental issue relating to iron ore dust escaping from the Port Authority's boundaries. It seeks a guarantee that "no" dust will escape. As to what is meant by "no dust", the petition states:

We (the Petitioners) "stress that 'no dust' implies no airborne dust. Not the accepted health standard of dust laid down by the Environmental Protection Authority being 260 ug/m³ high alert and 90 ug/m³ low normal."

In practical terms it will not be possible for the Port Authority to guarantee that no dust will escape its boundaries. The Committee does not believe that such a standard should be imposed on the Port Authority. The proper standard should comprise such restrictions as are necessary to guarantee that no environmental damage is caused by the project.

During the course of the Committee's inquiry other environmental issues were raised. These related to:

- . noise nuisance arising from ore loading facilities and increase in locomotive traffic through the town;
- . the visual impact of ore handling facilities on the town;
- . the discharge of ballast waters by iron ore vessels in waters controlled by the Port Authority; and
- . the increased risk of pollution arising from shipping accidents due to the substantial increase in vessels passing through the port.

Other issues, more commercial than environmental, were also raised before the Committee. The more important of these issues related to:

- the decision not to export the iron ore through Kwinana which is closer to Koolyanobbing than Esperance, has existing ore handling facilities and, unlike Esperance, has a substantial buffer zone between the ore handling facilities and

residential development; and

- the effect that any cross-contamination of grain and other products or materials stored or handled through the port and the discolouration of the grain handling facilities situated there might have on grain exports from the region.

Although the Committee has concentrated on the dust issue, the Committee has also given some attention to the above described additional issues.

The Project and Esperance

The proposal for the export of iron ore from Esperance involves the mined ore being railed by Westrail to Esperance from Koolyanobbing. When fully operational there will be nine services to Esperance per week each having a load of around 3600 tonnes. The ore will be carried in open wagons, approximately 60 wagons per haul. The line to the Port Authority passes through the town following Harbour Road from the SECWA power station to the port.

At the port, the ore will be dumped by a rotary car dumper, which will be housed in a shed with a dust extraction system, for transfer via a conveyer, either directly to the ship's hold or to a sealed stock-pile shed. This shed is also to be installed with a dust collection system which will result in a negative pressure gradient into the shed (ie the air will flow into the shed) during all "stockpiling and load out operations".

A water spraying unit is to be installed to control dust in the unloaded wagons as they are shunted along the breakwater after dumping. The Port Authority has advised that this facility will only be used if necessary.

All conveyers used in the ore handling operations will be covered and all conveyer transfer points (where the ore drops from one conveyer to the next) will be enclosed and installed with dust control systems.

The ore will be loaded into the ship's hold by a telescopic, conical, shiploading chute with a dust collection system. Consideration is being given to the installation of a 'choke feeder' which is attached to the ship loading chute and which tends to create a negative pressure within the hold during loading operations. The Port Authority, however, has been advised that such an apparatus is unnecessary provided the loading chute is kept well below the level of the hold opening. Nevertheless, the possible installation of a 'choke feeder' is being considered.

Environmental Assessment

Under the Environmental Protection Act 1986 ("the Act"), the EPA must be advised of any development proposal, inter alia, which appears likely to affect the environment. There are a number of ways by which the EPA may be informed of a relevant proposal. In this case, the Minister for the Environment, in March 1993, nominated the Port Authority as the proponent in a "consultative environmental review" to be carried out in respect of the proposal to export iron ore from Esperance.

In making an assessment of any proposal, the EPA takes the view that any project should be permitted provided the environment is protected. The approach of the EPA with respect to the export of iron ore through Esperance is described thus:

"The Environmental Protection Authority has made its assessment of the iron ore export proposal in the belief that the clean air, ocean and beaches of Esperance must be protected. At the same time, the Authority recognises that, due to its particular topography, Esperance has functioned as a port since very early in the history of the settlement. The Authority considers that a viable port operation is a beneficial use of the environmental characteristics of the site."

The Port Authority instructed Ashton Environmental and Safety Services to prepare a consultative environmental review ("CER") on its behalf. The CER so produced was released by the Port Authority to the public.

During the course of the assessment process, the Port Authority made significant changes to its proposal, due largely as a response to concerns expressed by the local community with respect to the proposal as outlined in the CER. (Those concerns were obviously justified because the EPA expressed the view in its report that the proposal as originally submitted was unacceptable.)

In September 1993 the EPA issued its report and recommendations in respect of the proposal as Bulletin 701 ("EPA report"). Three appeals (pursuant to the relevant provisions of the Act) were lodged with the Minister in respect of the EPA recommendations. After following the appeal process provided under the Act, the Minister dismissed one appeal and upheld two in part. (To the extent to which the appeals were upheld, the EPA recommendations were strengthened.) On 23 October 1993, the Minister issued his "Statement that Proposal may be Implemented"⁴ in respect of the project. In issuing this statement the Minister accepted all the recommendations of the EPA and incorporated his decisions in respect of the appeals. Works Approval 1028 was issued by the EPA on 21 December 1993 authorising the Port Authority to commence the construction of the ore handling facilities at the port. In due course, provided the Port Authority complies with the works approval and subject to completion of all normal licensing processes under the Act, the EPA will amend the Port Authority's existing license to permit the export of iron ore through its facilities.

⁴

The conditions contained in this statement are referred to in this report as "the Minister's conditions".

The recommendations contained in the EPA report appear generally accepted as the most stringent ever set by the EPA. At page i (Summary and recommendations) it is stated:

"The proposal will, in fact, set new standards for materials handling at ports in Australia. For this reason, the Authority considers that the components of the Esperance environment that people value will be protected by the stringent Environmental Conditions and management measures recommended for the proposal, and emphasised through conditions of Works Approval and Licence under the Environmental Protection Act."

In considering the proposal the EPA identified the following as the key issues that required consideration:

1. dust control;
2. noise abatement;
3. a 'shutdown' provision;
4. ballast water discharges from ore carriers;
5. the standard of environmental management; and
6. potential impacts of Westrail operations.

In respect of each of these issues, the EPA has made certain recommendations, all of which, as indicated above, were accepted by the Minister.

Continuing Concerns of Petitioners

The Committee accepts that the conditions placed by the EPA on the proposal are indeed stringent and do in fact set new standards. Nevertheless, whilst some of the petitioners' fears may have been allayed by the imposition of those conditions, they remain generally concerned about the following issues.

1. Bearing in mind that the technology being employed in the port ore handling operations has not previously been tested on a scale similar to that involved in the proposal, whether such technology will prove sufficiently effective to control dust levels to within the limits imposed by the EPA.
2. Having regard to the capital cost of the project and if the standards set by the EPA are not being met in any circumstance, whether the relevant authorities will shut down the ore handling operations until such time that those standards are achieved; and
3. Whether the technology exists to satisfactorily rectify any damage to the environment caused by iron ore dust staining as a result of failures in the ore handling operations.

Behind these concerns lies the petitioners' fundamental belief that the town's future economic and social direction is best served by protecting the "pristine" environment of Esperance. This

is of prime importance to the residents and the existing industries of the town, particularly those of tourism, retirement living, grain exports and commercial fishing. Many residents strongly believe that the expansion of the existing port, which is located within the precincts of the town, is not compatible (both in size and location) with their economic and social vision for the town.

Economic Development

One of the major challenges facing modern-day Western governments is how to achieve economic development without harming the environment. Across the political spectrum, the view is no longer held that the environment is subservient to economic development. Nevertheless, there remains a wide divergence of opinion in the balancing of the often conflicting interests of economic development and conservation.

Moreover, the Committee is mindful that both State and Federal Governments, when making decisions with respect to the project, cannot simply look at the town of Esperance in isolation. Esperance is part of its region, our State and the nation and Governments are often obliged to look beyond the local interest and view matters from a broader

perspective. That is not to say that local issues are unimportant but rather that conflict often exists between such interests and the broader interests for which governments are responsible. Indeed, each Member of the Committee has considerable empathy with the case of the petitioners.

Putting aside the environmental questions and assuming that the project can operate without any undue effect on the environment, it is clear that significant economic benefits will accrue from the project to Esperance and the region. Some of the suggested benefits are listed in the December '93 - February '94 issue of Prospect issued by the Department of Resources Development:

- the additional ships visiting the port (approximately 35 - 40) per year will be consumers of goods and services provided through Esperance;
- the work force of the Port Authority will increase from 19 to 33;
- revenue to the Port Authority will increase by approximately \$4m per annum;
- the local tug company will earn approximately \$300,000 per annum extra in towing fees;
- the shipping agent who wins the contract will open an office in the town;
- Westrail has won a contract to deliver fuel to the Goldfields region because of the

upgrade of the Kalgoorlie Esperance line⁵;

- flow-on benefits to the region will accrue from the increase in Westrail's activities in the region.

Dust Control

Without wishing to diminish the importance of other environmental issues raised in connection with the project, it is clear that the control of the iron ore dust is the paramount environmental issue.

The petitioners are concerned that dust will escape from:

1. the ore handling facilities at the port when the ore is:-
 - (a) dumped by the rotary car dumper;
 - (b) conveyed within the port's operations area; and
 - (c) loaded into the ship's hold.
2. the open Westrail wagons as the loaded wagons travel through the town and from the unloaded wagons as they sit on the break-water after dumping.

The problems of dust control at Esperance are exacerbated by the high winds to which the town is subjected throughout the year.

The EPA devoted considerable attention in its report to the issue of dust control. Four specific recommendations (2, 3, 4 and 5) were made which are worth repeating in full:

EPA RECOMMENDATION 2 -

The EPA recommends that the proponent ensure that there is no visible, airborne iron ore dust, nor staining from accumulations of iron ore particles, outside the port's operations area (as shown in Figure 2⁶ of his Report).

EPA RECOMMENDATION 3 -

The EPA recommends that the proponent ensure that there is no iron ore staining of the ocean and beaches resulting from storm water drainage discharges.

⁵ It seems that this claim may not be accurate as the contract in question was awarded at or about the same time that funding of the rail upgrade was approved. Nevertheless, productivity benefits will accrue to Westrail in respect of the contract and Westrail will be in a better position when tendering for future contracts.

⁶ See Appendix One.

EPA RECOMMENDATION 4 -

The EPA recommends that, prior to the commissioning of the iron ore facility, the proponent prepare and implement a research programme to quantify the amount of iron ore particles which would cause observable staining of Esperance beach sand. The Authority recommends that a trigger level, which is below a level that would cause staining, be defined by the EPA from the research results, and that the proponent monitor Esperance beach during the iron ore export operations. Should monitoring of the beach sand show that the trigger level is exceeded, the proponent must prepare an amendment to the environmental management programme which specifies measures to ensure the source of the staining is identified and corrected.

EPA RECOMMENDATION 5 -

The EPA recommends that, prior to the commissioning of the iron ore facility, the proponent prepare and implement a monitoring programme for potential iron ore dust impacts, to the requirements of the EPA.

The EPA concludes that, by enclosing the iron ore stockpile and handling facilities, and with the implementation of the best available technology and best management practices, the Esperance Port Authority would be able to control iron ore dust to levels which would prevent the occurrence of significant iron ore impacts, including staining.

Dr A Baker (Director, EPA Pollution Control Unit) advised the Committee that, in his professional opinion, the implementation of the above recommendations would ensure that staining or nuisance from iron ore dust would not occur in Esperance outside the Port operations area (as defined in the map shown on page 8 of the EPA Report and duplicated in this report as appendix 1). Specifically, it will require dust emissions from the ore handling operations to be well below 90 ug/m³

Esperance Port Authority

The Port Authority has been criticised for its handling of this project. Some residents believe that it approached the matter in an ill-conceived and ill-prepared manner. Certainly, the Port Authority proposal changed significantly from the proposal originally submitted for consideration in the CER.

The Committee does not consider that it should make any judgments on this criticism. However, it is clear that the process involved in bringing the project to the present stage has resulted in a proposal which, in the view of the EPA, is capable of being performed so as to "prevent the occurrence of significant environmental impacts"⁷. The process of the CER, the public comment and debate, the media scrutiny and perhaps even the work of this Committee, have each played a part in the formulation of the final proposal.

In the course of the Committee's discussions with representatives of the Port Authority during its trip to Esperance, the Chairman of the Port Authority Board, Mr Ralph Bower, stressed that the Board was committed to take whatever steps prove necessary to ensure that the proposal

⁷

See EPA Report Recommendation 5, above.

is carried out in compliance with the EPA conditions.

Perhaps a sign of the Board's commitment is its recent decision to erect a spraying unit (at a cost of approximately \$30,000) to assist in the control of residue dust in wagons after dumping. The Committee also understands that consideration is now being given to the installation of a 'choke feeder' to assist in the control of dust as the ore is loaded into the ship's hold. These precautionary actions are being taken even though they are not required, at least at this stage, by the EPA.

However, the Committee has been advised that as at the date of this report, the Port Authority has not yet submitted to the EPA any of the programmes referred to in recommendations 4, 5, 7 and 9 of its report to the Minister. These programmes are in respect of research concerning discolouration of beach sand, monitoring iron ore dust impacts, the contingency 'shut down' plan and the environmental management plan. It is most important that the EPA and the community be given ample opportunity for the proper assessment of these programmes, especially as the effectiveness of these programmes is essential for the protection of the Esperance environment and the town's existing industries. At this stage, it is hoped that the ore handling facilities will be commissioned in August 1994. This being the case, the Committee feels that more urgency should be accorded by the Port Authority to the preparation of these programmes.

In the view of the Committee, it is absolutely imperative that the Port Authority has both the commitment and the resources to operate the ore handling operations within the conditions set by the EPA. It will always be the Port Authority which has, in the first instance, the responsibility of ensuring that the project operates strictly in accordance with those conditions. The preparation and implementation of all programmes relating to the Minister's conditions protecting the environment is of the utmost importance.

Westrail Operations

With respect to Westrail's part in the project, the EPA has made the following recommendation:

EPA RECOMMENDATION 10 -

The EPA recommends that transport of iron ore from Koolyanobbing to Esperance be in accordance with an environmental management plan, which addresses the issues of dust, noise, safety, scheduling and public amenity prepared by Westrail prior to the transport operation, to the requirements of the EPA.⁸

The issue of dust escaping from the ore laden wagons as they pass through the town has continued to attract public comment despite the above recommendation. In response, the Minister for Transport, the Hon Eric Charlton MLC, issued a media statement on 30 November 1993 in which he, inter alia, says:

⁸

It is understood that Westrail's environmental management plan, which is being prepared by an independent consultant will be submitted to the EPA by early April 1994.

"One story being spread would have people believe that the rail wagons will be carrying large amounts of dust externally into the town each year.

This is an absurd claim. Advice from Westrail suggests that any dust on the outside of the wagons is shaken off within a few kilometres of leaving the minesite at Koolyanobbing.

Iron ore from Koolyanobbing was once railed to Kwinana for shipment so there is a sound basis for that advice.....

That aside, Westrail is obliged to have in place - as part of the environmental guidelines - a full dust management plan for the entire journey from the minesite to the port."

The Committee is not quite as confident as the Minister that no dust problems will arise from ore carrying wagons. However, the Committee notes Westrail's commitment to formulate and implement a proper environmental plan covering its part in the operations. Such a commitment is evidenced by the letter from the Commissioner of Railways, Dr J I Gill, dated August 17, 1993 which is annexed as Appendix 4 to the EPA Report.

The Committee stresses that, in its view, it is just as important for Westrail to be totally committed to achieving and maintaining the control of dust levels within the prescribed EPA limits throughout the operation of the project as it is for the Port Authority.

Monitoring of Ore Dust

Under the EPA guidelines the Port Authority, at its cost, will be required to "monitor the ambient airborne dust levels at representative sites around the port" and to carry out "regular sampling of beach sand to detect accumulations of iron ore particles".

The Port Authority has advised that it is currently installing three air monitoring units at a cost of approximately \$8,000 each. These monitors will be operated by an independent consultant who will also be responsible for analysing results. Results will be made available to the EPA, the Esperance Shire and responsible community groups. If the community is to be satisfied as to the effectiveness of the compliance strategies, it must have full and timely access to those reports. Accordingly, these reports should be delivered directly to the EPA, the Shire and interested community groups at an agreed frequency.

Regular independent testing of beach sand will also be performed. At this point, the research has not yet been undertaken as to how this is to be done. It is imperative that this be completed prior to the issue of the license and, when the methodology is established, that the testing be undertaken by an independent consultant.

If adherence to the stringent EPA conditions is to be effectively enforced, the Committee is strongly of the view that it is crucial that proper independent monitoring of airborne ore dust and ore levels in the beach sand be carried out by an independent consultant who will then provide all monitoring results directly to the EPA, the Shire and community representatives.

Enforcement - 'Shutdown'

The Esperance port is not surrounded by a significant buffer zone. At page 2 of the EPA Report it is stated:

"The EPA notes that there is a less than normally accepted separation distance (buffer zone) between the port and nearby residences, with nearly 40 residences located between 150 - 300 metres and over 150 residences (plus a caravan park) within 600 metres of the port boundary. Many of these residences have been built after the port was established."

The Committee notes that Kwinana, the alternative port from which the Koolyanobbing ore could be exported, has a buffer zone of 2.5km - a point often raised by the petitioners. As the EPA suggests in its report, future planning decisions should be made with a view to establishing a more acceptable and effective buffer zone in Esperance. It is the view of the Committee that the time has come for serious consideration to be given to the establishment of a new port facility outside the precincts of the town and away from any residential development, especially if Esperance is to be developed as a major port servicing the hinterland and the mining regions to the north. For the time being, however, the fact remains that residences do exist within close proximity to the ore stock-piling and handling facilities.

Having regard to the proximity of housing, the adjacent white sand beaches and the difficulty in rectifying damage caused from iron ore dust staining, it is absolutely essential that proper strategies are in place that will result in the ore handling facilities being promptly shut down as soon as it becomes apparent that environmental conditions are being breached or likely to be breached, particularly with respect to the dust control.

It is essential that all parties concerned with this project either directly (such as the Port Authority, Westrail and the EPA), or indirectly (such as the Shire) are pro-active in the environmental management of the project.

The Committee emphasises that all parties concerned with the project must be both willing and prepared to act promptly to prevent dust contamination. In the event of a failure to meet the EPA standards, whether by way of an accident or a general deficiency in the operations, urgent action must be taken to first minimise the potential for damage and then to rectify any damage.

Delegation of Shutdown Power to the Shire

Obviously, there may be a need to shut down the ore handling operations from time to time. On this issue, the EPA Report at page 11 reads:

"The EPA considers that, in order to be found environmentally acceptable, the proposal must include the contingency plan that the iron ore handling operations will temporarily cease if prevailing meteorological conditions or other circumstances make it apparent that dust or noise pollution is occurring or is likely to occur."

On the same page it is stated that the "enforcement of the Authority's recommended Environmental Conditions must be independent and effective".

It is understood that an officer of the EPA, stationed in Kalgoorlie, will be present during all ore handling operations⁹ within the town during the first few months and will be authorised to shut down operations when appropriate. The Shire, supported by some members of the public, believe that the shutdown power should be delegated to an officer of the Shire who may exercise it on behalf of the EPA when an EPA officer is not present during any ore handling operation.

The Environmental Protection Authority Act (1986) provides two mechanisms for the delegation of pollution abatement authority. Firstly, the Act empowers the Chief Executive Officer of the EPA to issue and enforce orders in relation to pollution abatement. This includes prospective pollution abatement notices. The CEO may delegate this power¹⁰. Secondly, the Act empowers the Minister for the Environment to enforce prospective pollution abatement notices where compliance is found not to be occurring. This includes the power to enforce the cessation of activities to which the pollution abatement notice relates. The Minister also has the power to delegate this authority¹¹.

⁹ In this context "ore handling operations" is taken by the Committee to include Westrail's hauling of the ore laden wagons to the port and the unloaded wagons back to Koolyanobbing, as well as the stock-piling and ship-loading operations of the Port Authority.

¹⁰ Section 65, sub-sections 1 and 2, enables the Chief Executive Officer, in the event that any waste is being or is likely to be discharged and that that waste does not comply with approved or prescribed standards or has caused or is causing or likely to cause pollution, to issue a pollution abatement notice which "2(b) may require any person bound by it to take such measures as -
(i) the Chief Executive Officer considers necessary to prevent, control or abate the discharge of waste..... to which the pollution abatement notice relates;"

Section 20, sub-section 1(d) allows the Chief Executive Officer, with the approval of the Minister, to "delegate, either generally or as otherwise provided by that notice, to
..... (d) a public authority or officer or employee thereof;
..... all or any of his powers and duties under this Act, other than this power of delegation."

¹¹ Section 69, sub-section 1(c) allows for the Minister, in the event of non-compliance with a pollution abatement notice, to order a person
"to stop carrying on the whole or any part of the trade, process or activity, and to close down the whole or any part of the premises, to which the pollution abatement notice... relates".
Furthermore, under sub-section 2(a), the Minister may take such steps as he considers are necessary "to stop the carrying on of the trade, process or activity, and to close down the premises, to which the pollution abatement notice concerned relates"
Section 18, sub-section 1(b) allows the Minister to "delegate, either generally or as otherwise provided by the instrument of delegation, to
..... (b) a public authority or officer or employee thereof;"
..... all or any of his powers and duties under this Act, other than this power of delegation."

It can be seen, therefore, that the Act provides for the delegation of pollution abatement authority in a manner that is consistent with that envisaged by the Shire. In either case, authority to issue and enforce a pollution abatement notice, including shutdown power, may be delegated to a representative of the Shire.

The EPA may be reluctant to delegate its powers to the Shire. However, if the EPA does not have the resources to ensure a permanent presence in the town, it must be prepared to make appropriate arrangements for delegation to an appropriately qualified officer of the Shire.

In the Committee's view, it is essential for the shutdown power to be delegated to a responsible and duly trained officer of the Shire with the authority to exercise that power at any time. Further, no ore handling operations should be permitted unless an officer of the EPA or a duly appointed delegate is present.

Other Environmental Issues

As previously stated, ore dust control is not the only environmental issue involved in the export of iron ore from Esperance, but it was the only issue raised in the petition. Whilst the Committee does not feel inhibited in looking at associated issues, there are nevertheless some constraints in both time and resources. Accordingly, the Committee has restricted its deliberations to those issues it has assessed to be more important. It appears to the Committee that all significant issues have been adequately canvassed and well dealt with in the EPA report. This is not to say that the Committee considers these issues to be unimportant. On the contrary, the necessity of all parties strictly complying with all EPA recommendations on these other environmental issues cannot be over-emphasised.

Esperance v Kwinana

Koolyanobbing is approximately 140km closer to Kwinana than Esperance, the shipping time to China is approximately 4 days less from Kwinana than Esperance and there are existing ore handling facilities at Kwinana. With these facts in mind, it was difficult for the Committee, and indeed the petitioners, to understand why Portman chose to export from Esperance rather than Kwinana.

The ore handling facilities at Kwinana are owned and operated by BHP. It was suggested to the Committee that BHP over-priced its port handling charges because it did not wish to help a competitor succeed with the development of a project which it had previously abandoned as uneconomical. The Committee took evidence from representatives of BHP Transport Ltd and the Department of Resources Development. No evidence was presented to the Committee that supported the suggestion that BHP was being obstructive. In fact, the evidence, brief as it may have been, indicated that Portman's decision not to export through Kwinana was based on sound commercial grounds. (Interestingly, the BHP representatives did express concern as to possible cross-contamination with other ores being exported through its facilities - see page 17 below - "Grain Handling and Exports".)

It is understood that Portman's original proposal was to export the iron ore through Kwinana. When that operation appeared not to be viable, consideration was given to export through

Esperance. This alternative, if not suggested by the Department of State Development,¹² appears certainly to have been strongly supported by it.

From the wider view of Government, the export of the Koolyanobbing ore through Esperance has greater benefits for economic regional development. It seems that the grant to upgrade the Leonora - Kalgoorlie - Esperance line from the Australian Land Transport Development Program would not have occurred if it were not for the proposal to export the iron ore through Esperance.¹³ No doubt this project (ie the rail upgrade) has been a significant boost to the region. Hence, provided the important issues of protecting the environment and the existing industries of Esperance are attainable, the Committee cannot fault the motives of Government in attempting to achieve further economic development of the Goldfields and Esperance regions through the Koolyanobbing project. That seems to the Committee to be a legitimate objective of Government.

Grain Handling and Exports

The prosperity of the Esperance region is to a large extent dependant on the grain farming areas of the hinterland. Last financial year almost 700,000 tonnes of grain products were exported through the port. Such exports are likely to continue beyond the life of the Koolyanobbing mine and are significant to both the State and the region. Consequently, the Committee was concerned that the project should not be operated in a way that might jeopardise grain exports.

For this reason, the Committee sought evidence from Mr I Mencshelyi, Assistant General Manager of CBH (which operates the grain handling operations at the port). Mr Mencshelyi informed the Committee that CBH has two major concerns. First, the company was concerned that, if grain stored at the port was contaminated by the iron ore to the extent that there was an actual or perceived health risk, then it could result in an adverse reaction from the sensitive international markets. Secondly, if undue iron ore dust staining occurred to the grain handling and storage facilities at the port, it may create a negative impression in the minds of potential and existing overseas buyers.

Mr Mencshelyi advised that, in CBH's view, the proposal as presently structured did not represent a threat to the operations of CBH in the region. However, the matter would be monitored closely by the company once the iron ore exporting operations were under way.

The Committee feels strongly that the potential threat, however small or large it might be, is an important issue that should be monitored closely by the relevant authorities.¹⁴

¹² As it was the known - now the separate Departments of Resources Development and Commerce and Trade.

¹³ However, as events have turned out, with Westrail commencing the upgrade work well in advance of final EPA endorsement of the proposal, the upgrade work (which represents over 70% of the Westrail work) would have been carried out if the project did not eventually proceed.

¹⁴ The issue of cross-contamination is, of course, relevant to other products handled by the Port Authority. It is understood that the issue has, in fact, also been raised in respect of the nickel stored and exported through the port.

Final Concern - Failure

The parties involved in the project are proceeding with the project confident that its operation can be performed in strict compliance with the recommendations of the EPA as embraced in the Minister's conditions. Despite assurances given by the EPA, the Port Authority and Westrail, many members of the community still do not share that confidence. In fact, the Committee itself, has some continuing concerns.

It seems to the Committee that not enough consideration has been given to :

1. the extent to which the Port Authority (as an agency of government) will be responsible for any significant unforeseen capital outlay that may be required in order to achieve compliance with the Minister's conditions;
2. in the event that it is not possible to achieve the Minister's conditions, the extent to which the Port Authority will be contractually liable to compensate Portman;
3. whether the Port Authority has the resources to fund any liability in respect of 1 and 2 above without assistance from the taxpayer; and
4. the compensation to the Esperance community in the event that the environmental conditions are not met and there is damage to public or private property, and in particular, whether the parties involved in the project will be strictly liable to remedy any environmental damage or consequential economic loss, not attributable to their own negligence, arising from non-compliance with the Minister's conditions.

All these issues are important and should be properly addressed from the outset. It is not acceptable to defer consideration of the issues until such time that a problem arises. Even though the engineering advice received by the Port Authority, and presumed by the EPA, implies that the risk may be slight, the potential liability could be enormous.

CONCLUSION

The Committee accepts that the environmentally successful operation of the project will benefit Esperance and the region. On the other hand, the Committee firmly holds the view that there will be a serious, if not disastrous, impact on Esperance if iron ore dust, in excess of the of the limit recommended by the EPA and imposed by the Minister, escapes from the 'port operations area'. In the Committee's view, the preservation of the environment of Esperance and its existing industries is of prime importance and is certainly of more importance than any commercial benefits that the project may bring to the town and the region.

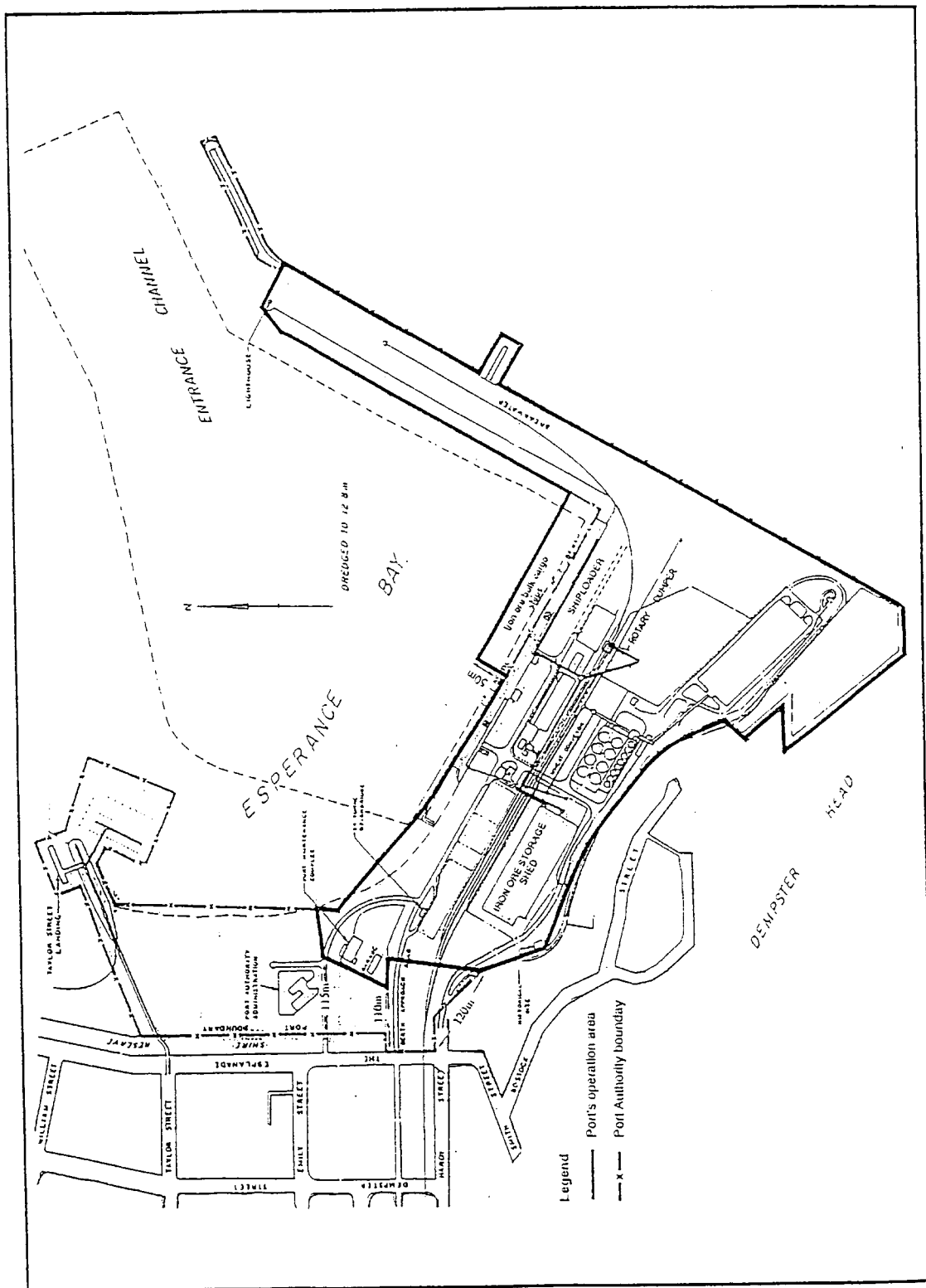
If the environment of Esperance is to be protected, all possible steps must be taken to ensure that there is absolute compliance with all EPA license conditions in respect of the proposed ore handling and transport operations within the town. Crucial to achieving and maintaining compliance is the independence and effectiveness of the monitoring systems. Hence, the Committee has recommended that all monitoring test results be made available directly to the EPA, the Shire and interested community groups at predetermined regular intervals (see above - "Monitoring of Ore Dust").

The elaborate system being put in place to control ore dust has not been tested elsewhere. It is imperative, therefore, that if the system fails to deliver compliance with the EPA license conditions - whether because of technical deficiency or accident - there must be a total commitment to shut down the operation immediately until the fault is rectified. In order to assist in achieving this objective, the Committee has also recommended the delegation of the shut down power to a duly qualified officer of the Shire (see above - "Delegation of shutdown power to the Shire").

The community must be satisfied that it will be adequately compensated for any losses that occur should the safeguards fail. Accordingly, the Committee has recommended that a clear statement of legal liability be provided before the ore handling operations are commenced.

The Committee believes that if these recommendations are implemented, the community will be better placed to protect its environment and its existing industries.

ESPERANCE PORT AREA



PREVIOUS REPORTS OF THE COMMITTEE

REPORT NUMBER	DESCRIPTION OF REPORT	DATE	PRESENTED
First	A petition concerning certain aspects of procedural and substantive law relating to sex offences against children.		October 1991
Second	Interim Report - Links between Government Agencies and failed Western Women Group.		September 1992
Third	Second Interim Report - Links between Government Agencies and failed Western Women Group.		November 1992
Fourth	A petition concerning the dissolution of the City of Perth.		December 1993
Fifth	A petition concerning recreational gill net fishing in the Pilbara region.		December 1993