

**STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW**

RAIL SAFETY NATIONAL LAW (WA) BILL 2014

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 8 DECEMBER 2014**

Members

**Hon Kate Doust (Chair)
Hon Brian Ellis (Deputy Chair)
Hon Mark Lewis
Hon Amber-Jade Sanderson**

Hearing commenced at 11.06 am**Mr GRAEME DOYLE****Acting Deputy Director General, Department of Transport, examined:****Miss MELISSA BOUVERIE****Senior Policy Officer, Department of Transport, examined:****Ms SUE HELLYER****Acting Director, Strategic Transport Analysis and Reform, Department of Transport, examined:**

The CHAIR: Thanks for coming in. This is our first foray into the Rail Safety National Law. What we were hoping to do today is have a briefing from you about what the bill is about, and there is a range of questions that we have provided to you just to sort of kickstart us along, if you like, in this inquiry. Today we are not going to formally swear you in or ask you to take an oath or affirmation, because we want to go through the legislation. There may be an occasion where we call you back in at a later stage of the inquiry to clarify issues or to seek some further information. We will see how we go. I will introduce the members of the committee: Hon Amber-Jade Sanderson, Hon Brian Ellis, my name is Kate Doust, Alex Hickman is our research officer, and Hon Mark Lewis. I might get you to introduce yourselves and state in what capacity you are here today so we know who is in the room.

Ms Hellyer: Sue Hellyer. I am the acting director of strategic transport analysis and reform, and I have been managing the legislative change process in conjunction with the rest of our team, including Melissa, and our legislative services person.

Miss Bouverie: I am Melissa Bouverie. I am a strategic policy analyst within the strategic transport and analysis reform team, and I have been working on the Rail Safety National Law (WA) Bill.

Mr Doyle: Graeme Doyle, acting director general, Department of Transport, in charge of the policy, planning and investment side of the business.

The CHAIR: We have got Hansard here today, so it will be recorded, and that is to assist us with the inquiry. You will get a copy of the transcript and if you need to correct anything in it, please do so and return it. I just ask you to be careful of the microphones and not to ruffle papers in front of them, so we should be fine.

I might perhaps get you to start off; you might want to give us a bit of a statement or briefing about the origins of the bill.

Mr Doyle: If I can, yes. We do have a presentation, and we have eight copies, so perhaps, Melissa, if you could provide the copies of the presentation that we will walk through.

Just to give a very broad overview, because then Sue and Melissa will be able to take you through the presentation in detail—and we have also got the responses there to the written questions that you did ask, so that is in the pack that is being handed around.

By way of very broad overview, this is a national reform. The rail safety issue is a national reform. It has been around now for a few years, and most other jurisdictions are in the national arrangement at the moment. Broadly, it is around having a single regulator right across the nation so there is consistency in systems and consistency in accreditation et cetera, which will be welcomed by industry that operates across various state jurisdictions, so they would welcome this change.

As you know, this is mirror legislation that we are introducing in WA, so we retain our sovereignty over our legislation rather than just adopting the national bill, which is South Australian legislation; so we retain that sovereignty.

Basically, once this legislation is passed, assuming that it does get passed, then we are ready to go in terms of our rail safety functions transferring across to the national office, so there is a lot of groundwork being done in readiness for this transition, and once we get this legislation through, then we can dot all the i's and cross all the t's and actually have it in place—we hope to have that in place by mid next year. As I said, Sue and Melissa are very close to the detail on this and they will take you through the presentation that we have just handed around. Melissa will do that for you. Obviously, you will ask questions as you see fit, but we will let it evolve from here.

Miss Bouverie: I will start with the presentation on the Rail Safety National Law reform. I will provide some background on rail safety regulation in Australia, the national reform time line, some of the key benefits of the national reform. I will then go into some of the details of the Rail Safety National Law Bill itself and conclude with some implementation information.

Historically, every Australian state and territory has regulated its railways independently, which has led to a number of inconsistency between jurisdictions and inefficiencies for industry, in particular, for multistate operators who have had to comply with the legislation in each of the jurisdictions in which they operate and with each of the regulators and each of the jurisdictions in which they operate. In terms of the national reform time line, going back to 2006, the National Transport Commission developed the model rail safety law, and it is that law upon which the existing Rail Safety Act in WA is very closely based. In 2009 the Council of Australian Governments endorsed a national partnership agreement to deliver a seamless national economy, which identified rail as a key transport reform area. In 2010 the Rail Safety Act of WA was passed and that again reflected what was contained in the model Rail Safety National Laws developed by the National Transport Commission. In 2011 the Council of Australian Governments endorsed the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform, which identified the need to establish a single national rail safety regulator under a single rail safety national law. In 2012 South Australia, who are the host jurisdiction for the reform, first passed the Rail Safety National Law through their Parliament and then it was up to each participating jurisdiction to pass that same rail safety law through their Parliaments. In 2013 the Office of the National Rail Safety Regulator commenced operations and it is now operational in all jurisdictions except for Queensland and Western Australia, where the law is still to be passed through Parliament.

The CHAIR: Can I ask a question at that point? Do they have a separate office based in each of those states?

Miss Bouverie: Yes; the head office is based in South Australia and then each jurisdiction who is participating has a local branch office of the national regulator.

The key benefits of the reform are the establishment of the Office of the National Rail Safety Regulator and the establishment of national systems for accreditation and compliance for rail transport operators, with reduced compliance costs for operators. The national office establishes a pool of resources with specialist knowledge with a strength and capacity to make evidence-based decisions and apply those decisions consistency across Australia.

The CHAIR: Can I just ask some questions at this point? With the funding of the national rail safety regulator, how are they funded? Are they funded out of the commonwealth budget or does each state contribute to the operation?

Mr Doyle: Each state—or we currently make a contribution to the national office; that is part of the IGA that has been agreed even though we are not actually under the national regulator at the moment that we have to make a contribution to them. Once it is all in place, the intent is that it is a full cost recovery service, just as it is in WA at the moment—we operate on a full cost recovery

basis from industry. So the national office will also operate on full cost recovery. I am not certain whether they get any commonwealth funding, if I can call it that, at this point in time. I am not absolutely certain about that.

[11.15 am]

Ms Hellyer: There is some start-up funding from the commonwealth, I believe, for transition.

Hon MARK LEWIS: One question, too, Chair. Does this apply to private operators, like BHP, Rio and FMG?

Mr Doyle: Yes, it does.

The CHAIR: Just looking at this national system of accreditation and compliance, are we able to get some examples of what that means?

Miss Bouverie: Yes. Essentially the accreditation is what is required for an operator to be considered to have a safe rail operation. So currently, or prior to, the establishment of the national regulator, each operator was to have a safety management system approved by the regulator of the state they operate in, or in multiple states if they operate in multiple states, and then under the national system it will just be one single safety management system that will then qualify them to have accreditation under the rail safety law.

The CHAIR: In terms of compliance costs, is there a table available that sets out the various compliance costs across the different jurisdictions?

Mr Doyle: Not yet, as I understand it. Obviously, we know what it currently costs us in WA.

The CHAIR: What would that be?

Mr Doyle: The fee collection is just over \$3.5 million at the moment in WA. On the basis of best estimates at this stage, we understand that once this arrangement is in place the annual fee collection will be in the vicinity of \$3.8 million to \$3.9 million under the national arrangement. That also takes into account that in this financial year we did not apply any increase to the fees based on seeing how the passage of this legislation went. So what we intend to do for the next year, and it also depends on the way that the national office structures its fees, is our estimate is that basically every two lots of CPI—this year's CPI that we did not apply and a further CPI for next year—will bring it to that \$3.8 million or \$3.9 million figure that is collected from WA operators.

The CHAIR: In terms of how the operator pays, how do you determine the appropriate fee for the operator?

Mr Doyle: It is based on—there are two components. One component is what they call the track, below rail, the track, and the other component is the number of train kilometres. Currently in WA, it is a 25/75 split between the track and the train operations. Our understanding is that is going to change to be a 30/70 split between the proportion of revenue recovered from track and the proportion of revenue recovered from train operators.

The CHAIR: Will that change kick in once this legislation is passed?

Mr Doyle: Yes, it will. So it is the national office that sets the fees, and obviously then they will advise the state jurisdictions, and because we have our own legislation, then we will have to put regulations through the normal way, as we would, to gazette what the fees are; but that will be based on advice from the national office.

Hon MARK LEWIS: So there are no reduced compliance costs? They have actually gone up, even though you have a CPI—you missed one CPI—effectively compliance costs are going up, not being reduced? It is going from 3.5 to 3.9. If it was at CPI, that would be, you know —

Mr Doyle: There is a review underway. The national office has commenced a review of the entire operations. In the first instance, the way they have struck, or they anticipate striking the WA fees is,

there is what they call a contribution by WA to the national office costs, which is around the \$1.4 million to \$1.5 million mark, plus the branch operations of WA, which is around about the \$2.4 million mark at the moment. So what they are reviewing is across the entire national network to uniform that cost out, and our expectation is that the \$1.4 million to \$1.5 million current attribution to WA costs will come down somewhat once this review has been done. In the short term, yes, there are basically CPI increases coming in, but the expectation is that it will flatten out after that point in time.

Miss Bouverie: So the objectives of the Rail Safety National (WA) Bill are to provide for a national rail safety regulation scheme to establish the national rail safety regulator in Western Australia and to enact in mirror form the Rail Safety National Law as a law of WA. WA has chosen the mirror form of applying the legislation here as opposed to automatically adopting the legislation of South Australia to retain parliamentary sovereignty in Western Australia. So that means any amendments to the national law in future will come through the Western Australian Parliament and be scrutinised as an amendment bill of this state in the future.

The bill also provides for local provisions for drug and alcohol testing. During the development of the national law it was decided that each jurisdiction would retain its own drug and alcohol testing provisions, which align with the state's road traffic drug and alcohol provisions under the road traffic legislation of the state. One of the key reasons for that is that local police officers are one of the authorised people to undertake drug and alcohol testing under the National Rail Safety Law, so rather than police having different testing procedures for road traffic testing versus rail safety testing, there is consistency between those provisions of drug and alcohol testing in both the rail safety and road traffic legislation.

The bill also provides for the making of regulations to complement the bill, and once the bill is passed, the existing Rail Safety Act of WA and regulations will be repealed and replaced by the national law.

The bill provides for a number of transitional provisions, so that allows for existing accreditations under the Rail Safety Act here and registrations under the Rail Safety Act WA to continue to have effect under the national law. So operators who are already accredited here in WA under the Rail Safety Act will not need to seek a new application for accreditation under the national law. The transitional provisions will provide for those to continue.

The bill also enables a number of consequential amendments to be made, so for other pieces of state legislation which make reference to the existing Rail Safety Act, such as the mines and petroleum legislation, that will be updated to automatically reflect that it is now Rail Safety National Law of WA that is to replace that text.

Hon AMBER-JADE SANDERSON: Is that the only act?

Miss Bouverie: No, it is also in the rail access act, and, I think, the occupational health and safety legislation as well.

The CHAIR: Which aspects of the occupational health and safety legislation?

Miss Bouverie: It is just where there is an interface with the rail safety regulation and occupational health and safety regulation. So there might be references in occupational health and safety just purely to the title of the Rail Safety Act, where rail safety has oversight over particular things; for example—I think it would be in relation to minesites.

The CHAIR: That comes under different legislation—the mine safety legislation rather than the general occupational health and safety.

Ms Hellyer: It will not change the intent of any of the other legislation; it will simply change the reference to the national law as opposed to the state-based law.

The CHAIR: Okay.

Hon MARK LEWIS: This sort of goes to the issue of sovereignty—this slide. Okay, it is a mirror; it does not automatically adopt, but if the South Australians make a regulation change as the host, that then goes to the Governor, our Governor?

Mr Doyle: No.

Miss Bouverie: With regulations —

Hon MARK LEWIS: In your answer here.

Ms Hellyer: It goes through the normal regulation-making process in Western Australia. The first—prior to a change being made in South Australia, it will need to be unanimously agreed to at the Transport and Infrastructure Council by all ministers sitting on that council.

Hon MARK LEWIS: But that is not Parliament.

Ms Hellyer: No; correct. Then it will go to the South Australian Parliament, and once they pass it, we will then draft regulation or legislation change here, and it will go through the same process that we apply in Western Australia as usual.

Hon MARK LEWIS: Via a ministerial statement or in Parliament or?

Ms Hellyer: It will be a legislation change process as normal, so there will be a bill and the full process will go through.

Hon MARK LEWIS: So it will be a full amendment bill?

Mr Doyle: If it is a regulation in the same manner as any other regulation, it has to be gazetted.

Ms Hellyer: And then the Governor.

The CHAIR: So it is just a regulation change?

Hon MARK LEWIS: Yes, just a regulation change.

The CHAIR: If it is an amendment to the legislation, then it comes in as a bill?

Ms Hellyer: Yes; correct.

The CHAIR: An amending bill.

Hon MARK LEWIS: Yes; the regulation, I have always got a little bit of an issue with.

Mr Doyle: So the time line is if there is to be a regulation change, that needs to be agreed at Transport and Infrastructure Council, which is all the relevant ministers of the state. Then South Australia, as the host jurisdiction, will draft their regulation and have it passed. Then every other jurisdiction will follow, and that has got mirror legislation—in our case we will draft legislation that complements that and have it taken through the same process as if it were our laws.

The CHAIR: I suppose one other questions that follows on from that is something that we have picked up—there seems to be a bit of a trend happening with these types of bills—is as well as having the potential for legislative change or regulation change, quite often there are separate documents, directions, or notes, that are attached to the bill which do not require any parliamentary scrutiny. Are you aware of any of those types of instruments being utilised with this legislation?

Ms Hellyer: I do not think so, not in relation to the transitional stuff—there is that 12-month capacity.

Miss Bouverie: That is for local regulations to be made, but in terms of any sort of supporting things that are not quite legislation, I am not aware of anything that complements this bill.

The CHAIR: Just curious. If you want to proceed, that would be great.

Miss Bouverie: The Rail Safety National Law WA bill it is made up of two components. At the back of the bill is the schedule which contains the national law as passed by each of the jurisdictions, and the start of the bill is made up of local provisions which enable the national law to

work seamlessly within the Western Australian legislative framework. Also within the local provisions are a number of local modifications which are being made to the national law as it will apply in Western Australia, and that predominantly relates to the parliamentary sovereignty issue and the mirror legislation approach that we have adopted here in Western Australia. So amendments are being made to various sections of the national law to provide that future amendments to the national law made in South Australia will not be automatically adopted in Western Australia, but, rather, the standard Western Australian legislative amendment process will occur. Similarly, with regulations, amendments have been made to sections to provide that instead of the South Australian Governor having the power to make regulations, it is the Western Australian Governor who has the power to make regulations under the national law as it is to be passed in Western Australia.

The CHAIR: Have those changes been done via regulation or have they been put into the actual bill?

Miss Bouverie: They are included in the local provisions within the bill.

The CHAIR: Okay.

Miss Bouverie: Another local amendment which has been made relates to the drug and alcohol testing provisions, which align with the road traffic legislation in Western Australia, to continue for urine testing to be undertaken in Western Australia in a post-incident testing—so following a rail safety incident—and that is not to apply in a random testing context. That is consistent with the existing rail safety legislation in Western Australia and the road traffic legislation in Western Australia.

The CHAIR: Can I ask a question about that. In terms of the people working in that sector, is there already capacity for random drug and alcohol testing for people who are driving trains?

Miss Bouverie: There is, as part of the accreditation, the rail transport operators have a drug and alcohol management program in place, and that includes the capacity for the operators to undertake drug and alcohol testing on a random basis for their staff. There are also provisions that allow for the regulator to do that also in the existing legislation.

The CHAIR: Any questions so far?

[11.30 am]

Miss Bouverie: So the Rail Safety National Law schedule—so the national law—which is contained in the schedule of the bill, there are a number of the changes between what is in the existing Rail Safety Act and the Rail Safety National Law. Predominantly the provisions are very similar, or in fact identical, but there are a number of key changes which are introduced under the national law; some relate to governance arrangements and the others are safety enhancements.

The governance provisions relate to the establishment of the Office of the National Rail Safety Regulator, appointments to the national rail safety regulator office position and a number of administrative arrangements of running the national office. There is also a provision which allows for ministerial exemptions to be made. Under the national law an operator can seek a short-term exemption from the minister if they are participating jurisdiction to particular parts of the legislation.

The CHAIR: In what circumstances would that occur?

Miss Bouverie: That can occur where there might be, based on the risk profile of the particular operator, some provisions which are particularly onerous for that operator based on the scale of their operation and the risk profile of their operation. In that case the operator might seek an exemption from a particular provision from the minister. The minister in consultation with the national regulator can consider whether or not it would be appropriate to provide that short-term exemption to that operator. The law provides that it is limited for a period of up to three months that

the minister can offer that exemption. If the operator were to seek an exemption beyond three months, they would need to make application to the regulator to have that considered.

Hon BRIAN ELLIS: On that, are there parts of that regulation that an operator could not be exempt?

Miss Bouverie: There are for long-term exemptions that the regulator can issue. They cannot relate to particular parts of the safety management system, so the operator must have a safety management system in order to be accredited. That includes things like a drug and alcohol management plan, a health and fitness plan to ensure their staff have rest and work breaks and those sorts of things; so they cannot be exempted from those safety management system requirements.

The bill also introduces consistent oversight laws to apply to all Office of the National Rail Safety Regulator staff. That includes things like state records legislation, audit, finance and public sector management acts, so under the national law the Western Australian oversight laws are dis-applied.

The CHAIR: Sorry?

Miss Bouverie: Dis-applied, and the South Australian equivalent oversight laws are applied to staff directly working for the national regulator.

The CHAIR: Does that also apply to our FOI laws?

Ms Hellyer: Yes.

The CHAIR: If someone sought an FOI from Western Australia, they would have to apply —

Mr Doyle: To the national office, and that would be covered under the South Australian legislation.

The CHAIR: Where are the differences between the South Australian FOI and ours?

Miss Bouverie: They are broadly consistent, so there are not any large differences between the South Australian and the Western Australian. The procedure for application is very similar between the South Australian process and the Western Australian process as well.

The CHAIR: Are there any differences?

Ms Hellyer: We are not sure. We would have to get back to you on that. If you would like us to, we certainly can.

The CHAIR: I understand that we have a question coming your way about that, so in due course.

Ms Hellyer: Thank you.

The CHAIR: I was curious about that aspect of it.

Miss Bouverie: There are also a number of changes which create greater consistency between work health and safety or occupational health and safety between and the Rail Safety National Law. That is where there are a similar terms and definitions that are used in both pieces of legislation. Slight amendments have been made to create consistency between those.

The CHAIR: The difficulty is that we do not have that legislation in place in Western Australia, and I am not sure when it will be introduced into our Parliament, so what happens if this legislation, as you say you are hoping to have it through and ready by the 1 July, and we do not have the national harmonisation health and safety legislation in place, will there be a need to come back and amend that legislation? How will that work to make sure that things meet up?

Miss Bouverie: I do not believe that there would be any need for the state occupational health and safety legislation to be amended. Any changes would occur through the Rail Safety National Law and would apply to rail safety workers working under the national law. Then any differences would then be under the occupational health and safety legislation applying to other workers, whereas rail safety workers would be covered under the Rail Safety National Law, is my understanding.

Hon MARK LEWIS: Has there been any consultation with BHP, Rio and FMG on this?

Ms Hellyer: Yes. We have spoken to most of the operators and, in fact, their safety standards exceed—yes, they are higher and they were all very comfortable with the introduction of this national law.

Mr Doyle: All operators were offered a briefing on this legislation in the last six months, and most of them took up the offer.

Hon MARK LEWIS: Including Brookfield?

Mr Doyle: They would have been offered. I do not —

Miss Bouverie: They accepted a briefing as well.

The CHAIR: So that I am clear in my mind, in terms of the health and safety regime, it is both—at a state level, currently it is both the mine safety and the general occupational health and safety legislation that would cover rail workers but in different aspects of work?

Miss Bouverie: That is correct. Currently there is an MOU in place between the rail safety regulator and the regulators of mine safety and occupational health and safety. Those MOUs will be replicated by the national regulator once the national law is passed in Western Australia, so there are ongoing arrangements if the existing regulators continue.

The CHAIR: If there is an incident in rail safety, who currently would go out and investigate that? Would it be WorkSafe if it was general, or a mine safety inspector if it was not, or would it be someone from rail safety?

Ms Hellyer: It could be any of the three, depending on the situation associated with the incident. That is our understanding, basically. Given that the rail safety approach is a co-regulatory one at a state level and at a national level, they would do that in conjunction with the operator in question.

The CHAIR: Once this legislation is through, if an incident occurs, who would be the first called in to investigate?

Ms Hellyer: It would depend again on the circumstances of the situation as to which one of those acts applied predominantly. Do you have anything to add, Mel?

Miss Bouverie: Again with the memorandums of understanding that would be in place depending on the particular incident then that would maybe indicate who would be best placed to deal with that incident on a case-by-case basis.

Mr Doyle: The WA branch still exists, so there are still officers.

The CHAIR: They would be the first port of call, wouldn't they?

Ms Hellyer: Not necessarily. That situation exists here and now, and, depending on the circumstances, if it is an incident on a minesite, then perhaps mines go as the first port of call. This will not change the situation; those three acts will still interrelate, if you like, and overlap slightly, and it will depend on the circumstances of the individual case.

Miss Bouverie: To add to that, when it is a particular prescribed rail safety incident that occurs, the accredited rail operator is to immediately contact the rail safety regulator to notify them of the occurrence happening, and then there are some subsidiary incidents—so category B incidents as they are known—which also need to be notified to the rail safety regulator.

The CHAIR: Is that information available in the legislation or the regs as to those categories?

Miss Bouverie: The categories are in the regulations, and they are consistent with the existing categories and incidences as described in the existing rail safety regulations, and will be replicated in the national regulations as well.

The safety enhancements which are introduced as part of the national law relate to drug and alcohol testing. So under the current legislation the blood alcohol content for rail safety workers is prescribed as 0.02, but under the national law it is reduced to a zero blood alcohol content. Also in

relation to drug and alcohol testing, as part of the national regime, the rail safety regulator will be taking on a drug and alcohol testing function, so that will allow for the regulator to undertake random testing for rail safety workers, and it is expected that in Western Australia that would include up to 200 tests annually.

The national law also introduces a new duty for freight loaders and unloaders to ensure that they are performing their duties safely, and that now comes under the oversight of the regulator, whereas previously it has not. For private sidings, under the national law, there is a slight change to the regulation process. Currently, the private siding infrastructure is registered; but under the national law, it is the infrastructure manager of the private siding that is required to be registered, and that will ensure better management of any interfaces with that particular private siding that the infrastructure manager also has oversight over.

The CHAIR: Do we know how many of those are in Western Australia?

Miss Bouverie: I believe there are about 20 or so, but I would have to check that and confirm.

The national law also enhances an enhanced risk management criteria as well as in relation to the safety management system and interface agreements under the national law, so there are further requirements for the identification, management and control of risks as part of the safety management system and interface agreements under the national law. The national law also introduces a consistent assessment of competency requirements, so the national law introduces the Australian quality training framework as the qualification framework to apply to rail safety workers. That provision is introduced as an insofar as reasonably practical provision—that means that where, for example, in the case of smaller operators such as a tourist and heritage operators who might have workers trained under a different qualification framework, the national law does not then require them to retake their qualifications under the act —

The CHAIR: So they can be RPL-ed to that new framework?

Miss Bouverie: Recognised?

The CHAIR: Yes.

Miss Bouverie: Yes, that is right; exactly.

In terms of implementation, Western Australia will transition to the Office of the National Rail Safety Regulator as soon as possible once the legislation is passed, and it is anticipated that subject to the parliamentary agenda, that the Office of the National Rail Safety Regulator will commence operations in WA on or above 1 July 2015, and the department is currently working with parliamentary counsel to draft the subsidiary legislation to complement the bill, and it is intended that those regulations will finalised in time for commencement of the legislation here in this state.

The CHAIR: Will we be able to see a draft copy of those regulations, if possible?

Miss Bouverie: Yes.

In summary, the rail safety national reform builds upon earlier rail safety reforms to achieve a consistent co-regulatory approach to rail safety regulation across Australia and to introduce the single Rail Safety National Law in Western Australia. Thank you.

The CHAIR: Thank you for that. I imagine you will be very pleased once this is done and dusted.

Ms Hellyer: If you are happy to do so, we could go through the questions one by one.

The CHAIR: Yes. Thank you for providing the detail that you have with those answers. Do you want me to read out the question, and you can go through them?

Ms Hellyer: That would be lovely. Thank you.

The CHAIR: The first question is —

Please outline the principal differences between the Rail Safety Act 2010, the Bill and the Rail Safety National Law (RSNL) and which differences are attributable to the entry into the Intergovernmental Agreement (IGA) on 19 August 2011.

Ms Hellyer: The answer we have provided you states —

The RSNL builds upon the Model Rail Safety Laws which the existing Rail Safety Legislation in WA is based upon.

The majority of the clauses are identical or have been amended for the purpose of clarity without changing the policy intent.

The key differences between the current WA Rail Safety Act 2010 and the RSNL

- Schedule that relate to entry into the IGA include:
- Governance provisions.
- Alignment with National Model Work Health and Safety Legislation
- Introduction of a national penalty framework.
- Duty for freight Loaders.
- Private sidings.
- Strengthened risk management ...
- Enhanced Drug and Alcohol testing.
- Ministerial exemptions.
- Consistent oversight laws.

I can go through those in detail if you would like further information on those.

The CHAIR: No, I think that is fine. Do you want detail on that at the moment? That is okay. We might come back to that at a later stage.

[11.45 am]

Ms Hellyer: The answer continues —

The key differences between the RSNL (WA) Bill 2014 and the RSNL Schedule which do not relate to entry into the IGA:

The mirror approach being used in the RSNL (WA) Bill 2014 retains WA Parliamentary sovereignty and allows for local modifications to be made.

The following local modifications have been made to the RSNL to specifically address circumstances in Western Australia:

- **Continuation of Urine Testing in WA**
 - Under the Western Australian local drug and alcohol testing provisions post incident urine testing remains as an option. This is consistent with the provisions under the existing rail safety and road traffic legislation in this State.
 - Under clause 5 of the Bill, modifications are made to sections 127 and 129 of the Schedule to ensure that urine testing remains as an option in a rail safety context in Western Australia aligned with current Rail Safety and Road Traffic legislation.

Relevant provisions are as follows:

- **Subclause (2) of clause 5** modifies section 127 of the Schedule by adding text to ensure that urine testing remains as an option in a rail safety context in Western Australia.
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- **Subclause (3) of clause 5** makes a consequential change relating to the use of urine samples and analysis under section 129 of the schedule as a result of the modification of section 127.

The second change relates to upholding parliamentary scrutiny and sovereignty in Western Australia —

- Under clause 5 of the Bill, modifications are made to sections 264 and 265 of the Schedule to provide that the Governor of Western Australian has the power to independently make regulations under the Rail Safety National Law in Western Australia, rather than regulations being made by the Governor of South Australia upon receiving the unanimous recommendation of the responsible Ministers of the participating jurisdictions.

Relevant provisions are as follows:

- **Subclause (4) of clause 5** modifies the regulation making mechanism in section 264(1) of the Rail Safety National Law to provide that the Governor of Western Australia, rather than the Governor of South Australia is the decision maker.
- **Subclause (5) of clause 5** modifies the regulation making mechanism in section 264(2) of the Schedule by deleting terms by which National Regulations are made on the unanimous recommendation of the Ministers of the relevant jurisdictions and instead providing that the Governor of Western Australia may make regulations.
- **Subclause (6) of clause 5** modifies the Rail Safety National Law by deleting section 265 of the Schedule which relates to the publication of national regulations on the NSW legislation website. Section 265 of the Schedule will be made redundant by the provision proposed in clause 8(2). The aim is for the regulation making provisions that would usually apply in Western Australia to apply in this context instead of the requirement for national regulations to be published on the NSW legislation website in accordance with Part 6A of the Interpretation Act 1987 (NSW).

The CHAIR: Can I also ask there: would they also be published in our *Gazette*?

Miss Bouverie: Yes.

Ms Hellyer: Thank you. Indeed, yes —

- **Subclause (7) of clause 5** makes changes to sections 30, 33, 35-6 of Schedule 2 to reflect the fact that future changes to the Rail Safety National Law as it appears in this State will be made by the legislation of this State, rather than legislation made in South Australia.
- Clause 8(2) of the Rail Safety National Law provides that the relevant sections of the Interpretation Act 1984 (WA) apply to the Rail Safety National Law (Western Australia); preserving the procedure by which Parliament normally reviews delegated legislation in Western Australia.

Mr Doyle: Do you want us to continue? Sue has been basically reading the response, do you want us to continue that approach?

The CHAIR: Do you want it just to have it incorporated into Hansard. Because you have provided those answers, we might just have it incorporated into Hansard, if that is all right.

There were a couple of things that I wanted to ask. Looking at questions 6—we will provide a copy of this to Hansard—looking at question 6 about whether or not a review was undertaken, I note that when you go back to the parliamentary report which was done by this committee, albeit with

different members, in 2010, the report—I am sure you have read the report—indicates that there were concerns by the government of the day, by the minister of the day, about entering into a national arrangement, and I think that they were able to resolve 10 of their primary concerns, but there was still about three outstanding matters that were points of difference, I suppose, between the Western Australian legislation and what was happening in other states around proposed national legislation. In this bill that we are dealing with, have those three outstanding matters been resolved? If you do not know that today, perhaps, I would be interested in that, because I know it is at the very beginning of that report that those matters are flagged, and I was just thinking that if there was that much concern back in 2010, given the passage of time, for Western Australia to agree to become part of this national arrangement, have those matters of concern been resolved? That is why when I saw that there had not been a review of that act, I just wondered how those outstanding issues had been dealt with?

Ms Hellyer: We are not aware at this point how they have been dealt with, but we would be happy to check and get back to you.

The CHAIR: I would be interested to know whether anything has been done about those matters or whether they have just fallen by the way.

Hon MARK LEWIS: Follow up to that, you do not think they are in the gap analysis, and the other issue is can we get a copy of the gap analysis?

Ms Hellyer: You can definitely get a copy of the gap analysis. We are not sure if they are in the gap analysis at this stage; we would have to check that too.

The CHAIR: Any other questions extending from what we have already got here?

In terms of how we manage this inquiry, we have obviously sent out invitations for a range of stakeholders to provide submissions, if they want to, about the bill and there is reference in your answers to freight loaders—for loaders and unloaders. Is there anyone working in that area that we might need to contact to perhaps invite to provide a submission?

Ms Hellyer: From the Department of Transport?

The CHAIR: No, anyone in industry, I suppose, that operates a freight loading company?

Hon BRIAN ELLIS: Or a body?

Mr Doyle: Can we take that on notice, so to speak?

The CHAIR: If you could. We are just trying to be as thorough as we can in terms of who we contact, and so it may be that we have already picked up on some of these people, but there might be some gaps and we would not want anyone to say you did not talk to us or consult with us. If there are examples of companies that do loading and unloading that are picked up by this bill, if you could provide that to our staff, that would be very helpful.

The other thing that we need, we noted today is that there is an extensive list, very extensive list, of accredited rail transport operators. We would like to write to them as well, but we do not have their addresses. If we could ask if you are able to provide the contact details for each of these companies listed, we would appreciate that. I imagine this came from the department. This list was provided to us by the minister, and we are happy to give you a copy of this, but if you are able to do that, that would be appreciated. We are hoping to have this report tabled back in the house by 24 March next year, so we will be doing work on this over the break and into the new period of sitting, so as soon as we are able to get those details, that would be helpful. We would like to get the letters out to them before Christmas and to get a response back from them by the end of January, just to speed up the process and, hopefully, assist you with getting your desired process of this legislation passed by midyear.

That was very good, very helpful to us, and I certainly appreciate the work that you have done in answering that first round of questions. That just helps us to start to pull this together before we start to get submissions back in from people in the industry. There will be some other questions, probably more detailed technical questions, that will be sent to you in the near future, and we would appreciate responses to those. I think there are a few matters that are you were going to come back to us on that were raised today as well.

Mr Doyle: To capture those: you referred to three outstanding matters that you want to try to identify what those three outstanding matters are and how they have been resolved or have they been resolved; you wanted also a copy of that gap analysis; you wanted to try to get contact in industry for freight loaders or unloaders; and, you wanted the contact addresses of the list of accredited operators.

The CHAIR: And also the number of private sidings.

Mr Doyle: Yes; and a copy of the regulations. We will get all of that information as soon as we can for you. We welcome any further questions that you have.

The CHAIR: I am sure there will be a lot of them. It may very well be that at some point during the process that we might ask you to come back in and clarify information or provide some new information if we need it.

Thank you very much for your time today and that was certainly very helpful.

Hearing concluded at 11.56 am
