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Comment on the Review of the Railways (Access) Code 2000
Prepared For Economic Regulation Authority

I welcome this opportunity to address the looming crisis for WA graingrowers. This opening statement may appear emotive but if this situation is allowed to continue then I believe the following could occur.

1. **Graingrowers will eventually be priced out of the market by exorbitant freight costs.**
2. **All grain will be freighted by road – wall to wall trucks on local government and main roads (with the ensuing deterioration of the road networks).**
3. **Brookfield Rail (BR) will continue to price gouge as the lease comes to a conclusion. Obviously it is in their best interests for the rail to be valued at a high price if they intend to on sell the lease.**
4. **BR will continue to ask government for money with no transparency on their costs and their management of the WA rail system.**
5. **Graingrowers (CBH) will be liable for demurrage charges and penalties if the grain does not reach its destination in a timely manner.**

At this time there is an interim agreement in place between CBH and Brookfield Rail. This was reached, not so much by negotiation, but by BR standing over CBH – a not for profit cooperative (the graingrowers) after having told CBH to remove all their trains from a WA Government owned and Canadian Corporate leased infrastructure (the rail). The graingrowers (CBH) need to fill all contracts with the grain buyers and this means that the grain MUST get to port when a ship is in port. BR are fully aware of this and in my opinion used that knowledge to apply significant pressure for an interim agreement to be signed on May 1 2015. This is due to cease on December 31 2015. BR will use the fact that grain must be shipped to extract further dollars from the graingrowers (CBH) on January 1 2016. If the ERA process does not lead to a solution by June 24 2015 then both parties will be required to enter an arbitration process. It would appear that BR are looking to go around the process as has been done in the past (KARARA MINING) so CBH will be locked into an access price no matter what the ERA or arbitration decides.

As a background to the situation: In the days of the single desk graingrowers pooled their commodity and they carried the risk until the grain was sold. This took place over an eighteen month period. Today a majority of grain is sold for cash over harvest and in the first few months after harvest. This change means that the marketers will factor the uncertainty of freight times into the prices offered to growers. The

majority of grain is shipped in the first few months after production. The freight pipeline must be extremely efficient and fast. Rail is the best option to get tonnes to port in the best possible time frame. BR are fully cognisant of this fact and so when December rolls around and, if there has been no access price set, the graingrowers will once again be at the mercy of BR.

I would like to quote from the EISC report on The Management of Western Australia's Rail Freight Network

Page 37: 3.1

"In June 1999, the then Minister for Transport, Hon Murray Criddle, MLC, issued a media statement saying that ' one of our key aims is to get more freight off road and on to rail. There are continuing environmental and safety benefits attracting freight to rail. According to Mr Criddle ,'the decision to sell Westrail's freight business was not simply about money because this consideration was secondary to ensuring the long term best interests of the State's industries and communities"

Page 42: 3.22

"ensure that these strategic State assets remain in public ownership and allow the State to maintain ultimate control over track standard and capacity and service continuity, to the extent of being able to intervene to ensure continuation of services in the public interest if necessary"

Page 45: 3.37

"When the original lease (with ARG) was spoken about by the then Minister for Transport there was discussion of a $400 million investment by the lessee for upgrading track and rolling stock."

In the report the comment was made that it remains unclear as to why this amount was NOT written into the original agreement and so was never invested into the rail network.

On page 110 of the EISC report, previously mentioned, Mr Harris from Karara Mining is quoted as saying:

"in terms of the original negotiations and structuring of the agreements to

allow the Karara project to proceed and for access to rail to be had, when those discussions and negotiations were occuring, it became clear fairly early on that the regulatory framework that was in place did not really provide any real support for a company in Karara's position"

Mr Harris went on to say (page 111):

"*because there was no real mechanism to get information on existing floor and ceiling prices (the CODE) was completely ineffective and of no use"*

In the EISC report Mr Harris discusses the changes that are required to the code so it can better assist the rail users. Karara went on to sign an agreement with BR which will last for 15 years and expressly excludes either party from using the Code during that period.

The ERA has an important role to play in this process. The floor and ceiling price as set by the rail line lessee (BR) does not appear to me to be transparent. BR say what needs to be replaced, when it needs to be replaced and at their contractors price. I ask, does the ERA have the ability to get independent costings? Another issue for me, as a graingrower, is where do all our current access fees get spent?

Brookfield rail have negotiated with other rail users ,outside of the ERA process, because the users require certainty of both cost and access. The current process appears to be far too slow and more importantly too expensive.

As you would know BR have closed all Tier 3 lines which has exacerbated the grain freight problems. The original rail lease was written so that if the lessee did not operate the lines they could be given back to the WA Government and some other user could lease them. However this clause has been changed so BR can close the lines, ask government for money for maintenance and if that is not forthcoming, hold onto the lines so they cannot be used. If the government does fund the lines today what will the future look like? BR asking for government dollars for Tier 1 and 2 maintenance? BR coming to government for more funds when they have the lease and it should be their responsibility to look after the lines. BR have stated on numerous occasions that they cannot make a profit on some of the lines. Perhaps they need to look at the graingrowers. When they (the graingrowers) don't make a profit the government does not give financial

handouts. In fact the WA government has been quite vocal that unprofitable growers should leave the industry.

CBH (graingrowers) has stated on numerous occasions their willingness to take over the Tier 3 lines. I believe that BR are unwilling to give the control of those lines to another operator because that would be direct competition and BR are controlling a monopoly at this time. If the competition can show that the WA rail lines can be operated more economically then BR may have problems with their existing rail users in the future, as contracts come up for negotiation. CBH (graingrowers) have been as transparent as BR have allowed them to be throughout this whole process.

In conclusion I have been passionate with my submission and I may not have addressed all the issues but the bottom line is that graingrowers and their markets require security of supply at a reasonable cost. Graingrowers are the bottom of the food chain and have no way of increasing their income. As such we look to the ERA to ensure the process of setting a fair and reasonable price for our access to rail be prompt and take into account the fact that this freight chain is the lifeline to our markets. The issue is the VIABILITY of GROWERS and in fact ALL INDUSTRIES THAT RELY on RAIL. The issue is most definitely NOT the excessive profit driven foreign corporate (BR) and its Canadian shareholders. If I was a complete cynic I would also be concerned about the fact that the foreign corporate (BR) is Canadian owned and as we all know Canada is one of our direct competitors in the world wide grain markets.

As a final statement I urge all WA politicians to carefully scrutinise any future leases (e.g the Fremantle Port) to ensure that WA is never put in this position again. Foreign investment should be welcome but not to the detriment of Western Australia.

Lindsay Tuckwell
9 June 2015