Review of the Railways (Access) Code 2000

Prepared For Economic Regulation Authority

June 2015

Submission on behalf of:

Wheatbelt Railway Retention Alliance

(Representing over 100,000 people)

26 member Local Governments:

Beverley; Bruce Rock; Corrigin; Cuballing; Cunderdin; City of Fremantle; Dumbleyung; East Fremantle; Kondinin; Koorda; Kulin; Lake Grace; Merredin; Moora; Mount Marshall; Mukinbudin; Mundaring; Narembeen; Narrogin Shire; Nungarin, Quairading; Town of Narrogin; Trayning; Wickepin; Yilgarn; York.

WA Farmers Federation - 17 Affiliated Zones state-wide

With support from 15 groups and individuals:

Australian Association for the Study of Peak Oil and Gas
Curtin University Road Accident Research Centre
Farm Power Pty. Ltd.
Farming Champions
Fremantle Road to Rail Group
Helena Valley Estate Resident Association
Mount Helena Residents & Ratepayers Assoc. (Inc.)
Narrogin Environmental Action Team Inc.
Professor Peter Newman
Professor Stephen Powles
RACWA
Roadside Conservation Committee
The Muntadgin Farming Alliance
Wheatbelt South WALGA RoadWise Programme
Wildflower Society of WA

The Wheatbelt Railway Retention Alliance was formed in December 2010 bringing together Local Government, WA Farmers and many groups with the overwhelming agreement that the grain freight task must remain on rail, for a safe, efficient path to port for an important export commodity. Rail is vital for the safety of our communities and for the viability of the grains industry, which is the back bone of Wheatbelt towns and the State's economy.

WRRA Chairman: Greg Richards:

[redacted]

WRRA Coordinator: Jane Fuchsbichler:

[redacted]

1. Wheatbelt Railway Retention Alliance Members represent:

- Growers: – producing up to 16 million tonnes of grain in WA, one of the State's largest export industries.
- Local Government: - responsible for road conditions and the budget for repair and maintenance of this vital community infrastructure. Increased Rates needed to cover road repair and maintenance flow on to producers impacting upon growers' profitability/viability.
- Many groups and individuals whose lives and livelihoods are impacted upon by the cost of rail access, the impact on viability of the grains export industry, road conditions and road safety.

This submission will endeavour to show the importance of an efficient and affordable rail network, a vital artery for the viability of WA's export industries and communities both city and regional and the need for oversight of access fees and performance standards to protect WA Industries.

2. WA Grains Industry and export industries:

WA is a very large State; transport is one of the main budget items for export industries.

It is vital that some protection be in place for customers and businesses to ensure ongoing viability and ability to be internationally competitive.

For WA Grain growers the 3 big budget items are fertilizer, chemicals and freight.

Fertilizer and chemical input costs are flexible and impact upon crop production, depending upon seasonal conditions there is the ability to monitor conditions and vary this cost and application accordingly.

Freight is a cost which has to be absorbed regardless of seasonal conditions, it is a necessary cost to carry the commodity to port and is a straight cost coming off the gross value of the grain. The further from port the commodity has to be freighted, the higher the cost of freight and the bigger the impact on the end price of the grain which the grower receives.

2.1 CBH Load Net Freight: (prior to increases as a result of the Interim Access Agreement 1st May 2015)
Freight to Kwinana:

York	\$11.31/tonne*
Southern Cross	\$26.08/tonne
Kulin	\$26.68/tonne
Mount Walker	\$28.40/tonne*
Narembeen	\$27.42/tonne

*Growers at Mount Walker receive \$17.09/tonne less for each tonne of grain than a grower at York.
For an average size production of say 5,000 tonnes in a year this is additional \$85,000 freight from a grower's bottom line in the Mount Walker area.
The Planfarm Bank West Bench Mark Publication 2013/14 – a 6 year average for 2008/13, show the lower profit margins in low rain fall areas. Low rainfall areas are also the bigger distances from port, high freight cost areas. Any increases in freight cost impact heavily on viability in these areas.

In a recent letter to the editor in The West Australian Tuesday May 19th 2015 Opinion page 17 by Paul Larsen:

“The cost to CBH represents a small portion of the overall supply chain costs”. **Any cost to CBH really means cost to growers. CBH is a grower owned not for profit Cooperative with any surplus distributed back to the grower shareholders.** The access fees are not “a small portion” of costs; every dollar impacts on grower profitability/viability.

The letter to the editor by Paul Larsen19th May 2015, goes on to say that prior to the interim deal access fees were about $6.50 per tonne and that this cost “represents a minimal 2.5% of the market value of the grain.”

The market value is irrelevant this does not indicate profit margins, nor does it show the impact of increased freight rates on growers’ profit margins. Grain is sold on the world market and prices fluctuate. To justify access fees based of a % of gross commodity price is totally unacceptable, even more so with such a seasonal fluctuation in world prices and tonnes produced.

There is a point at which it would no longer be viable to use rail freight to carry grain to port. From figures shown in The Planfarm Bank West Bench Mark Publication 2013/14, the increases in access fees Brookfield have indicated they require could represent as much as 10% of operating profit in low rainfall areas (income less expenditure, before tax; drawings; capital and interest). These increases could put a big question mark over the long term viability of the grain industry in these areas.

There must be some protection in place to ensure rail access fees do not increase to a level which makes WA export industries, unviable and in particular the grains industry which is unable to pass on costs, but has to absorb them.

Economics & Industry Standing Committee Report “The Management of Western Australia’s Freight Rail Network” page 172 “Brookfield Rail generated funds from operations (Annual Report 2013, 28th March 2014 p72) of $US187 million for the year ending 31st December 2013”.

a) Why has the State’s rail infrastructure been allowed to deteriorate (Sections of Tier 3 Rail are deemed to be unsafe) whilst large profits have been recorded by Brookfield Rail?
b) Speed, weight, heat restrictions impact on efficiencies and increase costs to growers. Rail performance standards have declined. There must be performance standards in place. Increased access fees cannot be justified with decreases in performance standards.
c) What has happened to the average of around $45 million per year in access fees that growers have paid since privatisation of the rail in 2000 – a total of about $675 million?
d) What protection is in place for WA State rail freight infrastructure?
e) What protection is in place for WA Export industries and producers for affordable access fees?
f) It has been reported that Brookfield Rail’s return on capital is in the region of 27% (average grower return on profit approx. 3%) and that the initial cost of purchase of the lease agreement in 2008 was in the region of $300 million. Surely these Brookfield Rail profits allow for repair and maintenance of the rail infrastructure with a one only upfront payment?
g) Federal Government funds of $135 million have been used for rail maintenance. Is it not enough that Tax Payers funds contribute to foreign corporate profits, without further increasing access fees to growers’, threatening their viability in order to secure profits for Brookfield Rail?

Economics & Industry Standing Committee Report "The Management of Western Australia's Freight Rail Network" page 172 "the view of the Committee is that the PTA should place greater emphasis on protecting the rights and interests of Western Australian citizens who are directly affected by the operation of the freight rail network."

There is mounting evidence that the Rail Freight Lease Agreement and regulatory process provides little or no protection for Western Australian citizens, businesses, producers and communities.

This is further evidenced by the recent failure of discussions resulting in the WA Salt Company now transporting 100,000 tonnes (3744 truck movements per year) of salt to port by road from the Yilgarn Shire, which had previously been transported by rail, as a result of 56% increases in rail freight rates.

3. Export and the ability to be internationally competitive.

Analysis of growers' freight rates shows that between 45% and 65% of WA growers' freight rates are rail access fees. This is before any increases in access fees being negotiated in the ERA process and before the recent extra $5m as a result of the Interim Agreement to 31st December, 2015.

Access fees for rail around the world typically make up 15 -20% of the cost of freight. In the Eastern States Australian Rail Tack Corporation access rates make up 10 – 15% of gross freight cost.

The Paul Larsen letter in the West Australian 19th May 2015 states that prior to the recent Interim Agreement the average access fee is "equivalent of about $6.50 per tonne of grain". On top of this we now have an increase in the region of $1.40 per tonne in the Interim Agreement to 31st December, 2015, and further the additional increases in freight incurred in the Tier 3 Area as a result of closure of Tier 3 Rail. This would take the average access fee of $6.50 up to about $9.40 in Tier 3 areas, with the hardest hit Tier 3 areas being an access fee up around $11.70.

WA ports have the ability to export 70 million tonnes per year. The path to port restricts delivery from paddock to port to between 13 and 14 million tonnes per year. Rail is a vital artery, the present Lease Agreement and lack of protection to ensure an efficient, affordable rail network is restricting this vital life line for WA export industries.

4. How does WA compare?

In Victoria the below rail access of railing grain from Dimboola to port 300 k is $1.92/tonne.

Before the recent increases the below rail access cost of railing grain from Merredin to port 300k was $7.92/tonne, as a result of the Interim Agreement and additional $1.40 brings Merredin rail access fee to $9.32, bringing Merredin Rail access fee to $7.40/t higher than Dimboola.

5. What is the cost to the Industry and the WA Economy?

If one equates these costs over and above those in the eastern states, there is a massive cost to the WA Grains Industry; a reduction in grain industry profits; a reduction of funds circulating in the WA economy, the flow on effect impact is immense.

The Kwinana Port Zone prior to the Strategic Grain Network Report 98% of grain was delivered to port by rail.

The Kwinana port production on a good season is around 7mt, roughly half of the state's production is from the Kwinana Zone, which is the Zone with the highest percentage of rail freight along with a high percentage of closed Tier 3 rail and low rain fall production.

From the Merredin catchment area alone, approximately 2 million tonnes is transported by rail from Merredin, the cost to growers in access fees over and above those that would be paid for an equivalent distance by our counterparts in Dimboola is $14.8 million.

This is $14.8 million <u>extra</u> cost to growers from just the Merredin area, a low rainfall area, with a low profit margin - this is not sustainable.

With these figures in mind what is the cost to growers over the total tonnage of around 8 million tonnes freighted to port by rail?

Shipping Transport from Kwinana to Jakarta is roughly $7/tonne whilst below rail access fees from Merredin to Kwinana has been $7.92, now with an extra $1.40 up to 31st December, 2015 = $8.06. Below rail access fee from Merredin to Kwinana is more than the cost of Shipping from Kwinana to Jakarta.

The closure of Tier 3 rail lines has not only added cost to freight in those areas, but also added storage facilities had to be built. Previously grain bins were emptied at night so as to ensure space for deliveries the next day. Without this ability to remove grain by train, extra storage facilities had to be built – again at a cost to growers.

Media coverage to date has focused on Brookfield Rail's need for more profit, it is imperative that WA export industries are able to be viable into the future. Many costs as a result of the management of the Rail Freight Lease Agreement are being passed on to customers, local government and communities.

Some of the above information may seem not to relate to the ERA process. We aim to underline that just looking at a narrow picture and not the big picture can lead to a poor outcome. The Rail Freight Network is vital infrastructure, the flow on effects of the present system, not protecting rail customers' needs, has a massive effect on the entire State of WA its economy and its' future.

There must be a cap on freight charges. The present floor and ceiling pricing system is failing WA export industries.

6. Overview:

Growers and exporters in Western Australia are competing on the World Stage. As previously stated freight costs are a make or break issue for the survival of Western Australian export industries particularly the grains industry, an industry unable to pass on increased cost to their customers.

7. Lack of transparency and competition:

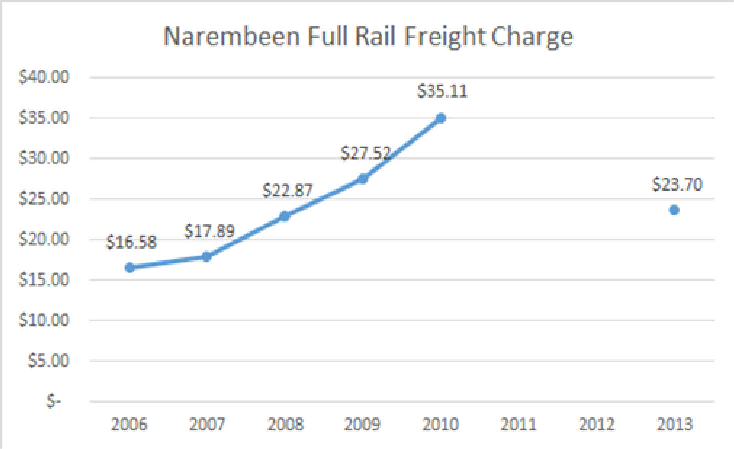
Prior to the grower investment into the CBH fleet of Locomotives and wagons, there was no transparency of freight costs. The below graph clearly shows the effect of a monopoly system to 2010 and the subsequent reduction in freight rates when transparency is brought about by the purchase of the grower funded CBH fleet.

2006-2010

Brookfield/Queensland Rail freight rates increased on Tier 3 Rail lines by up to 118% over 4 years.

2013:

Introduction of the CBH Rail Freight Rates: 32.5% reduction ($11.41/tonne); no Government subsidy required.



It must be noted that when prices rose without any transparency to $35.11 (as above), with similar increases all over the Tier 3 area, it was at this point that it was determined that rail was not competitive with road transport. As shown above (2.1) with Mount Walker at $28.40 + $1.40 as a result of the Interim Agreement to 31st December 2015, further access fee increases will make these rates marginal, grain like salt from WA Salt Company, will have to go to port by road, putting road maintenance costs back on to the taxpayer.

Due to confidentiality clauses, there is no transparency in access fees paid by other industries. There is no competition, no ability to assess the real "market", with Brookfield Rail holding the lease agreement for the entire rail freight network, without transparency there are no checks and balances.

It is vital that protection and regulation is put in place for Western Australian rail customers.

Brookfield Rail and its management of the Rail Freight Lease Agreement should be subject to ACCC scrutiny.

8. Conclusion – Summary

We must remember that 736 kilometres of Tier 3 Rail (State owned asset) lies idle, since Brookfield closed it on 30th June 2014, despite the fact that Bruce Rock and Narembeen Tier 3 lines were delivering 6,500 tonnes per day to Merredin immediately prior to closure. The closure of Tier 3 is adding cost to grower freight charges; to Local Government road repair costs; to Main Road repair costs and increasing risk for all road users.

The present ERA process is lengthy and costly. WA Growers are putting a crop in the ground now, with no idea how this will be transported to port or at what cost, with the present Interim Agreement ceasing on 31st December 2015. It is of great concern that growers and the grains export industry could be forced into a similar situation as at 30th April, 2015, with all grower owned trains (CBH fleet) forced off all WA rail lines. The cost of being forced to remove Grower owned fleets of trains from all WA rail lines was another cost borne by growers. The possibility of revisiting this situation creates instability, lack of confidence from customers and marketers, jeopardises shipping slots and ability to meet customer requirements, thus creating an unnecessary sovereign risk to a vital food commodity to our overseas customers.

Is Brookfield exploiting its privileged monopoly position and neglecting the needs of its' customers?

It must also be noted that as part of the privatisation of rail in 2000, marshalling yards, some areas and some sections of track were also sold and are not leased but privately owned by Aurizon, areas at Forrestfield; Avon; Narngaloo; Kwinana; Merredin; Esperance; Bunbury and Albany. Fees have to be paid for use of these areas. Another monopoly ownership adding cost to rail freight customers, if we move to road transport these costs would be removed.

Grain Marketers have made it clear that they will not cover holding costs resulting in slow access to port, any holding costs will be passed on to growers further eroding grower profitability and viability.

We have been told by Government on many occasions that if growers are not profitable they should not remain in business. If Brookfield Rail considers their profits are not sufficient, then they should relinquish the entire Western Australian rail freight network. Any rail which Brookfield is not using and refuses to include in present negotiations should be handed back to Government immediately, so another provider can administer this rail. This is a State owned asset.

The present situation is not sustainable for the remainder of the Rail Freight Lease Agreement to 2049. Both the Economics & Industry Standing Committee Report "The management of Western Australia's Freight Rail Network" and the Auditor General's Report "Management of the Rail Freight Network Lease: Twelve years down the track", outline serious concerns, none of which have as yet been addressed.

9th June, 2015.

Appendix

Excerpts and examples of statements made in submissions that indicate support for improvements to the ERA process and support our call for competition and transparency.

Asciano Submission:

a railway owner should not be able to challenge the validity of an access proposal before it has received any information it has required to be provided under sections 14 and 15 of the Code;

clause 50 (3) of the Code should be revised to promote greater transparency of costs. Natural monopoly access providers should not be able to claim confidentiality on information unless they can demonstrate that the broader public release of the information would be commercially damaging to the monopoly access provider in its role as an infrastructure provider.

Brockman Submission

2. UNIVERSAL ISSUES In Brockman's experience, the Code is not effective in enabling access to railway infrastructure in Western Australia. An effective access regime is fundamental to ensuring that key infrastructure is used most efficiently. To this end, an access regime should: • be designed and administered so as to promote effective competition (and minimise monopolistic and unfair conduct) in the development and operation of the infrastructure to which it applies; • be formulaic and mechanical (i.e. provide a precise process for gaining access, and clarity as to what is objectively required to move along the steps in that process); and • leave access seekers and railway owners with no doubt as to what is required to be done to achieve an access arrangement. The evidence to date is that the Code is not achieving these objectives.

Aurizon Submission

It is also important for the railway owner to be fully transparent in relation to the infrastructure standard and service levels, including any obligations contained under its lease agreement with the State.

Key points 1. The prohibition on unfair discrimination should clearly apply to all aspects of the regime, not just negotiations. It should also apply regardless of whether the arrangement is inside or outside of the Code. 2. In order to further clarify what might constitute unfair discrimination, it is proposed that three key tests need to be satisfied: a. it has a material adverse effect on one or more access seekers; and b. it has a substantial impact on competition in the relevant market. 3. The regulator should have confidential access to all access agreements (inside and outside the Code) to enable it to monitor compliance with this requirement. This provides it with information to enable it to assess whether the railway owner has been systematically discriminating between arrangements negotiated within and outside of the Code. However, it should not have the ability to use this information to override or interfere with commercially negotiated contracts that have already been agreed.