

# **Review of the WA Rail Access Regime**

## **Submission on behalf of:**

### **Wheatbelt Railway Retention Alliance**

**Representing 100,000 people in 26 member Local Governments of:**

**Beverley; Bruce Rock; Corrigin; Cuballing; Cunderdin; City of Fremantle; Dumbleyung; East Fremantle; Kondinin; Koorda; Kulin; Lake Grace; Merredin; Moora; Mount Marshall; Mukinbudin; Mundaring; Narembeen; Narrogin Shire; Nungarin, Quairading; Town of Narrogin; Trayning; Wickepin; Yilgarn; York.**

#### **WA Farmers Federation - 17 Affiliated Zones state-wide**

#### **With support from 13 groups and individuals:**

**Australian Association for the Study of Peak Oil and Gas**

**Curtin University Road Accident Research Centre**

**Farm Power Pty. Ltd.**

**Fremantle Road to Rail Group**

**Helena Valley Estate Resident Association**

**Mount Helena Residents & Ratepayers Assoc. (Inc.)**

**Narrogin Environmental Action Team Inc.**

**Professor Peter Newman**

**Professor Stephen Powles**

**RACWA**

**Roadside Conservation Committee**

**Wheatbelt South WALGA RoadWise Programme**

**Wildflower Society of WA**

The Wheatbelt Railway Retention Alliance was formed in December 2010 bringing together Local Government, WA Farmers and many groups with the overwhelming agreement that the grain freight task must remain on rail, for a safe, efficient path to port for an important export commodity. Rail is vital for the safety of our communities and for the viability of the grains industry, which is the back bone of Wheatbelt towns and the economy.

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## Introduction:

*Comments attributed to Treasurer Ben Wyatt:*

*"A review of the effectiveness of WA's Rail Access Regime is well overdue."*

There is no doubt that the above comment from Treasurer Ben Wyatt is in the main part correct, however I would add that in reality it is not just a "review" that is well over due but ACTION and a SOLUTION are well over due.

The 2000 Rail Freight Lease Agreement and Access Code was put in place by the by the Court/Cowan Liberal/National Party Government, the original lease agreement was not a good document, but the changes made to the Lease agreement in July 2010 by the Barnett/Grylls Liberal/National Government have made the present Lease Agreement and Access Code unworkable and damaging for the WA Economy.

### **1. The Rail Freight Lease Agreement commencing 2000 has proven without doubt to have been unsatisfactory, it is: -**

- detrimental to future planning
- detrimental to road conditions
- detrimental to road safety
- detrimental to freight costs
- detrimental to rail access users
- detrimental to Main Roads and Local Government budgets
- detrimental to the entire State's export industries, negatively impacting upon the WA's economy and ability to be internationally competitive.
- detrimental to the environment and WA communities

### **2. There is much evidence that the Rail Freight Lease Agreement and Rail Access Code is not operating efficiently and not working for the benefit of WA business, WA export industries and WA citizens. However as shown in the EISC Report October 2014 (Chair Ian Blaney) the Rail Freight Lease Agreement appears to benefit and protect the interests of the Lessee, a Foreign Corporate providing them with reliable profits which mostly leave WA's shores.**

- WA is a very large State – freight is a major factor impacting on export industries' ability to compete internationally and yet the rail freight network is under monopoly control of a foreign corporate, with no overseer with teeth to ensure the rights of rail access users; safety and interests of WA citizens and Businesses are protected.
- There is an ability for the Rail Network Lessee to cost shift. Speed restrictions, heat restrictions, splitting of trains, are all examples of cases where the cost to the rail access user/customer is increased, whilst reducing maintenance costs for the Lessee. Deteriorating performance standards should result in reduced access costs for customers, but this has not been the case.

### **THE SITUATION IS NOT SUSTAINABLE: –**

- **WHAT WILL BE LEFT OF THE WA RAIL FREIGHT NETWORK AT THE END OF THE LEASE IN 2049?**
- **WHAT WILL BE THE CONDITIONS OF THE ROAD NETWORK?**
- **WHAT IS THE COST TO THE STATE OF WA?**

### **3. There have been numerous Inquiries, Reports, Petitions and an ongoing lengthy ERA and Arbitration process as listed below: -**

- 3.1. The State Government's Grain Infrastructure Group (GIG) report published in March 2008.
- 3.2. 2009 Western Australian Auditor General's Report "Maintaining the State Road Network" found 'the cost of eliminating existing overdue maintenance may exceed \$800 million.'
- 3.3. SGNR 2009
- 3.4. SGNR Business Case 2010
- 3.5. Petition handed to Brendon Grylls and Simon O'Brien May 2010
- 3.6. Petition 80 June 2010 (Upper House) Simon O'Brien cancelled the Inquiry
- 3.7. Petition 145 Nov 2011 - Report findings ignored
- 3.8. WRRRA Submission – Management of WA's Freight Rail Network
- 3.9. Cardno Report.
- 3.10. Auditor General's report Management of the Rail Freight Network Lease: Twelve Years Down the Track (January 2013).
- 3.11. IESC October 2014 (Chair Ian Blayney)
- 3.12. Federal Petition
- 3.13. State Petition Number 73 inquiry cancelled
- 3.14. State Petition Number 104
- 3.15. ACCC Inquiry: Consortium comprising Brookfield, Qube & others – proposed acquisition of Asciano Limited
- 3.16. 2017 The Inquiry into the National Freight and Supply Chain Priorities.
- 3.17. Review of the WA Rail Access Regime
- 3.18. Economic Regulatory Authority Brookfield Rail Pty Ltd Floor and Ceiling Cost Determination
- 3.19. Arbitration - ongoing – lengthy and very expensive.

**It is possible that I have missed one or two Inquiries or Reports, but surely the list of items above is proof enough that the WA Rail Access Regime has been repeatedly questioned over the last decade, is not working in the interests of WA and MUST be addressed urgently.**

**4. It is requested that this inquiry:**

- a) MOST IMPORTANTLY – Review and rewrite the Rail Freight Lease Agreement and Access Code.
- b) Transparency is essential. The present situation with confidentiality clauses binding rail assess users, being insisted upon by the lessee must not be allowed. This is State owned infrastructure and must be managed in a transparent manner.
- c) DO NOT give any funds to Ark for rail repairs. Repairs, maintenance and upgrades of the State-owned asset must be transparent and subject to an open tender system.
- d) Any tax payer funds for rail upgrade/maintenance must be independently assessed.
- e) Thoroughly research and obtain the cost of road repairs and upgrades (both Local Government and Main Roads) that have been necessary since the closure of Tier 3 and other rail. Increased road maintenance costs will be ongoing.
- f) Highlight the inadequacies and cost of the Rail Access Code. It is weak, does not take into account price gouging, it is a costly and lengthy process. There are no consequences or ability to hold the lessee accountable for abusing their monopoly powers and neglecting the needs, interests or safety of their customers and community.
- g) Read thoroughly the EISC Report (Ian Blayney) tabled October 2014 and consider implementing the Recommendations and Findings of that Report

- h) Formally state that the SGNR 2009 is a flawed document and should not be used as a document to address the freight needs of WA. (Closure of Tier 3 is costing growers in that area in the region of \$11m per year and increasing, add to this the road upgrade and maintenance costs).
- i) Un-severable strings must be attached to any funds being put into rail ensuring performance and access to rail. The emphasis **MUST** be put back onto serving the State's needs, economy, citizens and export industries.
- j) Road costs, road Safety and community impact **MUST** be included in the discussion and costings.
- k) A Royal Commission should be considered to investigate the relationship between the Barnett/Grylls Government and Brookfield/Arc.

**5. Quote from "Bruce Rock the Story of a District" published 1959 "Introduction" page 2: -**

- **"Today, after only half a century of occupation and development, it is one of the richest farming areas in Western Australia."**
- **SGNR 2009 – 50 years after the "Bruce Rock Story of a District", the same area became known as the "Black Hole".**

This sums up the massive impact the Rail Freight Lease Agreement has had particularly on the Tier 3 area. Increased freight costs mean reduced viability for export industries in WA.

Following the SGNR Federal Government put in \$135 million for upgrades and repairs, we know the performance and maintenance standards had slipped. Tax Payer Funds have ensured corporate profits, with no protection for WA rail access customers.

**6. The almighty dollar \$\$\$ is the usual pressure for Governments to make a decision.**

**The big picture facts and figures:**

- Westnet/Brookfield/Arc purchased the lease of Babcock Brown for a one-off purchase price of \$320m. WA Government did not receive any of this purchase price having sold the lease for a single one-off payment to Wesfarmers Genesee Wyoming in 2000.
- The Economic and Industry Standing Committee (EISC) Report Ian Blayney October 2014. Showed a Brookfield profit of \$187 million financial year 2013.
- If we take this as an average (we do not have any other profit figures for Arc), over a period of 12 years this equates to \$2.244 billion profits taken out of WA.

**During this period of assessed Arc profits of \$2.244 billion: -**

- 736 kilometres of rail has been closed,
- Milling Tier 2 Line is in jeopardy,
- there are speed restrictions on the Standard Gauge between Merredin and Kalgoorlie, increasing fuel usage and time taken for this trip.
- Grain Freight costs to port have increased

- WA Salt Company has shifted from using Standard Gauge to move 130,000 tonnes to port by train to transporting the salt by truck on the Great Eastern Highway alongside the standard gauge rail.
- Road upgrade, repair and maintenance costs to Local Government and Main Roads has escalated.
- Local Government Rates have had to increase
- Road Safety and Environmental issues continue to be a huge concern.

**7. There were absolutely no consequences for the Lessee (Brookfield) when all CBH (grower) trains were removed, at great expense to growers, from all of WA's Brookfield Rail Lines on 30<sup>th</sup> April 2015. This is completely unacceptable, monopoly bully behaviour, restricting access to a State-owned infrastructure and vital artery for export industries. CBH/grower trains were only allowed back onto the rail after CBH agreed to pay an extra \$6 million (growers money).**

- In short Arc's profits leave the shores of WA.
- Rail Access fees are high and designed to be just under road freight prices
- WA Tax Payers, businesses and citizens wear the cost of increased freight costs
- WA Tax Payers and Citizens wear the cost of increased road damage, upgrades, repairs and maintenance
- WA owned State Infrastructure (a vital freight artery) performance standards decrease and lines have been closed
- WA Export industries have reduced capacity to be internationally competitive
- Future planning and development is stifled.
- The present situation privatises the profits and socialises the losses – it is simply not sustainable and morally wrong.

**8. The Rail Freight Lease Agreement and Access Code needs to be addressed urgently. The Government is elected to act in the interests of WA Citizens, WA Business and the WA economy NOT protect the interests and profits of a corporate entity.**

**It is imperative that urgent action is taken, the Rail Freight Lease Agreement and Rail Access Code MUST GO BACK TO THE DRAWING BOARD AND BE RE WRITTEN**