



REPORT OF THE

STANDING COMMITTEE ON

PUBLIC ADMINISTRATION

IN RELATION TO

INQUIRY INTO GOVERNMENT PROPOSALS

FOR THE SALE OR LEASE OF

WESTRAIL FREIGHT OPERATIONS

Presented by the Hon Kim Chance MLC (Chairman)

Report 14

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Date first appointed:

7 November 1996

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ISBN: 0-7309-8946-1

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CHAPTER 1

SUMMARY OF FINDINGS

1.1 Summary of Findings

On 23 June 1999 the Legislative Council directed the Standing Committee on Public Administration to inquire into the Government proposals for the sale or lease of Westrail freight operations, track network, rolling stock and associated infrastructure.

The following is a summary of the Standing Committee on Public Administration's report findings, by chapter. This report provides an overview of the pertinent issues.

Chapter 3: Sale of Westrail Freight Business

- 3.4.1 The Committee notes the Government view that a private operator of Westrail's freight business will be able to introduce innovation and operating efficiencies and expand the rail business in Western Australia.
- 3.4.2 The Committee notes that the Government believes Westrail's capacity to invest in the rail network will be limited and that its constraints of being a Government owned entity will result in current business being lost to other rail operators.
- 3.4.3 The Committee notes that industry generally support the privatisation of Westrail's freight business.
- 3.4.4 The Committee notes that the Australian Rail Tram and Bus Industry Union, expressed opposition to the sale as it fears job losses particularly in regional areas.
- 3.4.5 The Committee notes that the WA Farmers Federation is opposed to the sale on the grounds that the Government has provided insufficient evidence of the benefits of privatisation. It is concerned about the effect, particularly on the grain industry using narrow gauge lines, of private ownership with shareholder rather than public interest priorities.

Chapter 4: Railway Structure

- 4.4.1 The Committee believes that it is important to consider that a vertically integrated system with an open access regime is uncommon worldwide.

Chapter 5: A Vertically Intergrated Structure

- 5.10.1 The Committee notes that the rail industry overwhelmingly supports privatisation but generally would prefer a vertically separated system rather than a vertically integrated system. This is partially due to concerns that the Access Code will be insufficient in allowing third party competition.
- 5.10.2 The Committee is concerned with the prohibition on Government-owned entities bidding for the proposed rail sale and lease. This restricts bidding from Europe where rail operators are predominantly Government-owned. It also prevents the ARTC (which is owned by the Commonwealth Government) from bidding, as well as other Australian operators.
- 5.10.3 The Committee therefore believes that the proposed vertically integrated system will be most attractive to bidders from the United States where there is a history of private rail ownership and vertical integration. The Committee believes that the reasons, implications and justification for this restriction in bidding should be explored further.
- 5.10.4 The Committee notes that the NRC expressed the view that the proposed access regime is insufficient to prevent leakage of information between above and below rail operations if the system is vertically integrated.
- 5.10.5 The Committee notes that the Productivity Commission Draft Report on Progress in Rail Reform concluded that a low volume regional network is better suited to a vertically integrated system.
- 5.10.6 The Committee notes that amongst witnesses, there was some support for the Productivity Commission's conclusion that regional Western Australia is a low volume regional network and therefore is better suited to a vertically integrated system. However, the Committee notes that the NRC disagrees with the Productivity Commission's conclusion and sees it as "too simplistic".
- 5.10.7 The Committee notes the ARTC submissions that although the standard gauge interstate lines should be vertically separate, it is in favour of a vertically integrated narrow gauge intrastate system because of economies of scale involved. The Committee is concerned

that requirements to suit national standards above consumer demand may prove too costly for operators. The Committee believes that the Bunbury to Perth rail line should be looked at closely as the two main customers from the mining sector may leave an owner of only track (in a vertically separate system) in a much weaker position to negotiate with dominant customers to the detriment also of other potential users of the track.

- 5.10.8 The Committee notes that the Government and Task Force submissions argue that a privatised vertically integrated system, with a third party access regime, would promote competition and lead to development and innovation in the rail freight industry. Each submit that meaningful comparisons of other rail systems is difficult because of different operating environments, with differences in size of rolling stock, levels of competition, regulatory frameworks and markets.

Chapter 6: Rail Access

- 6.5.1 The Committee notes that the Government and the Task Force submitted that the proposed access regime will be sufficiently robust to promote third party competition in the proposed vertically integrated system. This is because of the provisions in the Access Code that prohibits the hindering of access and requires the rail owner to avoid unnecessary delays, as well as providing for an independent arbitration mechanism.
- 6.5.2 The Committee notes that several industry submissions viewed the proposed regime as being unable to balance out the advantage that a vertically integrated rail operator would have over others seeking access of the track. They pointed to their practical experiences on tactics used to suppress competition on standard gauge interstate rail lines.
- 6.5.3 The Committee specifically notes the ARTC's statement that access regimes prevent exploitation but do not promote competition. The Committee recognises that this is in itself a matter of contention.

Chapter 7: Establishing a Value for the Sale

- 7.4.1 The submissions to the Committee emphasised the importance of the rail access Regulator being independent.
- 7.4.2 The Committee notes that concerns were raised about an Access Code, specifically the effectiveness of the setting of a floor and ceiling price in preventing the operator of a vertically integrated system from stifling competition.

- 7.4.3 The Committee believes that consideration should be given to spreading rail track lease payments periodically instead of providing for one large upfront fee. It was submitted to the Committee that the advantage of this would be that the new operator would then have more capital to apply to the maintenance and improvement to the rail infrastructure.
- 7.4.4 The Committee recognises that the issue of an “up-front” lease payment is a point of conjecture and believes the views expressed to the Committee should be explored further.

Chapter 8: Effect of Sale on Westrail Employees

- 8.6.1 The Committee believes that a situation should be avoided whereby the employer and employees are faced with instant industrial negotiations should the privatisation of Westrail’s freight business eventuate.
- 8.6.2 The Committee notes the concerns raised about the difficulties in transferring superannuation under a Government scheme to private schemes and the effect of an employee’s decision to opt for Government redeployment over transferral to the private sector.
- 8.6.3 The Committee notes the Union’s concerns about job losses following privatisation. The Committee further notes evidence that Westrail has already undergone an extensive process of restructuring and considers that large scale retrenchments are an unlikely consequence of privatisation.

Chapter 9: Effect on the Grain and Mining Industries in Western Australia

- 9.3.1 The Committee finds that there are a number of issues, mostly unrelated to the sale itself, which have the potential to substantially alter the dynamics of the grain haulage task for the rail service provider.
- 9.3.2 The Committee finds that the probability of pressure being exerted on the present price averaging arrangements between standard gauge and narrow gauge rail clients is high, and this may lead to a disaggregation of freight charges for grain.
- 9.3.3 The Committee believes that in some cases this disaggregation will lead to either commercial pressure to close lines, or to the requirement for the private owner to invest heavily in a low volume regional network, which may have limited potential for growth other than in the grain industry itself.

- 9.3.4 The same pressures would apply to a Government-owned Westrail in the same circumstances. The Committee notes that Westrail and the taxpayer have absorbed losses that were sustained during the period of time taken to make the investment required to regain commercial competitiveness with road transport. An equal capacity will need to be demonstrated by any potential private owner. This does not prevent community service obligation payments being utilised by the Government for the public interest.
- 9.3.5 The Committee notes that while this possible dilemma is not principally related to the sale of Westrail, it serves to underline the importance that attaches to the capacity of a potential private operator to access significant investment capital in a relatively short period of time. Any deficiency in this area could have serious consequences for the grain industry in regions not currently served by a high efficiency railway. In this context the term “high efficiency” is not exclusive to standard gauge operations.
- 9.3.6 In the interests of more accurately defining the potential for significant grain freight rate variations which may arise from the changing dynamics of the grain industry, the Committee suggests that the Minister for Transport should address the House further on this matter.

Chapter 10: Local Government Concerns

- 10.4.1 The Committee notes that WAMA is opposed to section 46 of the *Rail Freight System Bill* which provides that rail corridor land once leased remains exempt from paying rates under the *Local Government Act 1995*. The Committee believes this issue should be considered further.

CHAPTER 2

INTRODUCTION

2.1 Inquiry

- 2.1.1 On 23 June 1999 the Legislative Council directed the Standing Committee on Public Administration to inquire into the Government proposals for the sale or lease of Westrail freight operations, track network, rolling stock and associated infrastructure. The motion was:

“That the House direct the Standing Committee on Public Administration to inquire into Government proposals for the sale or lease of Westrail freight operations, track network, rolling stock and associated infrastructure.”

- 2.1.2 The Western Australian Government proposes to sell Westrail’s freight business and lease the railway track and railway land corridor to one entity. This would create a “vertically integrated” system whereby both the rail track infrastructure (below rail), and locomotives, rolling stock and freight operations including contracts (above rail) would be initially controlled by the same entity. The *Government Railways (Access) Act 1998* and the proposed *Rail Access Code 1999* (Access Code), would provide the legislative framework for third party access to the rail network. The *Rail Freight System Bill* is intended to affect the proposed privatisation.
- 2.1.3 The Government undertook a consultation process by setting up the Rail Freight Sale Task Force. A Key User Group comprised of representatives from the WA Farmers’ Federation, Pastoralists and Graziers’ Association, Grain Logistics Committee, Chamber of Commerce and Industry, and Chamber of Minerals and Energy, was also established.

KEY ISSUES TO BE ADDRESSED

2.2 The sale and lease proposal for Westrail Freight business and associated track

The WA Government proposes to:

- a. sell all of Westrail’s freight rolling stock terminals, contracts and locomotives;
- b. lease the land in the rail corridor and associated infrastructure for 20 years plus options of 15 years and 14 years respectively;

- c. make it a condition of sale and lease that all existing contracts and State agreement obligations are honoured in their current form;
- d. effect the sale as a 100% trade sale;
- e. sell and lease Westrail's above and below rail operations to one entity;
- f. complete legislation establishing a third party rail access regime;
- g. provide that under the new lease the new operator retain the network identified by the Grains Logistics Strategic Plan¹ which expires in 2005;
- h. exclude any Government-owned rail operator from the bidding process;
- i. offer existing Westrail staff an opportunity to transfer their employment to the new owner of the business; and
- j. retain control over other forms of development within the rail corridor.²

2.2.1 The two main groups opposed to the sale are the Australian Rail Tram and Bus Industry Union (the Union) and the WA Farmers' Federation. The Union objects because of concerns that the jobs of Westrail workers may be lost if the freight business is privatised and at the very least current conditions of employment may be affected detrimentally. The WA Farmers' Federation believes that no great benefits from privatisation can be adequately demonstrated.

2.3 Whether the vertically integrated system proposed should be adopted

2.3.1 The Government proposes to sell and lease Westrail's freight business and associated track as a whole to one entity. A vertically integrated system with an accompanying open access regime is relatively uncommon elsewhere in the world and the Committee were unable to draw on precedent as a result. The Government believes that a vertically integrated system will allow for greater growth and efficiencies in the rail freight business. The Government also believes the access regime proposed is robust enough to allow for third party access and promote competition on the rail track.

2.3.2 Those involved in the rail industry generally are in favour of the sale and lease proposal but favour a vertically separate system at least in respect of the interstate standard gauge traffic. There is a feeling in the industry that the intended access regime will not be able to prevent anti-competitive behaviour from a new private operator of a vertically integrated rail system.

¹ The Grain Logistics Strategic Plan is devised by the Grains Logistics Committee, which is an advisory body to the State Government.

² Written submission on the Government's Proposals for the Sale and Lease of Westrail's Freight Business, Rail Freight Sale Task Force, July 1999, pp. 8-10.

2.4 The effect on Westrail employees

2.4.1 The Union submitted to the Committee that it was opposed to the sale. It fears that, as a consequence of the privatisation, there may be job losses and a lowering of the standard of working conditions. It also raised concerns about the Government redeployment system and difficulties relating to the shifting of Government Superannuation benefits of those employees transferring to the private sector.

2.5 Pricing issues

2.5.1 Access Price: Although rail access and privatisation are in fact separate issues, they are linked in that the access regime is being developed in anticipation of the privatisation of Westrail's freight business occurring. Schedule 4 of the proposed Access Code deals with access pricing. A floor and ceiling price would be set by the Regulator³. The floor price refers to the incremental costs resulting from its operations on the route and use of the rail infrastructure and the ceiling price refers to the total cost attributable to that route and that infrastructure.⁴

2.5.2 It is intended that parties will negotiate access agreements with accordance to the provisions of the Access Code⁵. An arbitration process is also set up to deal with disputes between the operators and those seeking access, should other dispute mechanisms prove unsuccessful.⁶

2.5.3 The Australian Rail Track Corporation (ARTC) submitted to the Committee that the setting of floor and ceiling prices did not prevent manipulation by a private operator of a vertically integrated system in a manner that would reduce competition.

³ See Part 3, Division, 1 section 14 of the *Government Railways (Access) Act 1998* and section 8 of the *Transport Co-ordination Act 1966*. The Regulator is responsible for monitoring and enforcing compliance with the Code. The Government announced in a media statement dated 7 September 1999 that it now supports an independent Regulator being appointed.

⁴ See Schedule 4, clause 4 and 5 of the *Government Railways (Access) Code 1999*.

⁵ See Part 3, Division 2 and Part 4 of the *Government Railways (Access) Code 1999*.

⁶ See Part 3, Division 3 of the *Government Railways (Access) Code 1999*.

- 2.5.4 Another concern raised to the Committee is that the arbitration process was too slow to combat any anti-competitive behaviour, given the nature and pace of the rail industry.
- 2.5.5 **Sale Price:** The Department of Transport engaged Macquarie Bank Limited to produce a report on *Western Australia Rail Access Regime Independent Assessment of Maximum Rate of Return on Rail Infrastructure*, to determine the weighted average cost of capital⁷ of Westrail's commercial and operating environment. This included Westrail's freight business and infrastructure.
- 2.5.6 Issues raised in submissions to the Committee include whether the sale price of the freight business should be discounted by the amount of the capitalisation of the "monopoly rent", being a reference to the increased value of the above and below rail by virtue of it being operated together, as opposed to being separate.
- 2.5.7 Another matter raised was whether rail track lease payments should be periodic rather than "upfront" to enable more capital to be available for investment in the infrastructure.

2.6 Grain and mineral haulage

- 2.6.1 Grain is a major component of Westrail's present freight. It is of great importance not only as a consequence of the volume per year moved but also due to the fact that as much as 65% of the Westrail network exists primarily for the purpose of the grain haul. The grain lines include the bulk of Westrail's regional, low volume narrow gauge network, as well as part of the higher volume standard gauge lines between Southern Cross and Kwinana, and Salmon Gums to Esperance.
- 2.6.2 The Committee sought evidence from various sectors of the grain industry in an endeavour to define the likely outcome for the industry of the proposed legislative changes. The grain industry is concerned about the effect of privatisation on the narrow gauge rail lines.
- 2.6.3 The Mining Industry is also a major customer of Westrail's freight business, especially in the Perth to Bunbury rail corridor. It appears to favour a vertically separate model.

⁷ The "weighted average cost of capital" refers to the target long term weighted average cost of capital appropriate to the railway infrastructure, expressed on a real before-tax basis. Schedule 4 of the proposed Access Code will provide that this is to be determined by the Regulator annually.

CHAPTER 3

THE SALE OF WESTRAIL FREIGHT BUSINESS

3.1 The Government's reasons for the sale

3.1.1 The Western Australian State Government seeks to sell the Westrail freight business because it believes that:

"... if Westrail remains within Government ownership, others will be able to bid for Westrail's more lucrative contracts. Westrail may find it difficult to compete within its constraints as a Government agency, and lose some of its current business to other rail operators".⁸

3.1.2 The Government's view is that if Westrail's freight business is not privatised, the existing low-margin rail traffic will have to bear a greater proportion of the fixed costs. It believes that Westrail's capacity to invest in the rail network will be jeopardised and its capacity to pay interest on its outstanding debt, which for the freight business alone is estimated at \$617.7 million at 30 June 1999, will be limited.⁹

3.1.3 On the other hand, the Government sees a private operator of Westrail as being able to:

- introduce innovation and operating efficiencies;
- expand the rail business in Western Australia and elsewhere;
- increase the use of rail and improve its competitiveness with road transport; and
- invest in railway track, rolling stock and equipment.¹⁰

3.1.4 Ultimately, the Government intends to use the proceeds of the sale of Westrail's freight business to pay off existing debts and reinvest in other State infrastructure.¹¹

⁸ Written submission on the Government's Proposals for the Sale and Lease of Westrail's Freight Business, Rail Freight Sale Task Force, July 1999, p. 11.

⁹ Ibid, p. 11.

¹⁰ Ibid, p. 11.

¹¹ Written submission on the Government's Proposals for the Sale and Lease of Westrail's Freight Business, Rail Freight Sale Task Force, July 1999, p. 12.

3.1.5 The Government views the proposed sale as the next step in the on-going process of land transport reform. The aim is a more competitive rail industry, better able to compete with other modes, especially road. As a result, it anticipates that there will be less traffic on road (than would otherwise occur) leading to significant environmental and social benefits.

3.2 The views of parties opposed to the sale

3.2.1 The Union

3.2.1.1 In its submission to the Committee, the Union objected to the sale. Apart from concerns about the effect on Westrail employees, it feared that rural towns and industry's vital transport needs would not be met by a private operator, whose primary objective is profit making.¹² The Union anticipates that the privatisation will lead to heavier road use at the expense of rail.

3.2.1.2 The Union cited Queensland Rail as an example of a government-owned railway that has maintained a publicly owned vertically-integrated structure and has protected and expanded its business in the current climate. The Union also notes the New South Wales rail system is entirely publicly owned, has adopted a vertically separate model, and has implemented an access regime that has been accepted by the Nation Competition Commission.¹³

3.2.1.3 Finally, the Union submitted that Westrail has dramatically improved its productivity and reduced its costs by taking a commercial approach to freight contracts. It therefore believes that privatisation is not justified on commercial grounds. The Union is generally concerned that any privatisation of Westrail may cause instability in the State's rail network.¹⁴

¹² Written submission of the Australian Rail Trams and Bus Industry Union, Mr Roger Jowett, National Secretary 16 July 1999, p. 4.

¹³ Ibid, p. 6.

¹⁴ Ibid, p. 9.

3.2.2 The WA Farmers' Federation

3.2.2.1 The WA Farmers' Federation (the Federation) does not believe that the benefits of privatisation have been adequately demonstrated.¹⁵ Its main concern is that under a privatised ownership, the freight charges to growers would increase. Potential buyers have indicated to the Federation that they see no competition on the narrow gauge lines, with the consequence that if the rates are pushed down on the standard gauge line as a result of the open access policy, they must go up on the narrow gauge lines. This could in turn induce more grain to turn to road transport.¹⁶

3.2.2.2 The Federation also saw a public owner as being more accountable than a private owner:

“Grain growers are concerned that the corporate owner will more than likely come from a country that is our biggest competitor on world grain markets.”¹⁷

Generally, the Federation sees the privatisation of Westrail's freight business (as well as the advent of the proposed third party access regime) as leading to disruptions in freight transport and costs in Western Australia.

¹⁵ Transcript of oral submission of WA Farmers Federation, Mr Kevin Mc Menemy, Mr Colin Nicholl, 12 July 1999, p. 1.

¹⁶ Ibid, p. 4.

¹⁷ Ibid, p .11.

3.3 CHAPTER SUMMARY

Proponents' Arguments	Opponents' Arguments
<ul style="list-style-type: none"> ▶ Existing low-margin rail traffic will bear a greater proportion of costs over time if Westrail is not privatised. ▶ Privatisation will introduce innovation and operating efficiencies. ▶ Privatisation will expand rail business and investment. ▶ Privatisation will increase competitiveness with road transport. ▶ General rail industry support for privatisation. 	<ul style="list-style-type: none"> ▶ Benefits of privatisation not adequately demonstrated. ▶ A public owner is more accountable and concerned with the public interest than a private owner. ▶ Concerns that rural town and industry transport concerns will not be a priority of a private owner. ▶ Concerns about the effect on Westrail employees.

3.4 COMMITTEE FINDINGS

- 3.4.1 The Committee notes the Government view that a private operator of Westrail's freight business will be able to introduce innovation and operating efficiencies and expand the rail business in Western Australia.**
- 3.4.2 The Committee notes that the Government believes Westrail's capacity to invest in the rail network will be limited and that its constraints of being a Government owned entity will result in current business being lost to other rail operators.**
- 3.4.3 The Committee notes that industry generally support the privatisation of Westrail's freight business.**
- 3.4.4 The Committee notes that the Australian Rail Tram and Bus Industry Union, expressed opposition to the sale as it fears job losses particularly in regional areas.**

3.4.5 The Committee notes that the WA Farmers' Federation is opposed to the sale on the grounds that the Government has provided insufficient evidence of the benefits of privatisation. It is concerned about the effect, particularly on the grain industry using narrow gauge lines, of private ownership with shareholder rather than public interest priorities.

CHAPTER 4

RAILWAY STRUCTURE

4.1 General background on rail structures

“Conceptually, modern railway structures tend to follow one of two models: vertically integrated, where one organisation controls both the track and the rail services; and vertically separated, where the above and below rail components of the railway operate independently.

*In most cases, where vertical separation has occurred, it has been accompanied by horizontal separation, usually by customer base (urban passenger/country passenger/freight) and sometimes also by geographical region. The most well-known example of this has occurred in the United Kingdom. New South Wales and the Commonwealth-owned interstate operations have also adopted this model in Australia”.*¹⁸

*“The pioneers of vertical separation in railways have been Sweden and the United Kingdom. In the UK, privatisation was also preceded by horizontal separation, and the freight business was offered for sale as six separate franchises. In the UK, also, some shippers operated their own rail services, adding to the competitive pressure. Five of the franchises were won by a single company, and the British rail freight market is now dominated by that company, with two others (one being one of the original franchises) claiming a small share of the market. Sweden has not seen any new competitors to challenge the incumbent (government-owned) rail freight operator”.*¹⁹

- 4.1.1 North America has a railway system based on a large number of private, vertically integrated, competing railways. Competitive access occurs in various forms. In the United States of America, these include joint terminal agreements and/or conferral of rights to the track, whereby one railway obtains the right to use the freight handling facilities and/or the line haul tracks of another railway at a particular location or along

¹⁸ Summary of the written submission by the Rail Freight Sale Task Force, Ms Anne Hill, Principal Policy Adviser, 10 August 1999, pp. 1-2.

¹⁹ Ibid, p. 7.

a particular route. Another form is interlining, whereby traffic is “handed off” between, and hauled by, several railway entities, each on its own track. Interlining may be agreed to in preference to utilisation of access rights to track as it may allow more effective use of each company’s locomotives. In the USA railways do a great deal of interlining, under terms that are largely unregulated.

- 4.1.2 US railways also perform reciprocal switching under terms subject to regulation, and exercise rights to track that are sometimes freely negotiated and sometimes result from regulatory mandates imposed by the Surface Transportation Board. Regulated access most often occurs in the context of rail mergers which would otherwise reduce competition. Access may also arise from the “bottleneck” provisions of transport legislation, administered by the Surface Transportation Board which allows it to direct railway owners to provide access where shippers are being disadvantaged by lack of on-rail competition. However, this regulated access is not an “open” access system, as it is referred to in Australia, but a targeted approach to increase on-rail competition for specific shippers and lines, and usually involves competitive access only for specified competitors.²⁰

4.2 Comparing structures

- 4.2.1 There are also cases where horizontal separation has been implemented (by geography and customer base) while vertical integration is retained for the individual businesses. Japan and Argentina provide examples of this internationally, and a similar model has been adopted in Victoria.
- 4.2.2 In addition to the differences in structure, the operating environments of railways differ in terms of:
- i. ownership (government or private);
 - ii. regulatory framework;
 - iii. competition (both intermodal and intramodal²¹, if competitive access to the track is available);
 - iv. market (passenger or freight, size and profitability of market, commodity mix (e.g. bulk or general), single or multiple origin/destination pairs);
 - v. size (in gross tonnage, tonne-kilometres and track length); and

²⁰ Ibid, p. 7.

²¹ “intermodal” refers to rail and road competition while “intramodal” refers competition with rail

- vi. commercial performance expectations (self-sufficient or subsidised).

The large number of combinations of characteristics means that it is difficult to make meaningful comparisons between railways.²²

4.3 Comparing the United States model to the vertically integrated model proposed for Western Australia

- 4.3.1 The United States railway system is a vertically integrated system with no open access. Most of the railway track is privately owned. The owner maintains the track and generally acts as the only operator on that track.²³

“In the United States, the railroads were built with private funds and have been owned privately for a number of years. An open access regime there is therefore looked upon as taking private property. It is somewhat different in Australia in which it is the sale of a public asset and putting restrictions on the sale.”²⁴

Mr Chabot, the Chief Executive Officer of Genesee & Wyoming Australia Pty Ltd, at his appearance before the Committee stated that:

“The situation here [in Australia] is different [from the United States], in that most of the rail freight traffic is hauling grain from silos to the port or hauling coal or iron ore from mine to port. In the United States grain and coal will continue to be predominantly uni-train moves...”²⁵

- 4.3.2 It is important to note that the particular model proposed for Westrail of a vertically integrated system with an open access regime is uncommon worldwide.

²² Summary of the written submission by the Rail Freight Sale Task Force, Ms Anne Hill, Principal Policy Adviser, 10 August 1999, p. 9.

²³ Letter from Genesee & Wyoming Australia Pty Ltd to the Public Administration Committee, Mr Charles Chabot, Chief Executive Officer, 23 July 1999, p. 2.

²⁴ Transcript of oral submission of Genesee & Wyoming Australia Pty Ltd, Mr Charles Chabot, Chief Executive Officer, 19 July 1999, p. 19.

²⁵ Ibid, p. 19. (text in brackets added). Note that “uni-train” is referring to trains assembled for one cargo.

4.4 COMMITTEE FINDINGS

- 4.4.1 The Committee believes that it is important to consider that a vertically integrated system with an open access regime is uncommon worldwide.**

CHAPTER 5

ARGUMENTS FOR AND AGAINST THE VERTICALLY INTEGRATED STRUCTURE PROPOSED BY THE GOVERNMENT IN WESTERN AUSTRALIA

ARGUMENTS FOR A VERTICALLY INTEGRATED STRUCTURE IN WESTERN AUSTRALIA.

5.1 Rail Freight Sale Task Force Position

5.1.1 The Rail Freight Sale Task Force (the Task Force) is in favour of selling Westrail's freight business and leasing its rail tracks to one entity, this being a vertical integration model. It had concluded, that to split the above and below rail functions would be artificial since infrastructure and rolling stock are both assets deployed to produce a single service.²⁶

5.1.2 The Task Force believes that to achieve the best outcome it is necessary for infrastructure and operations to be technologically and managerially integrated, to allow for both operational efficiency in the short term and appropriate investment decisions to be made in the long term.²⁷

5.1.3 The cost of converting to a privately owned vertically separated rail system was also examined by the Task Force, which concluded that rail operations were more cumbersome and costly under a vertically separate system:

“Under a vertically separate mode, the relationship between infrastructure provider and train operator is governed by the access contract. In addition to the allocation of risk, contracts need to cover a myriad of other issues including track, terminal and depot access, specification of output and performance standards, dispute resolution mechanisms and procedures for prioritisation and timetabling.

²⁶ Written submission on the Government's Proposals for the Sale and Lease of Westrail's Freight Business, Rail Freight Sale Task Force, July 1999, p. 34.

²⁷ Ibid, p. 35.

*With vertical integration, these issues are resolved by management responsible for the performance of the assets as a whole”.*²⁸

- 5.1.4 The Task Force also addressed the argument that vertical separation allows greater competitive benefits. The Task Force believes the proposed rail access regime will safeguard against anti-competitive behaviour. The proposed “ring fencing” provisions have “built in” confidentiality requirements, which ensures that the above-rail component of the business does not have access to information provided by its competitors as part of their track access negotiations. The Task Force concluded that any additional cost to operations due to ring fencing for a vertically integrated operator would be significantly less than would be incurred by full vertical separation.²⁹
- 5.1.5 The Task Force believes that there may be some potential advantages to separation if it results in increased on-rail competition over and above what is possible with a competitive access regime. However, it also believed that there is a significant risk of reducing the efficiency of the system, increasing costs to users, potentially losing market share to road transport, asset deterioration due to lack of reinvestment, and possibly a necessity to rejoin the ranks of railways that require a government subsidy to remain operational.³⁰
- 5.1.6 The Task Force submitted that a quantitative assessment of the economic effects of vertically separating the Westrail freight business would be speculative, involving numerous assumptions about:
- a. which markets attract significant, sustainable competition;
 - b. the benefits that would result from that competition;
 - c. the extent to which vertical integration would hinder the full expression of that competition; and
 - d. the extent to which contestability would imitate the effects of actual competition.
- 5.1.7 The Task Force believes that the costs associated with the separation of the business need to be set against the assumptions outlined above, including:
- a. the duplication of administrative functions;

²⁸ Ibid, p. 36.

²⁹ Ibid, p. 38.

³⁰ Ibid, p. 36.

- b. loss of economies of scale and scope;
- c. extra transaction and possibly litigation costs; and
- d. the loss of the efficiency of integrated operational and investment decision making.

5.1.8 In essence, the Task Force believed that while the **costs** of separation might be estimated in quantitative terms, the **benefits** cannot.³¹

5.1.9 It believed that the decision on the most appropriate structure for the Western Australian railway system must be based on previous performance, the evidence of railways elsewhere, and a realistic assessment of the future operating environment in Western Australia. This includes the State rail access regime, which is expected to be certified as effective under the *Trade Practices Act 1974* by the National Competition Commission later this year.³²

5.2 Minister for Transport's position

5.2.1 The Minister for Transport, the Hon Murray Criddle MLC, submitted to the Committee the Western Australian Government's reasoning for its preferred structure for the sale of Westrail's freight business.

5.2.2 The Government believes that vertical integration is appropriate where traffic density is low and believes that additional intra-modal competition is likely to be minimal with stronger intermodal competition, namely from road transport. In order to compete effectively in such an environment, it views vertical integration as the best way of maximising technical efficiency in rail, making it more competitive with road as a transport mode.³³

5.2.3 The Government also finds "little merit in horizontally desegregating Westrail's above rail business in order to create multiple rail operators"³⁴, a model which it sees leading to additional cost and complexity in the industry due to loss of scale and scope. This is

³¹ Ibid, p. 36.

³² Written submission from the WA Government on the Preferred Structure for the Sale of Westrail's Freight Business, Minister for Transport, July 1999, p. 2.

³³ Ibid, p. 24.

³⁴ Written submission from the WA Government on the Preferred Structure for the Sale of Westrail's Freight Business", Minister for Transport, July 1999, p. 25.

because Westrail as a small railway by world standards, is highly sensitive to any additional costs introduced by vertical separation.³⁵

- 5.2.4 Regarding the effect of vertical integration on competitiveness, the Government believes that there is no incentive on a below rail operator to hinder access to an above rail operator who brings in extra traffic “from a market that is of no commercial interest to the integrated operator”, but rather that the incentive will be to optimise the use of the track.³⁶
- 5.2.5 The Government also believes that the proposed access regime will be adequate to prevent a restriction of access to the below rail system, by prohibiting a railway owner and operators from engaging in conduct that will hinder access by others to any part of the railway network.
- 5.2.6 A further safeguard is that rail owner-operators will be required to use reasonable endeavours to avoid unnecessary delay and meet the needs of the other party when negotiating an access agreement. Shippers will also be entitled under the Access Code to negotiate an access agreement directly with the railway owner and then to seek tenders from rail service operators to provide the freight carriage based on the pre-negotiated access terms and conditions.³⁷
- 5.2.7 The Minister for Transport’s written submission stated that international experience shows that all vertically separate railways, without exception, are subsidised, especially the below rail businesses, but often also the above rail businesses and that “all commercially successful railways are vertically integrated...”.³⁸

5.3 Productivity Commission, Progress in Rail Reform Draft Report, March 1999, discussion on vertically integrated structure and low volume regional railways

- 5.3.1 The Australian Productivity Commission examined the issue of vertical integration and vertical separation (as well as horizontal separation) of the rail networks, in relation to the density of traffic using a particular rail network. The Productivity Commission found that the competitive gains usually associated with vertical separation were less

³⁵ Ibid, p. 25.

³⁶ Ibid, p. 38.

³⁷ Ibid, p. 38.

³⁸ Ibid, p. 1.

likely with low volume regional railways because they already face strong intermodal competition, namely from road transport.³⁹ It found that, “*Improvements on performance and competitiveness in relation to road are best achieved by separating out the low volume regional railways from other rail networks and allowing the networks to operate as vertically integrated businesses*”.⁴⁰ In the Draft Report, Western Australia is cited as an example of a low density regional railway system.

5.3.2 The Productivity Commission suggested that many low volume regional railways were suited to horizontal separation, namely the separation of types of service, because they were regionally based and largely radial.⁴¹

5.3.3 The Australian Rail Track Corporation (ARTC) agreed with the Productivity Commission that low volume narrow gauge rail systems should remain vertically integrated if privatised. Mr David Marchant, the Chief Executive Officer of ARTC, stated, in his oral submission to the Committee that if small track areas are forced to maintain some national standard above what the market can bear, they would be “priced out of existence”. He cites the experience with the low volume track in New South Wales as an example.⁴²

ARGUMENTS AGAINST A VERTICALLY INTEGRATED STRUCTURE IN WESTERN AUSTRALIA.

5.4 Productivity Commission, Progress in Rail Reform Draft Report, March 1999, discussion on the issue of separation structures and competition

5.4.1 The Productivity Commission found that, generally speaking, structural separation of the rail system improves performance by promoting both intermodal and intra modal competition, facilitating the regulation of private monopolies, promoting competition “for” the market (as opposed to “in” the market), and implementing different policies in different markets.⁴³

³⁹ Progress in Rail Reform Draft Report, Productivity Commission, March 1999, p. 100.

⁴⁰ Ibid, p. 99.

⁴¹ Ibid, p. 99.

⁴² Transcript of oral submission of the Australian Rail Track Association, Mr David Marchant, Chief Executive Officer, 18 August 1999, p. 21.

⁴³ Progress in Rail Reform Draft Report, Productivity Commission, March 1999, p. 94.

5.4.2 However, the Productivity Commission also found that the implementation of structurally separate rail systems involve costs arising from the need to coordinate and formalise the interactions with other operating companies.⁴⁴

5.5 G13 Pty Ltd submission regarding the effect on intermodal competition of vertical integration

5.5.1 Michael Purcell is the Director of G13 Pty Ltd (G13), which has interests in interstate passenger services within Australia. He submitted to the Committee that while he favoured the privatisation of Westrail's rail freight business and the leasing of the rail tracks, he believed privatisation should be to a vertically separate system.

5.5.2 The reasoning put forward by Mr Purcell was that vertical integration would lead to high charges for the use of the rail tracks because the rail operator would be able to manipulate the market to discourage other rail operators. He believed that the national competition framework and the proposed legislative framework would be inadequate in preventing tactics that block access to rail tracks:

*"G13 is well familiar with the ability of an operator in control of an asset to frustrate entry by another party notwithstanding strong legal and political direction to be cooperative."*⁴⁵

5.5.3 Mr Purcell also referred in his submission to differences in the marketing, financing and operating approach required for operating above and below rail. He stated that above rail locomotives and rolling stock are usually required in response to immediate customer demand with short term finance secured against assets. In contrast, track is installed for strategic reasons, with financial investment being in anticipation of long term total demand.⁴⁶

5.5.4 Mr Purcell suggested that Westrail be disposed of in the following separate parts:

- a. the sale or lease of the standard gauge network to an infrastructure entity prohibited from providing above rail services;

⁴⁴ Ibid, p. 98.

⁴⁵ Written submission of G13 Pty Ltd, Mr Michael Purcell, Director, 1 August 1999, p. 4.

⁴⁶ Ibid, p. 5.

- b. the sale or lease of the narrow gauge network to an infrastructure entity prohibited from providing above rail services;
- c. the sale of the standard gauge above rail business; and
- d. the sale of the narrow gauge above rail business as a whole or in parts.⁴⁷

5.6 Chamber of Minerals and Energy view on the importance of a robust access regime to accompany any vertically integrated system

5.6.1 The Chamber of Minerals and Energy (the Chamber) favours the privatisation of Westrail but prefers the vertically separate model. The Chamber believes that although the Government's sale of a vertically integrated system may attract a greater sale price and may lead to efficiencies in operation, these advantages are outweighed by its ability of the new operator to manage the track against the interests of other track users.⁴⁸

5.6.2 Mr Ian Satchwell, the Chief Executive Officer of the Chamber, in his written submission stated that he believes the currently proposed third party access regime is not sufficiently "robust" to prevent this imbalance occurring. He suggested that Western Australia adopt either an industry wide Regulator along the lines of the Regulator General in Victoria or (as the second option) an independent rail specific Regulator.⁴⁹

5.7 The Rail Access Corporation, manager of the vertically separate NSW rail network and the argument that a vertically integrated network operator has an incentive to preclude access

5.7.1 The Rail Access Corporation (RAC), submitted that the Western Australian Government's objectives could be achieved, and the public interest greater protected by selling Westrail as a vertically separate system.

5.7.2 Mr Derek Harris, the Chief Executive Officer of RAC, submitted that in Australia where operators retain control of the track "there is no evidence of effective competition".⁵⁰ He

⁴⁷ Written submission of G13 Pty Ltd, Mr Michael Purcell, Director, 1 August 1999, p. 7.

⁴⁸ Written submission of the Chamber of Minerals and Energy, Mr Ian Satchwell, Chief Executive Officer, 16 July 1999, p. 2.

⁴⁹ Ibid, p. 3.

⁵⁰ Written submission of the Rail Access Corporation, Mr Derek Harris, Strategic Development Manager, 16 July 1999, p. 4.

cited as examples, Westrail, Queensland Rail, Freight Victoria and Tasrail. In its submission to the Productivity Commission (a copy of which is also attached to its submission to this Committee) RAC expressed concern that a vertically integrated model could lead to distortion of the above rail market:

*“...a vertically integrated operator may be able to invest in new locomotives and rolling stock giving it efficiencies in a contestable market in the knowledge that it can cascade older, less efficient equipment into its vertically integrated market. This gives the old equipment a residual value that an operator without effective access to that vertically integrated market cannot realise”.*⁵¹

5.7.3 The RAC concluded that a vertically separated sale of the above rail and lease of the below rail businesses, would not be an impediment to the Government’s objectives and that in light of the problems it sees with the vertically integrated model, believed that it is the preferred option.⁵²

5.8 The National Rail Corporation Ltd views on the inadequacy of the current legislative framework to address access problems apparent with the vertically integrated system

5.8.1 National Rail Corporation (NRC) also appeared to favoured the vertically separate system above the vertically integrated rail system proposed by the Government. Alternatively, the NRC preferred a vertically integrated system accompanied by a strong access regime. Dr Fred Affleck, the General Manager of the NRC, in his oral submission to the Committee stated:

*“It (a vertically separate model) is our preferred model, but as I said in our submission, I think the jury is still out, so to speak, on whether that is a necessary precondition for competition. It is sufficient but is it necessary? What I said in our submission is that because it is proposed to have a vertically integrated sale by means of sale and lease, that means that the access regime that ensures that adequate competition will take place needs to be particularly strong to ensure that occurs.”*⁵³

⁵¹ Ibid, Attachment 1

⁵² Ibid, p. 7.

⁵³ Transcript of oral submission of the National Rail Corporation Ltd, Dr Fred Affleck, 27 July 1999, p. 2. (text in brackets added)

- 5.8.2 Dr Fred Affleck raised issues of possible conflicts of interest of directors and officers of a company that controls both the above and below rail operations:

*“...the potential for leakage of information across the boundaries between above and below-rail portions of the organisation is the greatest threat to competition”.*⁵⁴

- 5.8.3 Dr Affleck stated that ring-fencing arrangements, or the “competition reinforcing arrangements”, were important particularly at the negotiation stage of access agreements between the track operator and those seeking use of the track.⁵⁵ He believed that the leakage of information was an issue that needed to be seriously addressed if a vertically integrated system were to be adopted. The NRC view was that the currently proposed access regime is insufficient to prevent such leakages of information occurring:

*“The Rail Freight System Bill should require that the purchaser of the Westrail freight business establish a separate company to hold the lease of railway corridor land and infrastructure, and to provide track access to competing rail carriers. To this should be added a requirement that the above and below rail companies have separate Boards, separate CEO’s and other officers and that their Articles of Association contain an obligation to keep confidential from each other and their common owners all the business information not in the public domain, except as required by formal contractual relationships between them”.*⁵⁶

- 5.8.4 Dr Affleck does not see this as impeding close cooperation between two such companies. He sees the above strategy as a way to enable investors to have the “operational synergies” available which safeguard against the restrictions on third party access.⁵⁷
- 5.8.5 The NRC in its submission to the Committee also addressed the correlation between the volume of traffic on a rail system and the appropriateness of a vertical system. Dr Affleck disagreed with the conclusions drawn by the Productivity Commission Draft

⁵⁴ Ibid, p. 2.

⁵⁵ Ibid, p. 2.

⁵⁶ Written submission of the National Rail Corporation Ltd, Dr Fred Affleck, General Manager Corporate Affairs, 21 July 1999, p. 6.

⁵⁷ Transcript of oral submission from the National Rail Corporation Ltd, Dr Fred Affleck, General Manager Corporate Affairs, 27 July 1999, p. 7.

Report, that low volume regional rail networks were suited to a vertically integrated system: “The definition of low volume regional railways is too simplistic and general to warrant the conclusion drawn.”⁵⁸

- 5.8.6 The test suggested by Dr Affleck is whether vertical integration would have the effect of creating (or re-creating) a rail monopoly. Dr Affleck believed that using this test, a rail monopoly would be created on any regional line with “more than minimal volume” particularly involving more than one bulk commodity.⁵⁹ Examples cited in Western Australia are the corridors serving the Eastern Goldfields, iron ore shipping from Koolyanobbing to Esperance and the lines providing rail access for bauxite transport.⁶⁰

⁵⁸ Written submission of the National Rail Corporation Ltd, Dr Fred Affleck, General Manager Corporate Affairs, 21 July 1999, p. 9.

⁵⁹ Ibid, p. 9.

⁶⁰ Ibid, p. 9.

5.9 CHAPTER SUMMARY

Proponents' Arguments	Opponents' Arguments
<ul style="list-style-type: none"> ▶ The Task Force is in favour of a vertically integrated system whereby the above rail freight business is sold and the below rail infrastructure is leased for a potential of 49 years to ONE entity. ▶ Technological and managerial integration allows for operational efficiency and appropriate investment decisions. ▶ Vertical separation poses a significant risk of reducing the efficiency of the system, causing deterioration of assets and increasing cost to users. ▶ Quantitative assessment of the economic effects of a vertically separate system is speculative. ▶ The Rail Access Code is sufficient to ensure competitiveness and prevent restrictions to third party access. ▶ The Productivity Commission favours vertical integration of low volume regional railways. 	<ul style="list-style-type: none"> ▶ The rail industry overwhelmingly supports vertical separation over vertical integration. ▶ A rail operator of a vertically integrated system would be able to manipulate the market to discourage other rail users. ▶ Above rail responds to immediate demands while below rail investment is made in anticipation of long term demand. ▶ The proposed Rail Access Code is insufficient and will not adequately “ring-fence” the operations of an operator controlling the above and below rail. ▶ With vertically integration there is a potential for leakage of information between above and below rail operations. ▶ The Productivity Commission conclusions regarding low volume regional rail is “too simplistic”. ▶ The proposed system will recreate a monopoly but a private one which is unconcerned about the public interest.

5.10 COMMITTEE FINDINGS

- 5.10.1** The Committee notes that the rail industry overwhelmingly supports privatisation but generally would prefer a vertically separated system rather than a vertically integrated system. This is partially due to concerns that the Access Code will be insufficient in allowing third party competition.
- 5.10.2** The Committee is concerned with the prohibition on Government-owned entities bidding for the proposed rail sale and lease. This restricts bidding from Europe where rail operators are predominantly Government-owned. It also prevents the ARTC (which is owned by the Commonwealth Government) from bidding, as well as other Australian operators.
- 5.10.3** The Committee therefore believes that the proposed vertically integrated system will be most attractive to bidders from the United States where there is a history of private rail ownership and vertical integration. The Committee believes that the reasons, implications and justification for this restriction in bidding should be explored further.
- 5.10.4** The Committee notes that the NRC expressed the view that the proposed access regime is insufficient to prevent leakage of information between above and below rail operations if the system is vertically integrated.
- 5.10.5** The Committee notes that the Productivity Commission Draft Report on Progress in Rail Reform concluded that a low volume regional network is better suited to a vertically integrated system.
- 5.10.6** The Committee notes that amongst witnesses, there was some support for the Productivity Commission's conclusion that regional Western Australia is a low volume regional network and therefore is better suited to a vertically integrated system. However, the Committee notes that the NRC disagrees with the Productivity Commission's conclusion and sees it as "too simplistic".
- 5.10.7** The Committee notes the ARTC submissions that although the standard gauge interstate lines should be vertically separate, it is in favour of a vertically integrated narrow gauge intrastate system because of economies of scale involved. The Committee is concerned that requirements to suit national standards above consumer demand may prove too costly for operators. The Committee believes that the Bunbury to Perth rail line should be looked at closely as the two main customers from the mining sector may leave an owner of only track (in a vertically

separate system) in a much weaker position to negotiate with dominant customers to the detriment also of other potential users of the track.

5.10.8 The Committee notes that the Government and Task Force submissions argue that a privatised vertically integrated system, with a third party access regime, would promote competition and lead to development and innovation in the rail freight industry. Each submit that meaningful comparisons of other rail systems is difficult because of different operating environments, with differences in size of rolling stock, levels of competition, regulatory frameworks and markets.

CHAPTER 6

RAIL ACCESS

6.1 Government's argument in favour of the proposed regime

6.1.1 The Government believes that the proposed *Government Railways Access Code 1999* (the Code) will address any problems of access being denied to third parties by an operator of a vertically integrated rail network in the following ways:

- a. The proposed Code will specifically prohibit the rail owner (clause 6) and operator (clause 33) from engaging in conduct aimed at hindering access by any person to any part of the railways network to which the Code applies;
- b. the rail operator will be required (clause 16) to use all reasonable endeavours to avoid unnecessary delays and to meet the requirements of a proponent who has complied with the Code, in negotiating access agreements;
- c. it is expected that access agreements will contain performance standards, performance indicators and some provision for redress if the agreed performance standards are not met by either party; and
- d. the proposed access regime will allow for an independent arbitration mechanism should negotiation or dispute mechanisms agreed by the parties fail (Division 3).⁶¹

6.1.2 It is the Government's position that an operator of a vertically integrated railway does not have any incentive to hinder access but instead will try to maximise the use of the railway. It anticipates that additional traffic will be gained by rail as a result of the combination of the access regime and the desire to make the rail business grow.

6.2 Interstate access arrangements

6.2.1 The ARTC, fully owned by the Commonwealth Government, was established to provide a "one stop shop" service to rail track users of the interstate network. It currently owns rail track in South Australia, extensions to Alice Springs, Kalgoorlie and Broken Hill, and has a lease over interstate track in Victoria.

⁶¹ Written submission from the WA Government on the Preferred Structure for the Sale of Westrail's Freight Business, Minister for Transport, July 1999, p. 38.

- 6.2.2 The 1997 intergovernmental agreement which established the ARTC gives it the exclusive right to sell access for interstate rail operators to the East of Kalgoorlie. Westrail is currently in negotiation to provide the ARTC with the exclusive right to sell access for interstate operators to the Kwinana to Kalgoorlie section of the standard gauge line:

“An intergovernmental agreement signed in 1997 established the Australian Rail Track Corporation (ARTC) as a “one stop shop” for interstate rail operators to obtain rail access to the interstate track regardless of track ownership. The agreement further gives the ARTC the exclusive right to sell access to interstate rail operators. The ARTC may achieve this either through its own control of the track (ownership in South Australia and through a lease in Victoria) or under an agreement with the track owner (Western Australia, New South Wales and Queensland).”⁶²

6.3 Potential inadequacies

- 6.3.1 In its submission to the Committee, the ARTC stated that it was in favour of the sale of Westrail’s freight business but believes that the standard gauge rail lines used for interstate transport should be vertically separated.⁶³
- 6.3.2 Mr David Marchant, the Chief Executive Officer of ARTC, in his oral submission to the Committee distinguished this interstate network from the narrow gauge intrastate rail tracks which he believes should remain vertically integrated:

“The argument for separation does not relate to all domestic track in Western Australia. ARTC supports the Productivity Commission’s Draft Report on separating interstate track and those regional tracks with high volumes. The smaller regional and single-purpose tracks would not benefit from separation as the cost distortions would not provide market benefits in the competition between road and rail.”⁶⁴

- 6.3.3 The ARTC further submitted that a privately operated, vertically integrated interstate standard gauge rail line would lead to access difficulties. Mr Marchant expressed the view that while access regimes could prevent exploitation, they did not promote

⁶² Ibid, p. 40.

⁶³ Transcript of oral submission of the Australian Rail Track Association, Mr David Marchant, Chief Executive Officer, 18 August 1999, p. 3.

⁶⁴ Ibid, p. 9.

competition. He also expressed a view that while there were legitimate ways in which a below rail manager could disadvantage above rail competitors, there are also a wide range of less ethical options available (*see paragraph 7.1.4*).

- 6.3.4 He explained that an operator of the above and below rail network may endeavour to squeeze out competitors while still satisfying the access requirements. This could be achieved by charging the ceiling price (the highest price allowed under the access regime). The price of accessing the track would therefore be unattractive to competitors in the current commercial environment in which intra-modal competition is intense.
- 6.3.5 Meanwhile the owner-operator's above and below rail operations, when consolidated, would still make a profit on the weighted value of its assets. The return on the above rail investment could be lower because of the increased access price the above rail operations would pay. However, the owner-operator would be better placed than its competitors, because it could counter the lower investment return on above rail operations against its below track operations.⁶⁵
- 6.3.6 Mr Marchant therefore believes that a private owner of a vertically integrated, standard gauge system would not be concerned that customers were lost to road freight. He submitted that, if the standard gauge network is vertically integrated, use of rail will decrease.⁶⁶
- 6.3.7 Mr Purcell, from G13 Pty Ltd told the Committee that the issue of "monopoly rent" should be considered when negotiating a sale price. "Monopoly rent" being the added position of strength of an operator (of a vertically integrated system) to negotiate access to rail with third parties.⁶⁷

⁶⁵ Ibid, p. 23.

⁶⁶ Transcript of oral submission of the Australian Rail Track Association, Mr David Marchant, Chief Executive Officer, 18 August 1999, pp. 22-23.

⁶⁷ Oral submission of G13 Pty Ltd, Mr Michael Purcell, Director, 14 August 1999, p. 12.

6.4 CHAPTER SUMMARY

Proponents' Arguments	Opponents' Arguments
<ul style="list-style-type: none"> ▶ The Rail Access Code addresses problems with third party access and will prevent anti-competitive behaviour. ▶ An operator of a vertically integrated system does not have an incentive to hinder access and would instead try to maximise the use of the railways. ▶ The 1997 intergovernmental access agreement saw the establishment of the ARTC. ▶ Westrail's current negotiations with the ARTC are for the ARTC to have the exclusive right to sell access to interstate operators under agreement with Westrail (the track owner). ▶ The intergovernmental access agreement with ARTC is expected to be finalised before any privatisation, and to be transferred and binding on the private operator. 	<ul style="list-style-type: none"> ▶ The ARTC believe that the interstate standard gauge rail track should be vertically separated. ▶ Access regimes can prevent exploitation but may not promote competition. ▶ An operator of a vertically integrated system may be able to squeeze out competitors in the above rail business. ▶ The "monopoly rent" situation would be created whereby the operator would have financial benefit by reason of controlling both above and below rail.

6.5 COMMITTEE FINDINGS

6.5.1 The Committee notes that the Government and the Task Force submitted that the proposed access regime will be sufficiently robust to promote third party competition in the proposed vertically integrated system. This is because of the provisions in the Access Code that prohibits the hindering of access and requires the rail owner to avoid unnecessary delays, as well as providing for an independent arbitration mechanism.

- 6.5.2** The Committee notes that several industry submissions viewed the proposed regime as being unable to balance out the advantage that a vertically integrated rail operator would have over others seeking access of the track. They pointed to their practical experiences on tactics used to suppress competition on standard gauge interstate rail lines.
- 6.5.3** The Committee specifically notes the ARTC's statement that access regimes prevent exploitation but do not promote competition. The Committee recognises that this is in itself a matter of contention.

CHAPTER 7

ESTABLISHING A VALUE FOR THE SALE

7.1 Access pricing and the Regulator

- 7.1.1 The proposed Access Code will provide the framework for the negotiation of third party access to rail in Western Australia and includes an arbitration process for dispute resolution.
- 7.1.2 Dr Affleck from the NRC expressed concern about the power of the Regulator under the Access Code. He stressed to the Committee in his oral submission the importance of the Regulator being independent. He raised concerns that the Regulator is a Government officer, being whomever holds the office of Director General of Transport.⁶⁸ (The Committee notes that subsequent to Dr Affleck's submission, the Minister for Transport has announced that the Regulator will be independent.⁶⁹)
- 7.1.3 Dr Affleck also submitted that the Access Code should be strengthened to allow the Regulator to intervene in the actual negotiation of access agreements to ensure that they are carried out in accordance with the Code.⁷⁰
- 7.1.4 Mr Purcell, of G13 Pty Ltd, stressed to the Committee the inadequacies of an access regime to enable adequate third party access under a vertically integrated rail system:

“G13 is well familiar with the ability of an operator in control of an asset to frustrate entry by another party notwithstanding strong legal and political direction to be cooperative. Tactics available during access negotiations include demands for commercially sensitive information, procrastination, un-competitive timetables and other operating constraint, un-commercial warranties and insurance, protracted legal drafting, and ambit price claims, possibly followed by lengthy and costly dispute and arbitration before regulatory authorities. If an access agreement is achieved, implementation will

⁶⁸ See Part 3, Division 1, section 14 of the *Government Railways (Access) Act 1998*.

⁶⁹ Media Statement: *WA to have Independent Regulator to Oversee Third Party using the State's Rail Network*, Minister for Transport, 7 September 1999.

⁷⁰ Transcript of oral submission of the National Rail Corporation Ltd, Dr Fred Affleck, General Manager Corporate Affairs, 21 July 1999, p. 10.

then be accompanied by continual 'unavoidable' aberrations and inefficiencies which will cause the other party's business to be more costly and less customer friendly than the alternative service offered by the vertically integrated owner."⁷¹

- 7.1.5 This reflects an industry concern that an access regime will not allow for adequate third party access to rail tracks and thus will not result in an increase in competition where a vertically integrated rail system exists under private ownership.

7.2 Lease payments periodic rather than 'upfront'

- 7.2.1 Derek Harris, the Strategic Development Manager of Rail Access Corporation in New South Wales (RAC), expressed concern about the management of the track with the long-term renewable leasing of the track from the Government:

*"There is a genuine risk that the track lessee will run down the track towards the end of the lease, thereby degrading the value of a public asset and imposing significant costs on the community."*⁷²

- 7.2.2 The RAC suggested that one way to safeguard against this occurring is to place a contractual obligation on the leaseholder to maintain the track.⁷³

- 7.2.3 Mr Purcell, from G13 Pty Ltd, when questioned by the Committee on the issue of lease payments, stated that there would be advantages in allowing for periodic rental payments for rail track rather than an upfront payment. He cited as an example his involvement with the financing of the Hamersley Iron Pty Ltd pipeline from Millstream to Dampier:

"The Government paid for that pipeline and charged a rent. The advantage was that the depreciation allowance on the pipeline was an immediate tax

⁷¹ Written submission of G13 Pty Ltd, Mr Michael Purcell, Director, 1 August 1999, p. 4.

⁷² Written submission of the Rail Access Corporation, Mr Derek Harris, Strategic Development Manager, 16 July 1999, p. 3.

⁷³ Ibid, p. 3.

deduction which considerably lowered the cost of capital for Hamersley Iron. The same would happen with a railway.”⁷⁴

7.3 CHAPTER SUMMARY

Proponents' Arguments	Opponents' Arguments
<ul style="list-style-type: none"> ▶ The Rail Access Code deals adequately with the issue of pricing to prevent anti-competitive behaviour. 	<ul style="list-style-type: none"> ▶ The Rail Access Code should be strengthened to allow the Regulator to intervene in the actual negotiations of access agreements. ▶ The Regulator should not be a government officer. ▶ An operator of a vertically integrated system can still in reality frustrate third party access to the below rail, notwithstanding a strong legal and political direction to co-operate. ▶ Lease payments for the below rail infrastructure should be periodic payments rather than upfront, so that more capital is available for the owner to apply to maintenance and improvement of the rail infrastructure.

⁷⁴ Transcript of oral submission of G13 Pty Ltd, Mr Michael Purcell, Director, 5 August 1999, p. 7.

7.4 COMMITTEE FINDINGS

- 7.4.1 The submissions to the Committee emphasised the importance of the rail access Regulator being independent.**
- 7.4.2 The Committee notes that concerns were raised about an Access Code, specifically the effectiveness of the setting of a floor and ceiling price in preventing the operator of a vertically integrated system from stifling competition.**
- 7.4.3 The Committee believes that consideration should be given to spreading rail track lease payments periodically instead of providing for one large upfront fee. It was submitted to the Committee that the advantage of this would be that the new operator would then have more capital to apply to the maintenance and improvement to the rail infrastructure.**
- 7.4.4 The Committee recognises that the issue of an “up-front” lease payment is a point of conjecture and believes the views expressed to the Committee should be explored further.**

CHAPTER 8

EFFECT OF SALE ON WESTRAIL EMPLOYEES

8.1 Task Force and Minister for Transport submissions

8.1.1 If the proposed *Rail Freight System Bill* is enacted, the Government intends to offer the affected Westrail employees the option of transferring employment to the new operator or remaining with the Government. However, the Government would prefer to attract all freight employees across to the new operator.⁷⁵

8.1.2 The terms and conditions of employment of the employees under the new operator will be the subject of negotiation between Westrail and any bidders. Mr Graham Baker, the Project Director of the Task Force, in his oral submission before the Committee, stated that these negotiations may include “some element of guaranteed employment for a period of time”.⁷⁶

8.1.3 Mr Baker conceded that it was difficult to impose requirements on the new operator on exactly how it developed the freight business. However, he believed that a private owner would have a better chance of maintaining regional development in rail than a Government owned Westrail which he anticipated would become “...a slowly decaying rail operation contracting its core business and struggling to find cash”.⁷⁷ The Task Force clearly believed that a private rail operator would be innovative and progressive, which would in turn provide new opportunities for Westrail employees.

8.2 The Union counter-argument is that employee concerns are not adequately addressed

8.2.1 Mr Roger Jowett, the Federal President of the Union, in his oral submission to the Committee states that:

⁷⁵ Transcript of oral submission on the Government’s Proposals for the Sale and Lease of Westrail’s Freight Business, Rail Freight Sale Task Force, July 1999, p. 11.

⁷⁶ Ibid, p. 12.

⁷⁷ Ibid, p. 12.

“Currently Westrail has 1,600 employees and our estimate is that 700 are directly employed in the freight task. As a guesstimate, 300 are involved in supply services through contracting, particularly in the maintenance of the infrastructure where a number of companies took over responsibilities from maintenance contracts two to three years ago. In 1990, the number of employees was 5,571”.⁷⁸

8.2.2 The Union is concerned that privatisation of Westrail will result in employee job losses, particularly in the regional areas. This is in light of the Productivity Commission’s estimation that two-thirds of the job losses in the Australian rail industry in the past 13 years has been concentrated in regional Australia.⁷⁹

8.2.3 The Union suggested that Western Australia would experience “significant rural job loss” as a result of privatising Westrail’s freight business and cited job losses in South Australia in regional areas following the privatisation in November 1997.⁸⁰

8.3 Superannuation problems as experienced with the Metrobus privatisation and its effect on redeployment outside the Public Sector

8.3.1 The Union noted that the privatisation of Metrobus led to difficulties with the redeployment process. One such difficulty was that some employees were reluctant to leave Government employment because they were in the defined benefits superannuation scheme.⁸¹ Another difficulty that the Union anticipates lies in obtaining redeployment for locomotive drivers who have been employed in a specific position for a number of years. Mr Jowett stated:

“I have a number of people in their fifties with 30 years’ experience as locomotive engineman. Any idea of retraining them or redeploying them would not be real.”⁸²

⁷⁸ Transcript of oral submission from the Australian Rail, Tram and Bus Industry Union, Roger Jowett, National Secretary, 4 August 1999, p. 4.

⁷⁹ Ibid, p. 4.

⁸⁰ Written submission from the Australian Rail, Tram and Bus Industry Union, Roger Jowett, National Secretary, 16 July 1999, p. 3.

⁸¹ Transcript of oral submission from the Australian Rail, Tram and Bus Industry Union, Roger Jowett, National Secretary, 4 August 1999, p. 15.

⁸² Ibid, p. 15.

8.4 The European Laws of Undertakings (Protection of Employment) provision - [TUPE]

8.4.1 The Union submitted to the Committee that any legislation for the privatisation of Westrail's freight business should include the provision that, "for a period of five years there will be no job losses" and provide for protection of employee wages and conditions.⁸³

8.4.2 Currently, the *Rail Freight System Bill* does not include any provision relating to Westrail employees in this context.

8.4.3 The Committee has examined this issue in its Report (No 12), *Investigations in the United Kingdom into Out sourcing and Contracting Out*, where reference is made to the European Union law operating in the United Kingdom privatisation process: the *Transfer of Undertakings (Protection of Employment Regulations 1991)* (TUPE):

"4.32 In essence the purpose of TUPE is to:

- open up the markets to competition; and
- to protect employees.

4.33 TUPE protects employees' jobs and conditions when their work is taken over by a new employer by requiring the maintenance of an employee's existing terms and conditions. Some of the consequences which apply include:

- the new employer who takes over the work must keep the existing workforce. They cannot pick and choose who will transfer (Reg 5);
- the new employer must offer a comparable position with the same rates of pay and conditions of service (Reg 5);
- time spent working for the previous employer counts towards length of service with the new employer;
- any dismissals related to the transfer are automatically unfair (Reg 8);
- collective agreements and trade union recognition are automatically transferred (Reg 9); and
- recognised unions have a right to be informed about and in relation to the transfer (Reg 10(5)).

⁸³ Ibid, p. 5. (see also *North Western Health Care Network v Health Services Union of Australia* (1999) VG 132 of 1998, FCA, 2 July 1999)

Under TUPE a duty is also imposed on the employer to inform and consult with representatives of the employees or their recognised unions.”⁸⁴

8.5 CHAPTER SUMMARY

Proponents' Arguments	Opponents' Arguments
<ul style="list-style-type: none"> ▶ The Government intends offering to transfer employment of existing employees to a new private operator or allow them to remain with the Government and be re-deployed. ▶ Terms and conditions of employees will be the subject of negotiations between Westrail and any bidders. ▶ The Task Force believes that a private rail operator will be innovative and progressive, therefore providing new opportunities for employees. 	<ul style="list-style-type: none"> ▶ The Union is concerned that job losses will follow if privatisation occurs, especially in rural areas. ▶ The TUPE European legislation has not been considered, whereby new employers are compelled to guarantee employment for a period of time after a transfer of a business. ▶ The relationship between Government superannuation and private superannuation funds (and the transferability between those two schemes) needs resolution.

8.6 COMMITTEE FINDINGS

8.6.1 The Committee believes that a situation should be avoided whereby the employer and employees are faced with instant industrial negotiations should the privatisation of Westrail's freight business eventuate.

8.6.2 The Committee notes the concerns raised about the difficulties in transferring superannuation under a Government scheme to private schemes and the effect of an employee's decision to opt for Government redeployment over transferral to the private sector.

⁸⁴ The Committee's *Investigations in the United Kingdom into Out sourcing and Contracting Out*, Report (No 13) of the Standing Committee on Public Administration, September 1999, p. 19.

8.6.3 The Committee notes the Union's concerns about job losses following privatisation. The Committee further notes evidence that Westrail has already undergone an extensive process of restructuring and considers that large scale retrenchments are an unlikely consequence of privatisation.

CHAPTER 9

EFFECT ON THE GRAIN AND MINING INDUSTRIES IN WESTERN AUSTRALIA

9.1 Privatisation's impact on the grain industry and associated issues

- 9.1.1 Since 1980 grain has been carried by Westrail subject to a contract which is negotiated by the industry, represented by the Grain Freight Steering Committee (more recently, the Grain Logistics Committee), and Westrail. Prior to 1980 grain freight rates were determined by regulation. The industry negotiating body has included producers, marketers and Co-operative Bulk Handling Limited (CBH) as the handling authority.
- 9.1.2 The Committee is aware of likely legislative changes to the structure of the grain industry scheduled to occur between the years 2000 and 2004.
- 9.1.3 The Pastoralists and Graziers Association Grain Committee (PGAGC) in oral submission to the Committee expressed its general support of the proposed privatisation. Mr Leon Bradley, the Chairman of the PGAGC, when questioned about the level of cross-subsidisation of narrow gauge by the more lucrative standard gauge line, did not agree that "massive" cross-subsidisation presently occurred.
- 9.1.4 Individual line accounting is not available to the Committee and as such we are unable to determine if any regional lines run at a loss. However, it is apparent to the Committee that price averaging between lines occurs but the amount cannot be quantified.
- 9.1.5 Mr Bradley believed that the main "driver" with regards to the narrow gauge rail lines, used extensively by the grain industry, was the competition with road.⁸⁵ He did not anticipate that privatisation would result necessarily in a running down of or a lessening of use of the narrow gauge:

"Cross-subsidy within business is standard practice. I anticipate that will be the case on the rail network. The viability for the rail network depends on the total volume. To sacrifice volume on the perimeter would be to undermine the viability of the whole lot.

⁸⁵ Transcript of oral submission of the Pastoralists and Graziers Association, Mr Leon Bradley, Mr Bruce Eyres, Mr Damian Capp, 26 July 1999, p. 8.

It is in the commercial operator's interests to pursue policies for the benefit of everyone."⁸⁶

- 9.1.6 The PGAGC oppose any suggestions that Government should endeavour to guarantee that narrow gauge rail lines remain open because of the possible detrimental effects on the grain industry. Mr Bruce Eyres, from the Transport Division of the PGAGC, commented to the Committee that the PGAGC would oppose any moves by Government to legislate to prescribe which rail lines should or should not be kept open as this would "compromise the integrity of a commercial operation".⁸⁷
- 9.1.7 What has interested the Committee in this regard is whether the proposed sale of Westrail would further complicate the likely outcome or add to pressure for a disaggregation of rail freight charges. CBH advised the Committee that it had confidence that it had unspecified commercial means of redirecting grain flows in the event that problems arising from any radical alteration in those grain flows began to impact on the use of its facilities, either by way of overloading or under-utilisation of existing CBH installations.⁸⁸
- 9.1.8 It was put to the Chairman of the Grain Logistics Committee, Mr Jim Flockart, that the effect on the whole question of organising the complex grain haulage task is one of uncertainty particularly in relation to the continued economic viability of many of the already marginal branch lines which make up the grain network.
- 9.1.9 He responded to this suggestion by pointing out that in the event of a very substantial fall in rates on the east/west standard gauge line, those growers who currently deliver to points on the branch lines which feed the standard gauge, would probably continue to do so. Even though these growers may have to pay more for that part of the route that was on the branch line, they would also benefit from the lower rates applicable to the standard gauge part of their grain's transport.⁸⁹

⁸⁶ Ibid, p. 9.

⁸⁷ Ibid, p. 17.

⁸⁸ Transcript of oral submission of Co-operative Bulk Handling Ltd, Mr Mencshelyi, Mr Allan Watson, Mr Adrian Parks, 4 August 1999, pp. 10, 11 and 12.

⁸⁹ Transcript of oral submission of the Grains Logistics Committee, Mr James Flockart, Chairman, 13 July 1999, p. 4.

- 9.1.10 The Macquarie Bank Ltd were engaged by the Department of Transport to draft a report on the *Western Australia Rail Access Regime Independent Assessment for Maximum Rate of Return of Rail Infrastructure*. With regards to Westrail's infrastructure the report concluded that:

“Whilst Westrail’s exposure to seven large customers may suggest significant risk, the majority of that risk is in fact borne by the above rail assets, as there is a low risk of mode substitution. Macquarie has therefore concluded that this risk is limited to the likelihood that these operations will significantly decrease their freight requirements. In other words, the principal specific risk assumed is that one or more of Westrail’s major customers will reduce or eliminate its freight task (eg by losing export contracts). The risk of mode substitution is considered remote and the risk that the loads will reduce or cease remains low in view of historical data and stakeholder consultation.”⁹⁰

- 9.1.11 The Committee notes that at least in respect of those parts of the grain haul which do not have access to the standard gauge line for any part of the journey, a significant increase in freight rates is a possibility. In that event, and in consideration of the unrelenting competitive pressure from road transport, the private operator would face the possibility of losing some market share to road if it were not able to shift or otherwise redress those increased costs in some way.

9.2 Privatisation’s impact on the mining industry

- 9.2.1 Alcoa World Alumina Australia (Alcoa) supports the sale of Westrail’s freight business and the lease of the associated below rail operations. It submitted however that it was in favour of a vertically separate system. Alcoa’s reasoning is that its rail requirements are high density and therefore that road freight is not a viable option to meet its transport needs:

“Given the major proportion of Westrail’s freight business that Alcoa represents, the reality is that, in the case of Westrail, competition from road will not occur for the majority of the business. Our only chance for competition is among rail operators under a fully open access regime.”⁹¹

⁹⁰ Western Australia Rail Access Regime Independent Assessment of Maximum Rate of Return of Rail Infrastructure Report, Macquarie Bank Limited, 23 August 1999, p. 31.

⁹¹ Written submission of Alcoa World Alumina of Australia, Kathryn Deane, Transport & Logistics Manager; Craig Lohman, Logistics Officer, 13 August 1999, p. 2.

- 9.2.2 However, in the oral submission of Mr David Marchant, the Chief Executive Officer of the Australian Rail Track Corporation Ltd, he expressed the view that the vertical separation of the Bunbury corridor should be approached with caution. He contended that the two main customers on the line (one of which is Alcoa) would be in a position to dominate a separated track owner at the expense of other users of the track:

“They would have the track owner over a barrel because he would be reliant on a revenue stream based on servicing that customer’s threat to move to another market, which is high anyway. The train operator and track owner in a combined negotiating situation has a better power of negotiation...”⁹²

- 9.2.3 There are therefore, very differing views as to appropriate arrangement for this rail corridor which is dominated by the mining industry.

9.3 COMMITTEE FINDINGS

- 9.3.1 **The Committee finds that there are a number of issues, mostly unrelated to the sale itself, which have the potential to substantially alter the dynamics of the grain haulage task for the rail service provider.**
- 9.3.2 **The Committee finds that the probability of pressure being exerted on the present price averaging arrangements between standard gauge and narrow gauge rail clients is high, and this may lead to a disaggregation of freight charges for grain.**
- 9.3.3 **The Committee believes that in some cases this disaggregation will lead to either commercial pressure to close lines, or to the requirement for the private owner to invest heavily in a low volume regional network, which may have limited potential for growth other than in the grain industry itself.**
- 9.3.4 **The same pressures would apply to a Government-owned Westrail in the same circumstances. The Committee notes that Westrail and the taxpayer have absorbed losses that were sustained during the period of time taken to make the investment required to regain commercial competitiveness with road transport. An equal capacity will need to be demonstrated by any potential private owner. This does not prevent community service obligation payments being utilised by the Government for the public interest.**

⁹² Transcript of oral submission of Australia Rail Track Corporation Ltd, Mr David Marchant, Chief Executive Officer, 18 August 1999, p. 19.

9.3.5 The Committee notes that while this possible dilemma is not principally related to the sale of Westrail, it serves to underline the importance that attaches to the capacity of a potential private operator to access significant investment capital in a relatively short period of time. Any deficiency in this area could have serious consequences for the grain industry in regions not currently served by a high efficiency railway. In this context the term “high efficiency” is not exclusive to standard gauge operations.

9.3.6 In the interests of more accurately defining the potential for significant grain freight rate variations which may arise from the changing dynamics of the grain industry, the Committee suggests that the Minister for Transport should address the House further on this matter.

CHAPTER 10

LOCAL GOVERNMENT CONCERNS REGARDING RATING OF RAIL CORRIDOR LAND

- 10.1 The Western Australian Municipal Association (WAMA) in its submission raised opposition to section 46 of the *Rail Freight System Bill* which provides that the rail corridor land once leased will be exempt from “any rate under the *Local Government Act 1995*”.⁹³ The Task Force are of the view that this is necessary to:

“..ensure that roads and railways are treated the same in terms of rates (otherwise the imposition of rates on railways may increase costs to the extent that traffic transfers from rail to road, with undesirable social and environmental consequences).”⁹⁴

- 10.2 Currently under sub-section 88(2) of the *Government Railways Act 1904* the Government railway land leased under section 63 of that Act is rateable, subject to an exemption granted to Co-operative Bulk Handling Limited.⁹⁵

- 10.3 The WAMA submits that a provision similar to the following Schedule 4, Division 7, section 36(3) of the *Dampier to Bunbury Pipelines Act 1998* should be inserted into the proposed Bill:

“The DBNGP Land Access Minister (Minister for Lands) is to pay to each Local Government in the district of which there is any utilised corridor land an amount equivalent to the rates that would have been assessable in the hands of an owner holding the fee simple in the land whose rates were assessable on the basis of unimproved value.”⁹⁶

⁹³ *Rail Freight System Bill* at section 46(1)(a).

⁹⁴ Facsimile from the Rail Freight Sale Task Force, Ms Anne Hill, Principal Policy Advisor, 4 August 1999.

⁹⁵ Ibid.

⁹⁶ Letter from the Western Australian Municipal Association, Ms Shaheen De Sousa, Policy Officer, 17 August 1999.

10.4 COMMITTEE FINDINGS

- 10.4.1 The Committee notes that WAMA is opposed to section 46 of the *Rail Freight System Bill* which provides that rail corridor land once leased remains exempt from paying rates under the *Local Government Act 1995*. The Committee believes this issue should be considered further.**

**Hon Kim Chance MLC
Chairman**

17 September 1999

APPENDIX 1: TERMS OF REFERENCE OF THE COMMITTEE

1. A Standing Committee on Public Administration is established.
2. The Committee consists of 6 members.
3. The functions of the Committee are:
 - (1) to inquire into and report to the House on the means of establishing agencies, the roles, functions, efficiency, effectiveness, and accountability of agencies and, generally, the conduct of public administration by or through agencies, including the relevance and effectiveness of applicable law and administrative practises;
 - (2) to consider and report on any bill referred to it by the House providing for the creation, alteration or abolition of an agency, including abolition or alteration by reason of privatization; and
 - (3) except as provided in Standing Order 339(c), the Committee shall not proceed to an inquiry whose sole or principal object would involve consideration of matters that fall within the purview, or are a function, of another Committee.
4. In this order:

"Agency" means-

- (a) an agent or instrumentality of the State Government, established for the purpose of developing, implementing or administering any program or policy with a public purpose or any such program or policy that relies substantially for its development, implementation or administration on public monies or revenue;
- (b) any person empowered by a written law to make a decision enforceable at law whether by that person or otherwise,

and, where appropriate, includes any agency officer or employee acting, or having ostensible authority to act, as the agent or delegate of the agency, but does not include:

- (c) a House of the Parliament, or any Committee or member of either House, or any officer or employee of a department of the Parliament;
- (d) a court of law or a court of record, or a judge or other member of either court;
- (e) any person whose functions are solely of an advisory nature and the failure to obtain or act in accordance with advice given by that person does not invalidate or make voidable a decision made by another person;
- (f) a police officer or other person in the course of exercising a power conferred by a written law to arrest or charge a person with the commission of an offence, or to enter premises and seize or detain any object or thing;
- (g) a local government within the meaning of the Local Government Act 1995;

APPENDIX 2: WRITTEN SUBMISSIONS RECEIVED

Name	Address	Date
Albany Port User Liaison Group	PO Box 5662 ALBANY WA 6332	27 July 1999
Alcoa World Alumina Australia	Cnr Davy & Marmion Streets BOORAGOON WA 6154	13 August 1999
Australian Rail Track Corporation Ltd	PO Box 10343 GOUGER STREET ADELAIDE SA 5000	26 July 1999
Australian Rail Tram and Bus Union	83-89 Renwick Street REDFERN NSW 2016	16 July 1999
Australian Southern Railroad (Genesee & Wyoming)	PO Box 2086 REGENCY PARK SA 5942	14 July 1999
Bunbury Port Authority	PO Box 4 BUNBURY WA 6231	16 July 1999
Chamber of Minerals and Energy	Locked Bag N984 PERTH WA 6844	16 July 1999
Chamber of Commerce and Industry	190 Hay Street EAST PERTH WA 6004	28 July 1999
Council for the National Interest, Western Australian Committee,	GPO Box K 845 PERTH WA 6001	16 July 1999
Co-operative Bulk Handling Limited	22 Delphi Street WEST PERTH WA 6005	15 July 1999
G13 Pty Ltd	PO Box 3 GLENSIDE SA 5065	2 August 1999
Geraldton Port Authority	PO Box 1856 GERALDTON WA 6531	14 July 1999
Goldfields Esperance Development Commission	PO Box 751 KALGOORLIE WA 6430	15 July 1999
Great Southern Railway Limited	3/434 St Kilda Road MELBOURNE VIC 3004	16 July 1999

Linkbusters	457 Jarrahdale Road JARRAHDALÉ WA 6124	8 July 1999
Minister for Transport Western Australia	12th Floor, Dumas House 2 Havelock Street WEST PERTH WA 6005	19 July 1999
G D Nind	PO Box 600 MARGARET RIVER WA 6285	received 13 July 1999
National Rail Corporation Ltd	PO Box 1419 PARRAMATTA NSW 2150	21 July 1999
Pastoralists and Graziers Association of WA (INC)	277 Great Eastern Hwy BELMONT WA 6104	12 July 1999
Rail Freight Sale Task Force	5th Floor, Dumas House 2 Havelock Street WEST PERTH WA 6005	16 July 1999
Rail Access Corporation	GPO Box 47 SYDNEY NSW 2001	16 July 1999
LC Richardson	139 Ardross Street ARDROSS WA 6153	15 July 1999
Shire of Serpentine - Jarrahdale	6 Paterson Street MUNDIJONG WA 6123	16 July 1999
Shire of Tambellup	46-48 Norrish Street TAMBELLUP WA 6320	16 July 1999
South Spur Rail Services	Lot 4 32 Rushton Road MARTIN WA 6110	12 July 1999
Toll Group	PO Box 522 NORTH SYDNEY NSW 2060	14 July 1999
WA Farmers Federation	4th Floor 239 Adelaide Terrace PERTH WA 6000	July 1999
Western Australian Municipal Association	15 Altona Street WEST PERTH WA 6005	16 July 1999
Graeme Vellacott	PO Box 322 CANNINGTON WA 6987	14 July 1999

APPENDIX 3: WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Name	Address	Date
Rail Freight Sale Task Force - Dr Christopher Whitaker Chairman - Ms Anne Hill Principal Policy Advisor - Mr Graham Baker Project Director - Mr Tim Sharp Deputy Crown Solicitor	Level 5, Dumas House 2 Havelock Street WEST PERTH WA 6005	6 July 1999
Westrail - Mr Wayne James A/ Commissioner of Railways - Mr John Goodall A/ General Manager, Freight - Mr John Leaf Financial Controller	Westrail Centre EAST PERTH WA 6004	12 July 1999
WA Farmers' Federation - Mr Kevin McMenemy General President - Mr Colin Nicholl Senior Vice President	Level 4 239 Adelaide Terrace PERTH WA 6000	12 July 1999

<p>Department of Transport</p> <ul style="list-style-type: none"> - Mr Michael Harris A/ Director General - Mr Alan Hubbard Executive Director, Regional & Policy Co-ordination 	<p>441 Murray Street PERTH WA 6000</p>	<p>13 July 1999</p>
<p>Grain Logistics Committee</p> <ul style="list-style-type: none"> -Mr Jim Flockart Chairman 	<p>PO Box 22 MERREDIN WA 6415</p>	<p>13 July 1999</p>
<p>Genesee & Wyoming Australia</p> <ul style="list-style-type: none"> - Mr Charles Chabot Chief Executive Officer - Mr Mark Hastings Chief Financial Officer 	<p>320 Churchill Road KILBURN SA 5942</p>	<p>19 July 1999</p>
<p>South Spur Rail Services Pty Ltd</p> <ul style="list-style-type: none"> - Mr James Wilson Managing Director - Mr Alan Nelson 	<p>Lot 21 32 Rushton Road MARTIN WA 6110</p>	<p>26 July 1999</p>
<p>Pastoralists & Graziers Association</p> <ul style="list-style-type: none"> - Mr Leon Bradley Chairman, Grain Committee - Mr Damian Capp Executive Officer - Mr Bruce Eyres Member, Grain Committee 	<p>277 Great Eastern Highway BELMONT WA 6104</p>	<p>26 July 1999</p>

National Rail Corporation Ltd - Dr Fred Affleck General Manager Corporate Affairs	85 George Street PARRAMATTA NSW 2140	27 July 1999
Great Southern Railway - Mr Stephen Bradford Chief Executive Officer	3/434 St Kilda Road MELBOURNE VIC 3000	27 July 1999
Independent Railway & Transportation Consultant - Mr Graeme Vellacott - Mr William Dawson	103 Bickley Road BECKENHAM WA 6107	27 July 1999
Co-operative Bulk Handling Ltd - Mr Allan Watson Chairman - Mr Imre Mencshelyi Chief Executive Officer - Mr Adrian Parks R & D Manager	GPO Box L886 PERTH WA 6842	4 August 1999
Australian Rail, Tram & Bus Union - Mr Roger Jowett National Secretary - Mr Robert Wells Branch Secretary	83-89 Renwick Street REDFERN NSW 2016	4 August 1999

Western Australian Municipal Association - Cr Jeremy Edwards President - Cr Ian Mickel Deputy President - Mr Christopher Thompson Executive Manager Transport & Roads - Miss Shaheen De Souza Policy Manager	15 Altona Street WEST PERTH WA 6005	4 August 1999
G13 Pty Ltd - Mr Michael Purcell Director	78 Grant Avenue ROSE PARK SA 5067	5 August 1999
Australian Rail Track Corporation Ltd - Mr David Marchant Chief Executive Officer	ARTC Building Passenger Terminal Road ADELAIDE SA 5000	18 August 1999

APPENDIX 4: COMMITTEE MEETINGS

30 June 1999

06 July 1999

12 July 1999

13 July 1999

19 July 1999

26 July 1999

27 July 1999

04 August 1999 (x 2)

05 August 1999

18 August 1999

15 September 1999

16 September 1999 (x 2)

APPENDIX 5: TABLE

**COMPARISON OF STRUCTURAL OPTIONS FOR THE SALE OF WESTRAIL'S
FREIGHT BUSINESS**

Comparison of Structural Options for the Sale of Westrail's Freight Business

Evaluation Criteria	Vertical Integration (with access) (private) (as proposed by WA Government)	Vertical Integration (with access) (government)	Vertical Separation (government/private)	Vertical Separation (private/private)
Community's perspective 1. Maximise economic benefit to WA through export enhancement 2. Regional development 3. Rail modal share 4. Impact on road transport 5. Environmental/social effects	1. Positive 2. Positive – ability and willingness to invest for the longer term 3. Increase due efficiency/innovation 4. Slow the growth of road transport 5. Positive	1. Little change 2. Little change 3. Probably remain same, but perhaps some further loss to road if rail loses efficiency and becomes more expensive 4. Road may become more attractive 5. May be negative, depending on 4	1. Above rail improvements will help, but limited by lack of track investment 2. Little change 3. May reduce due to reduced rail efficiency and increased transaction costs 4. Road may become more attractive 5. May be negative, depending on 4	1. Positive, but limited by coordination difficulties between above/below rail 2. Positive, but limited by coordination difficulties between above/below rail 3. May reduce due to reduced rail efficiency and increased transaction costs 4. Road may become more attractive 5. May be negative, depending on 4
Government's (taxpayers') perspective 1. Quality of the asset 2. Minimise ongoing cost to Government 3. Capital contribution to railway required 4. Debt to service 5. Revenue earned 6. Impact on road funding 7. Value of business	1. Protected by lease conditions 2. No cost – except there may be investment for social reasons 3. Transparent community service subsidies if required for social reasons 4. None for freight railway 5. One-off proceeds from sale, rental for network, taxes and charges 6. If rail modal share increases, less pressure for upgrading roads due heavy haulage 7. Maximised	1. Limited by Govt ability to invest for maintenance 2. May be a requirement for subsidy as revenue drops below costs, ongoing cost of govt agency 3. About \$100m per year 4. \$632m (30/6/99) and rising 5. \$???? (98/99) – may fall due competition 6. If rail modal share does not increase or is lost, increased need to upgrade roads for heavy haulage 7. Not applicable	1. Limited by Govt ability to invest for maintenance 2. Continuing subsidy to track, plus the operating cost of govt agency 3. About \$100m per year for track 4. \$632m (30/6/99) less value of above-rail component of debt 5. Insufficient to cover track maintenance and investment needs (unless increase access charges) 6. If rail modal share does not increase or is lost due to inefficiencies of separation, increased need to upgrade roads for heavy haulage 7. Insufficient to cover the debt	1. Protected by lease conditions 2. Subsidy to track owner likely to be needed 3. Transparent community service subsidies if required for social reasons, plus grants for track upgrades may be needed if revenue insufficient to justify 4. Some remaining debt due reduced value of sale 5. One-off proceeds from sale, rental of network, taxes and charges 6. If rail modal share does not increase or is lost due to inefficiencies of separation, increased need to upgrade roads for heavy haulage 7. Reduced and probably insufficient to cover debt (separate below rail business will not be highly valued)
Staff's perspective 1. Employment conditions 2. Job security 3. Career prospects	1. Likely to improve 2. Increased due growing business 3. Increased due international focus and larger parent organisation	1. No change 2. May reduce if market share lost 3. No change	No change for govt employees, for above rail employees: 1. Likely to improve 2. May increase if business grows, but reduce if market share lost due inefficiencies 3. Increased due international focus and larger parent organisation (although less than larger integrated company)	1. Likely to improve 2. May increase if business grows, but reduce if market share lost due inefficiencies (above and below rail) 3. Increased due international focus and larger parent organisation (although less than larger integrated company)
Shippers' perspective 1. Ongoing service availability 2. Freight rates 3. Service quality 4. Innovation/commercial approach	1. Protected by lease conditions 2. Likely to be more competitive with road 3. Improved due to innovation and market focus 4. Improved	1. Limited by Govt ability to invest for maintenance 2. Limited scope due need to service debt 3. Some improvement with more competition 4. No change	1. Limited by Govt ability to invest for maintenance 2. May become more competitive with road, but improvement limited due to increased transaction costs of separation 3. Limited by coordination difficulties between above/below rail 4. Some improvement above rail	1. Limited by returns from below rail (unless subsidised) 2. May become more competitive with road, but improvement limited due to increased transaction costs of separation 3. Limited by coordination difficulties between above/below rail 4. Some improvement