

RAIL SAFETY BILL 2009

Second Reading

Resumed from 15 October.

Point of Order

Mr M. McGOWAN: I am unsure at this juncture who had the call when debate on this bill was adjourned. Therefore, I seek the advice of the Deputy Speaker on who had the call at that point so that the house can determine who was speaking and therefore we can have some proper consideration of the bill.

The DEPUTY SPEAKER: The parliamentary secretary was the last speaker.

Debate Resumed

MR C.J. TALLENTIRE (Gosnells) [4.04 pm]: I rise to speak to the Rail Safety Bill 2009.

Mr R.F. Johnson: Are you the lead speaker?

Mr C.J. TALLENTIRE: No, I am not the lead speaker.

I say at the outset that I fully support the use of our rail infrastructure for the transport of freight and passengers. In keeping with that position of absolute support for our rail infrastructure, we must have the very highest rail safety standards. It is important that we ensure that those rail safety standards do not damage the reputation of rail and make it impossible for rail to operate. I have noticed in my electorate of Gosnells some of the problems that arise when safety measures are not in place.

I will quickly outline some of the difficulties that have arisen with the structure that administers the rail network in Western Australia. Multiple players have a say in how our rail network is run. We have the Australian Railroad Group, WestNet Rail and the Public Transport Authority. I am sure that each of those entities is run in a very capable and professional manner and that those entities employ people with a great deal of expertise. However, problems arise with the overall management of our rail network. There are problems with who is responsible for different issues that arise from time to time, and there are problems with accountability. I understand that the origin of these problems lies with the Court government, which made the decision to sell off parts of the rail network. I know that the then minister, Hon Eric Charlton, had all sorts of ideas about how the transport of freight in Western Australia could be more efficient. I think he had a particular penchant for the use of road trains, and so his interest was not necessarily in making sure that our rail infrastructure was able to run at its most efficient.

Ms A.J.G. MacTiernan: That is to say the least, member for Gosnells. When the road transport industry said, "Jump", he would ask, "How high?"

Mr C.J. TALLENTIRE: I thank the member for Armadale for that background. It is quite apparent that the current system definitely does not favour the use of rail for the transport of freight, especially in the wheatbelt region, which is where the former transport minister hailed from. All too often people who travel through the wheatbelt and in the east metropolitan region of Perth come across huge road trains and big trucks that take up a lot of space. At times they pose a risk to road users simply because of their bulk and the frequency with which they travel along Roe Highway and Great Eastern Highway and onto the rest of our road network.

The problems that the rail network is facing with this confused set of responsibilities and this fragmentation that has occurred between the Australian Railroad Group, WestNet Rail and the Public Transport Authority can be demonstrated by a problem that people in my electorate have experienced.

Local people are very supportive of the idea of using the rail network to its best effect, as am I. However, they want to be part of the decisions that relate to changes in the frequency of trains, changes in the volume of traffic and changes in the types of goods transported on the train lines. They want to be a part of that process.

The northern boundary of the Gosnells electorate is bordered by the freight line that goes from Kwinana to Forrestfield. Some 15 years ago probably only a few trains used that freight line each day, so the level of noise caused by trains or the disruption to traffic caused when boom gates were brought down on Nicholson Road was hardly an issue for people. It was an issue that people were pretty well prepared to live with. But we have seen an increase in traffic on the rail line, and, with that, has come some problems. As I say, no-one is against the use of the rail line for freight, but it is about how we go about ensuring that the interests of the freight network operators are met, whilst at the same time ensuring that the interests of people who have residences that abut the train line are protected. We have to make sure that their right to a good night's sleep is protected. Unfortunately, all too often there are occasions when trains going through the Gosnells electorate disturb the otherwise very peaceful evenings that we enjoy. Train sirens are sounded at three o'clock in the morning. I am told that is part

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of the safety requirements. It is hard to understand why a train would need to sound its siren for perhaps five or 10 seconds very loudly just for the sake of advising people that a train is going over a crossing that has boom gates on it, but that is exactly what people who live in the northern part of my electorate experience.

If the train was able to just quietly go through, there would be no problem, but it seems that our rail safety guidelines require the drivers to sound the sirens at every single crossing they go over. It happens not only when they go over Nicholson Road and the boom gates are down, but it also happens at the pedestrian crossing at Elliot Place, where it is very unlikely that anyone would be walking at three o'clock in the morning. Nevertheless, the train driver is compelled to sound the siren again there, just a few hundred metres away from the Nicholson Road crossing.

This happens across our state and in the metropolitan area. When I caught the *Australind* to the Bunbury regional Parliament, I noticed that the train driver was very careful to sound the siren at every single crossing the train went past. I am sure the driver was doing exactly what he or she had been told to do, and I admire his or her careful attention to the requirements of the job, but I think it is incumbent on legislators to ensure that the rules are not those of a nanny state that has gone too far and has gotten too obsessed with details about sounding sirens at inopportune times. We have to make sure that the safety requirements are met, but that there is not a ridiculousness about it that could put people off the very thing that we all want to support, which is the use of the rail network.

Without question, the Australian Railroad Group and WestNet Rail have increased their profits, given the increase in freight on the different lines. I think that the companies making those profits should have a responsibility to engage the community, which will not share directly in those profits but which will suffer the consequences of the profit-making activity, so that communities that live around the train lines are given the opportunity to put their view on when the trains run and what sort of procedures those trains might adopt. Unfortunately, I do not think there was any community consultation before this steady rise in train traffic was contemplated. I am not sure what has gone wrong with our present procedures for community consultation, but I think we are dealing with companies operating under a regime whereby they are not compelled to engage in good community consultation. They are able to just quietly ramp up the number of trains going through, bringing with it the negative consequences for the neighbourhoods that the trains pass through.

Undoubtedly, we have to have in place good safety mechanisms that avoid the harm that could arise if someone was going home late at night and crossing a crossing that did not have any sort of boom gates on it, such as those pedestrian-type crossings. Some mechanism must be in place to develop a system that prevents that sort of instant harm, and, in most cases, certain tragedy that might result from a collision. But we have to ensure that the system that prevents those sorts of circumstances is not one that allows another form of safety hazard to arise; that is, the safety risk to people's health that occurs after the long-term accumulation of sleep deprivation that affects residents in my electorate. We have to find a way of making sure that we have the safest possible network to do its job, but at the same time enable the freight traffic to go through as efficiently as possible.

One way to start this process is to ensure that the rail safety legislation in place is to its best effect. But we also have to ensure that our investment in the rail network is in keeping with the aspirations of the Western Australian community, to ensure that the quality of the tracks are such that they do not lead to excessive vibration in the ground that can disturb people who live hundreds of metres away from where the trains pass. We have to make sure that when we are upgrading the rail network, it is upgraded for both freight and developments in the passenger rail network.

My next point is that it seems that this fragmented approach to rail operations in Western Australia has created a situation whereby although the Public Transport Authority is contemplating an extension of the train line from Thornlie through to Canning Vale, and possibly through to the Mandurah line, those plans seem to be totally separate from the plans of the freight rail operators who are more focused on this rail safety issue. I had the chance to receive a briefing from Bruce Chan and Phil Ariti from the Department of Transport. Both gentlemen were very helpful in providing me with background information. I raised the issue of how we could improve the situation and improve the safety, and suggested that we could improve the crossing at Nicholson Road through a grade difference or by building a bridge for the train line to go over the road, and by building a pedestrian bridge at Elliot Place. That would minimise the disruption to the neighbourhood and ensure that there was absolutely no need for the trains to sound their sirens anymore, and at the same time it would enable us to improve the overall quality of the rail network. However, that issue was put in the too-hard basket, or it was suggested that it was something for the Public Transport Authority to deal with. That is an example of a situation in which the fragmentation makes it almost an impossibility to have integrated decision making for improvements to the rail network.

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This problem is exacerbated by some of the current decisions of the office of the Minister for Transport. I received a copy of a letter from the Minister for Transport to the chief executive officer of the City of Gosnells.

The letter is dated 13 October 2009. In the letter, the Minister for Transport, Hon Simon O'Brien, says that there is no prospect in the short to medium term of an extension of the train line from Thornlie to Nicholson Road in Canning Vale. He refers to a study conducted by Syme Marmion and Co and suggests that the costs involved would be in the order of \$64 million, whereas a previous study commissioned by the City of Gosnells put the figure at closer to \$23 million. The opposition has been wondering why there is such a difference between the study conducted for the City of Gosnells by MacroPlan Australia, a very respected organisation in the field of feasibility studies into transport infrastructure, and the study conducted by Syme Marmion. That letter was actually signed by the minister's chief of staff, Mr Eacham Curry. I know that Mr Curry is new to Western Australia; he worked in ministers' offices in the Howard government.

Ms A.J.G. MacTiernan: He reckons he is the actual minister; that is what he tells the business community.

Mr C.J. TALLENTIRE: He probably still has a bit to learn about the geography of Perth and the details of our rail network. He sent that letter on 13 October; but I asked a question on notice of the minister and received a response on 10 November. In the question I referred to the various studies and asked the minister whether the government was still considering the study commissioned by the City of Gosnells, which had put the cost of establishing the Nicholson Road train station at \$23 million. The answer I received from the minister was signed on 10 November, approximately one month after the letter signed by Eacham Curry. The answer was that the government was still considering the information provided by the City of Gosnells—even though Eacham Curry had said, a month earlier, that a decision had already been made.

[Member's time extended.]

Mr C.J. TALLENTIRE: There is clearly a problem with the coordination of information in the office of the Minister for Transport. I asked the minister whether the government had responded to the City of Gosnells on the findings and details of the assessment report, and the response that I got on 10 November was —

Not as yet. Further consideration is required.

I received that answer on 10 November, yet Eacham Curry's letter of 13 October made reference to the fact that the government had considered the Syme Marmion report and had looked at the MacroPlan report, and that the work commissioned by the Public Transport Authority—that is, the Syme Marmion report—had concluded that there was no case to extend the railway from Thornlie to Nicholson Road in the short to medium term. Clearly there is a problem there.

This comes back to my original point: there is a real problem with the coordination of information and planning for our rail network in Western Australia. If we add to the mix the confusing element of what goes on in the minister's office, along with the problems associated with WestNet Rail, the Australian Railroad Group and the Public Transport Authority, we end up with a very confusing picture. My constituents come to me asking who they can approach to have some sort of say about how the rail line is operated, and the best suggestion I can give them is that they phone WestNet Rail; but it is a very confusing picture. The lack of accountability and a clear line of command is quite stark. If that is the situation for planning, what is the situation for general safety? That is my principal concern about the Rail Safety Bill. A system has unfortunately developed in which the lines of accountability are simply not good enough and are very confusing for people to deal with. When a fairly simple, straightforward question arises, such as the possibility for the restriction of train services that run beyond regular hours, there is no direct response, but a suggestion that the Department of Transport has to comply with rail safety requirements. It is a very confusing picture and I have concerns about the ability of the legislation before the house to actually tackle the issues. I understand and support the fact that the legislation will ensure that safety is the number one issue—that makes perfect sense—but we have to make sure that other aspects of general rail infrastructure planning and issues of local community amenity are not lost when enforcing requirements on rail line operators because of a very fragmented operating system.

I know that the opposition's lead speaker in this debate will touch on rail safety issues that go much farther afield than issues concerning the south metropolitan area, and they are extremely important issues. However, the example of the rail service in the south metropolitan area suggests that something is wrong and that urgent action is needed to repair it.

MS A.J.G. MacTIERNAN (Armadale) [4.26 pm]: I thank the member for Gosnells for filling in for me and doing so very admirably. I am the opposition lead speaker in this debate but do not be alarmed, Mr Deputy Speaker—it is not my intention to speak for a very long time!

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The opposition supports the Rail Safety Bill 2009 in principle. It is legislation to establish something in the nature of a uniform scheme to regulate rail safety across the country. One of the big impediments to the advancement of freight rail is the fragmentation of rail operator regulations. We dealt with this problem in the area of road transport many years ago by establishing the Australian Transport Council, which is the forum for—as the Minister for Police would put it—“ministerial ministers” for transport across the country. That has resulted in great harmonisation of road transport regulations across the country, but it has added some difficulties to all the other impediments faced by rail transport.

In common with the member for Gosnells and in line with the Labor Party’s general policy, I would like to see more freight being transported by rail. Behind that are a raft of economic rationales, safety issues and issues of amenity for regional Western Australia, metropolitan Perth and the port towns of Western Australia that provide the impetus for the opposition to encourage rail transport. Yesterday the state government announced that it was looking at only \$43 million for the grain freight network project, but in fact we need to rescue around 1 000 kilometres of the freight network, which will cost \$400 million over 10 years. Alas, because of that decision, we can quite confidently expect that about 1 000 kilometres of grain freight lines will be closed down over the next couple of years. This is all a result of the privatisation that took place in 2000 and is the inevitable consequence of allowing the operators to cherry pick lines. The only way around it was the rail rescue package of some \$400 million, and the state government has quite clearly decided to abandon that.

I suppose that is one way of solving rail safety issues—just close down the lines and there will be no rail safety problems.

Ms R. Saffioti: Or do not build them in the first place.

Ms A.J.G. MacTIERNAN: That is right—do not build them. Those are the two key strategies.

This legislation was agreed to by the Australian Transport Council in this more or less uniform model. I was very pleased to see that late last year the ATC decided that there would be a subsequent step to this and that by 2012 there will be a single regulator. Although that has some problems for Western Australia, ultimately we have to go down the same path that has been taken with air transport. In the interim, the opposition certainly supports this step, although some concerns have been raised by sectors of the industry about some of the variations sought by Western Australia. There was a negotiated capacity to have some variations on the national scheme, and some aspects of the industry, represented by the Australasian Railway Association, are not entirely happy with those. We understand that these are issues for debate. These matters were considered and judgement calls were made. One of the things that the Australasian Railway Association is concerned about is the powers of the rail safety regulator and its capacity to commence no-blame investigations, with the cost of those investigations entirely recoverable from the rail operator. Where there is a fatal incident or an incident involving multiple fatalities, there is pressure to have a complete and thorough investigation that can establish what happened, rather than focusing in on who was culpable. This is probably important, and my understanding from the departmental advisers is that this parallels the system in the regulation of air safety. The association’s concern was about having to pay for these sorts of investigations.

There were some concerns about the rail safety regulator and the bill, but it is the view of the opposition that these matters can be best explored when the bill is referred to the Standing Committee on Uniform Legislation and Statutes Review in the other place. We understand that, because this is uniform legislation, this bill will be referred to that standing committee when it is introduced into the other place. We support the principle of the bill, but we have some concerns with the local variants. However, it is the view of the opposition that these are best dealt with when the matter is referred to the Standing Committee on Uniform Legislation and Statutes Review.

I will make a couple of comments on one of the points raised by the member for Gosnells, which was a very interesting one. He was concerned that rail safety in some areas might have gone a little over the top in the metropolitan area, with the train drivers being required to sound their horns for extended periods when going through level crossings protected by boom gates. It could be argued that the boom gates are providing protection. This is a very valid issue. Where do we get the balance right between safety and public amenity? It is still a real safety issue because there is no shortage of mung beans who will drive around the boom gates. I remember releasing a lot of film footage showing the really stupid things that some people did at boom gates. That is not to say that the point of the member for Gosnells is not valid. If some people want to be so absolutely and completely stupid, should the rest of the community be penalised?

One of the things we have to do is work to eliminate level crossings as much as possible. In Perth we have something like 36 level crossings. There are no level crossings on any of the new railways that were built by the previous government and earlier Labor governments. We invested a lot in both of our railway extensions in the

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northern and southern suburbs to eliminate level crossings. As part of the project of building the Thornlie spur we eliminated a number of the level crossings between Cannington and Perth. We managed to eliminate another when we built the extension to the Tonkin Highway. However, there is certainly more to do and Western Australia has many more of these level crossings in the metropolitan area. I certainly have sympathy for the constituents of the member for Gosnells. I suspect that there possibly is a case for seeking revision of those laws. Maybe safety can be enhanced with some sort of double boom gate operation, so that the boom gates block both sides of the road on both sides of the crossing. At the moment, only the left-hand side of the road is blocked on each side of the crossing. With a double boom gate on both sides, people could not do that stupid thing that they love doing.

The member for Gosnells has raised a very important issue. We have to get the balance right, although people do get used to the sound of trains at night. I remember once staying with my sister who lived in Yarraville. I woke up at two o'clock in the morning thinking a jumbo jet had landed in the backyard, but she lived along the major Dynon Road freight line. I woke up once, but then I obviously factored it in and did not wake up again. However, the sound of a horn is designed to attract people's attention and break through the peace. That is a very legitimate issue, and we need to have a look at what alternatives there might be. I can assure the member that every time there is a rail fatality there is a demand for an enormous response, even if it is quite clear that the driver of the vehicle was wrong. Nevertheless, the demand from the community is that that should not have been allowed to happen, and we should have had this and that. It is not an easy issue for the government or rail regulators to deal with, but it is certainly a very interesting one.

With that, without even requiring an extension of time, I am happy to give the opposition's support in principle, but there will be issues that will be taken up by the standing committee in the Legislative Council.

MR W.J. JOHNSTON (Cannington) [4.39 pm]: I will speak very briefly on the Rail Safety Bill 2009, and the issue of rail safety in general. The electorate of Cannington has three level crossings: one at Hamilton Street, one at Wharf Street and one at William Street. Because of the way that rail traffic is developing in the eastern suburbs, the boom gates at these level crossings create real problems in the morning. It is exacerbated at Wharf Street, because that is the major right turn from Sevenoaks Street to go from Cannington to Queens Park. The City of Canning is going to redevelop that intersection and install multi-phased traffic lights that phase on Railway Parade as well as on Sevenoaks Street. I understand that it will be the first occasion on which that has been done in Perth. In every respect, those three level crossings create great hazards and, particularly in William Street and Wharf Street, major traffic snarls. As the member for Bassendean is well aware, the William Street crossing also has a problem with the Beckenham Railway Station, which is split between opposite sides of William Street. Rather than a compact station in which all the security and activity can be provided together, the station is actually split in two. Clearly, action needs to be taken to resolve those three level-crossing problems.

Mr M.P. Whitely: Before we came to government there were 30 000 vehicle movements a day.

Mr W.J. JOHNSTON: Absolutely, and due to the hard work of the then member for Roleystone, the current member for Bassendean, the Labor government delivered the Roe Highway extension and took all that commuter traffic off William Street, which now has just residential traffic.

Mr M.P. Whitely: A month before time, thankfully, saving my career!

Mr W.J. JOHNSTON: Nonetheless, the William Street level crossing is still a major problem for the people of Beckenham and the bit of traffic that comes off the Kenwick Link and then goes up William Street to get into Welshpool. Those three level crossings really need to be dealt with, because as train traffic increases, the boom gates are kept down longer, which causes more and more problems in the morning. As I say, the Wharf Street intersection is just a disaster. Every resident of Cannington, East Cannington and Queens Park despairs at the Wharf Street intersection. I have had representations from the president of the parents and citizens association at Cannington Community College about the need to take kids from Queens Park and walk them across the Wharf Street intersection with the train. There are three major roads and a train track to cross, so it is a real problem. A bit of it will be alleviated when Leila Street is joined up around the side of the Western Power station next to Carousel Shopping Centre, as it will connect to the bridge that already crosses the railway line, but even that will not be sufficient.

We need to address the problems that exist for those three level crossings. I understand that there will be design issues and that there are problems because houses are quite close to them. There is a Caltex service station at the William Street crossing. I am not saying that they will be easy issues to deal with but I say, as member for Cannington, on behalf of my electorate, that these issues are very central to my job as a member of Parliament, so I am pleased to have the opportunity to raise these critical issues on behalf of those residents.

MR M.J. COWPER (Murray-Wellington — Parliamentary Secretary) [4.43 pm]: I thank the members for Armadale, Gosnells and Cannington for their contribution to the debate on the Rail Safety Bill. I empathise in many respects with the locations that they were describing, having worked out of Cannington Police Station many years ago. The member for Cannington mentioned Wharf Street. I attended a fatal crash there at the traffic lights on Nicholson Road. The father of a colleague of mine was killed tragically in one of those crashes. I do understand that there are still circumstances that are of a major concern. The vision that the former minister and member for Armadale revealed on television was astounding because of its level of stupidity. Unfortunately, it is a bit of an adage that we cannot legislate against stupidity in many respects, although we try to do our best.

This legislation had its origins in November 2004 when the Australian Transport Council agreed to the introduction of model national rail safety regulations. In February 2006, the proposal was further supported by the Council of Australian Governments. The objectives of the reform were to provide for the safer operation of the nation's railways and to ensure efficiencies in the rail industry by providing the industry with a common regulatory basis for rail safety. The Western Australian bill provides for rail safety legislation that will form part of a system of nationally consistent rail safety laws that are intended to deliver regulatory harmonisation across jurisdictions. The Western Australian bill does not alter the fundamental approach to rail safety that has been adopted since the mid-1990s. The rail safety regulation will continue to be based on a co-regulatory structure, with rail organisations being primarily responsible for risk identification, assessment and control. It will continue to be based on a significant process of regulation.

The Western Australian Rail Safety Act 1998 is based on current best practice principles. A shift to the Western Australian bill has been seen as a significant divergence. On proclamation of the Western Australian Rail Safety Bill, the Rail Safety Act will be repealed, and transitional arrangements are provided to enable industry to comply with any new requirements. In the course of developing the national model rail safety bill, four rounds of public information sessions on the legislative reform were held in Western Australia. The Western Australian bill was withdrawn from drafting on the change of the state government in September 2008. In January 2009, a new state cabinet approved the continuation, drafting and implementation of the Western Australian bill. In December 2008, the Prime Minister and the Premier signed an Intergovernmental Agreement on Federal Financial Relations, which set the broad terms of commonwealth funding. When jurisdictions identify arrangements under the national partnership agreement, they do so under the NPA that was designed in December 2008. The national rail safety regulation is listed in the schedules among the priority milestones. Concurrent with that initiative, in July 2008 ATC ministers agreed to consider the adoption of a national rail safety, regulatory and investigative framework while continuing to implement the model rail safety legislation. The model legislation is providing the platform for the framework to operate within. In May 2009, the ATC agreed to recommend to the Council of Australian Governments the implementation of a single national rail safety rail regulator and a rail safety investigator by June 2012.

During the course of the briefings the question was asked: why is there a need to have a regulatory body here in Western Australia? As we well know from history, although it might be the desired outcome that has been agreed to across states and territories, it may not necessarily be achieved by that deadline. We can only hope that it will. The Rail Safety Bill 2009 provides for the rail safety regulator established under local administrative arrangements to interact with occupational safety and health legislation; general safety duties as far as is reasonably practicable for the rail industry participants in the chain of responsibility; a system of accreditation to ensure the competence of rail transport operators; audit and inspection powers necessary for rail safety regulation; a hierarchy of compliance and enforcement powers, and sanctions for different breaches; an array of checks and balances on regulatory behaviour; complementary obligations on rail managers to develop, implement and maintain the interface; coordinated plans for railway crossings by roads and footpaths; and heads of power for the creation of subordinate legislation to specify more detailed requirements, such as the railways and classes of railways to which the bill does not apply, and exemptions are accredited. I asked a question about whether the *Hotham Valley* railway line in my own electorate was a conforming line. That is an example of a line that may be given exemptions from the accreditation. The bill also provides for the form and requirements of safety, security and emergency management systems; the information that must be contained in the applications for accreditation and notice of accreditation; and rail safety, work health and fitness, drug and alcohol fatigue management programs.

The bill is structured in 11 parts. Without going into the various parts, which I am happy to address should we go to consideration in detail, I would like to quickly touch upon some of the issues that were raised by members, in particular the member for Gosnells. I have sought some explanation on the question of whether the bill will address the concerns of residents who are subjected to the noise from warning horns and trains signals or to vibration from heavy trains. The debate among members earlier in the chamber was well structured and is salient inasmuch as I too live not far from a railway line—in fact, about two kilometres from one. It is across farmland

from me. When I am sitting quietly in the evening listening to the beautiful birds in a very picturesque part of North Dandalup, I can hear the trains coming out of Pinjarra, particularly those bauxite trains that are heavily laden. I can hear them quite clearly probably 10 or 15 kilometres away, but as they approach the town and cross the level crossings at the intersections and blow their horn, for whatever reason—it must be the sound bouncing off the Darling scarp, the wind direction or whatever—the noise seems to disappear. It is noisier 10 kilometres away than it is two kilometres away. Having as a young person lived in the metropolitan area near a railway line, I can still recall that the old steam trains blew a lot, and the noise that they made. After a while, as the member for Armadale pointed out, we become accustomed and programmed to it, I suppose. Nonetheless, the member for Gosnells raised a very important question. The answer is that issues such as rail noise are addressed by codes and standards developed under the legislation in line with best practice processes. However, it should be noted that the bill requires both rail and road managers to work together to ensure that risks at rail crossings and footpaths are adequately addressed. As the member rightly pointed out, the consequence of interaction between motor vehicles and trains is somewhat significant. One that springs to mind is the fatal traffic crash a number of years ago on Sandalwood Road near Bengier that took the life of a friend of mine, Mr Panteleo, in rather horrific circumstances. It was simply the case that as he was crossing the railway line at an uncontrolled crossing—blinking red lights but no boom gates—the morning sun got in his eyes and he did not see the *Australind* coming at about 110 kilometres an hour and, as members can appreciate, the consequences of that were somewhat significant. I do not need to describe it any further. In our electorates across Western Australia there are many rail crossings that can always be improved on. I note that in the past 12 months the Minister for Transport has provided for—at least in my electorate, which I am very pleased about, and I know of others in other areas—funding improvements to level crossings, and that will obviously be ongoing.

A further question was raised by the member for Armadale: can information gathered by the regulator be deemed inadmissible to the court if the evidence found was a result of information gathered by an independent investigator under a no-blame investigation?

Ms A.J.G. MacTiernan: I clarify that I did not ask the question in this place; I asked it in the briefing.

Mr M.J. COWPER: That is correct. However, it has come to me that it is of particular interest to the member; therefore, I thought it was worthwhile mentioning it. The member's concerns have been duly noted and I have tried to get an answer for her. The information sought by the Department of Transport from the WA Office of Road Safety and the Australian Transport Safety Bureau provides an insight into the effect of collecting information under no-blame investigations. The Office of Road Safety advises that no-blame investigations would report in general terms—for example, organisational processes and procedures. Any evidence gathered by the investigation—for example, documents, statements, notes or any other documents created by the investigator—would be privileged to the investigator alone. However, hard evidence or evidence gathered under normal legal processes by investigators would still be available to the rail safety regulator's compliance investigation and prosecution. The ATSB stated that the investigations are undertaken on the understanding that investigations by the rail safety regulator are carried out in parallel. Any evidence generated by the ATSB investigations are privileged to the investigator alone; however, the ATSB advises that the investigations are more akin to simply culture investigations, as they would report on not only processes and procedures, but also those who would be responsible for those processes and procedures. I interpret that to mean that the purpose of allowing the regulator to conduct a preliminary investigation is to ensure that there is no repeat of that sort of incident, which could otherwise be perpetuated, and can be remedied without having to go through a long, drawn out process. As the member would agree, the key point is to identify the problem —

Ms A.J.G. MacTiernan: So it is a preventative investigation rather than a sort of necessary culpability investigation.

Mr M.J. COWPER: Yes. The whole idea is that the people of Western Australia and Australia generally can be reassured that the circumstances that attend any particular accident will not be repeated because of some bureaucratic red tape that may delay the process from becoming evident. I understand that may well be the issue that was raised by the member.

The Rail Safety Bill addresses a whole range of issues and I am happy to take further questions in consideration in detail if that is the wish of the Parliament.

The DEPUTY SPEAKER: Thank you, member for Murray-Wellington; you gave a very eloquent speech on trains moving across the countryside.

Question put and passed.

Bill read a second time.

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Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Mr M.J. Cowper (Parliamentary Secretary)**, and transmitted to the Council.

House adjourned at 4.56 pm
