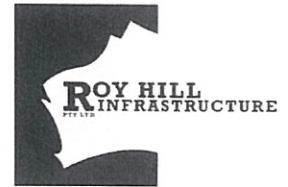
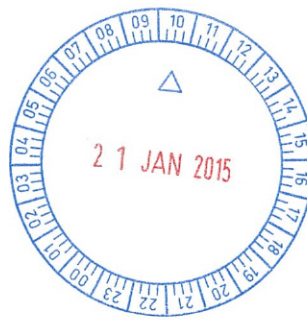


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13 January 2015

Standing Committee on Uniform Legislation and Statutes Review
Legislative Council Committee Office
Parliament House
Ground Floor, 18-32 Parliament Place
Perth WA 6000

By email: unileg@parliament.wa.gov.au

Dear Sirs

Re: Inquiry into Rail Safety National Law (WA) Bill 2014 (the Bill)

Thank you for your invitation of 22 December 2014 to provide a written submission on whether the clauses of the Bill may impact upon the sovereignty and law making powers of the Parliament of Western Australia.

Objectives of the Bill

The Explanatory Memorandum relating to the Bill states that the main purpose of the Bill is:

"to provide for a national rail safety regulation scheme, including a single national rail safety regulator and a national rail safety investigator, in accordance with the terms of the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform (Intergovernmental Agreement)"

The Explanatory Memorandum further states that *"The reform aims to decrease compliance costs to business by reducing the level of unnecessary regulation and inconsistent regulation across jurisdictions."*

The Intergovernmental Agreement (which was signed by all States and Territories on 19 August 2011) provides that the objective of the Agreement is the:

- (a) "promotion of safety and safety improvement in the delivery of rail transport;*
- (b) improved productivity and efficiencies from consistent national requirements; and*
- (c) decreased regulatory burden."*

Roy Hill Railway

The Roy Hill railway will be a 344klms standard gauge, 40t axle load heavy haulage railway with state of the art signalling and train control. The railway will commence at the Roy Hill mine site and terminate at the Port of Port Hedland. At full capacity Roy Hill will operate 5 trains, each with 3 x 4400 HP locomotives and 232 wagons for 32,000 tonnes capacity per train.

As at the date of this submission, construction of the railway is approximately 75% complete.

Roy Hill Concerns

Roy Hill is concerned that a single national regulator (contained within the Office of the National Rail Safety Regulator), and any regulations made pursuant to the Bill will not adequately address the particular needs and requirements of Roy Hill and other similar railway owners and operators who own and operate single purpose non-passenger railways within one jurisdiction. For example, regulations applicable to passenger railways (which may for example be prescriptive about platforms) should not apply to Roy Hill's railway. Regulations made pursuant to the Bill must not impose additional compliance costs on Roy Hill and similar railway owners and operators.

Roy Hill is particularly concerned that the Bill will not achieve its stated objectives in relation to the costs of compliance. Roy Hill is also concerned that the Office of the National Rail Safety Regulator will not be in a position to respond to the particular needs of Roy Hill, and other rail owners and operators of railways in the Pilbara region of Western Australia.

Costs - One Jurisdiction

The Roy Hill railway is wholly within Western Australia. Since the Roy Hill railway is wholly within one jurisdiction, Roy Hill will not receive the benefit referred to in the Minister's Second Reading speech of 17 September 2014 "of having a single regulator working in a uniform scheme [so] that it will eliminate the requirement for rail operators who work across multiple jurisdictions to apply for accreditation in each of those jurisdictions." Any alleged benefits accruing to an operator who works across several jurisdictions are simply not relevant to Roy Hill, nor to any other rail operator who works wholly within one jurisdiction.

Costs - Different Regulations

Roy Hill notes that the Western Australian Parliament, unlike other States, has sought to retain Parliamentary sovereignty by ensuring that:

- (a) the decision maker in relation to the regulation making mechanism is the Governor of Western Australia, rather than the Governor of South Australia (clause 5(5) of the Bill); and
- (b) future changes to the Rail Safety National Law will be made by the legislation of Western Australia, rather than the legislation made in South Australia (clause 5(7) of the Bill).

These legislative changes increase the possibility that compliance costs will not be reduced for all rail operators. For example, if amendments to the regulations were enacted in South Australia, and therefore applied across the remaining States and Territories of Australia, but those amendments were not followed by the legislature in Western Australia, rail operators in Western Australia would have to comply with different sets of regulations, thereby increasing compliance costs.

Costs - Overall Costs

Costs are not dealt with in the Bill. The Intergovernmental Agreement is also vague on costs. Although the Intergovernmental Agreement states (in clause 40) that the ongoing costs of the Office of the National Rail Safety Regulator will be shared between the States and the Territories through a combination of cost recovery and Government contribution, the Intergovernmental Agreement does not provide how those costs will be apportioned:

- (a) between the States and Territories (for example what proportion is to be paid by Western Australia); and
- (b) by each State and Territory amongst rail owners and operators.

Rail owners and operators who do not receive a benefit from the National scheme (for example, because they operate wholly within one jurisdiction) should not be responsible for any increased costs of compliance.

Cap on Costs

Further, there is no safeguard in the Bill that the overall costs of the Office of the National Rail Safety Regulator and the costs of compliance with the Bill to be paid by rail owners and operators will be not greater than current costs for rail owners and operators. Such a protection should be conferred on rail owners and operators by the Bill.

Particular needs of Pilbara Railways

As stated earlier, the Roy Hill railway is a single purpose railway, wholly within the Pilbara region of Western Australia. The value of the goods transported on the railway, and their importance to the economies of Western Australia and Australia as a whole requires that any problems or delays on the railway are addressed and corrected immediately. To date, Roy Hill has been very satisfied with the responsiveness and overall performance of the State based regulator. Roy Hill is genuinely concerned that the new National Rail Safety Regulator may not have a similar appreciation of the significance to Western Australia and to Australia as a whole of the Roy Hill railway and the Pilbara railways generally.

I would be happy to discuss any of these issues with you if you would like a further explanation of Roy Hill's concerns.

Yours sincerely

A handwritten signature in black ink, appearing to be 'B Fitzgerald', with a small 'PP' written to the left of the main signature.

Mr B Fitzgerald
Chief Executive Officer
Roy Hill Infrastructure Pty Ltd