

Chapter 1

Introduction

1.1 On 16 February 2017, the Senate agreed to the following motion referring the matters related to the Perth Freight Link to the Environment and Communications References Committee (the committee) for inquiry and report by 6 March 2017:

- a. the Senate notes the failure to comply with the Senate orders for the production of documents agreed to on 13 and 14 February 2017, relating to the Perth Freight Link;
- b. in order to investigate the subject of the Senate orders, the following matter be referred to the Environment and Communications References Committee for hearing on or before 24 February 2017, and reporting on or before 6 March 2017—The continuation of construction of the Perth Freight Link in the face of significant environmental breaches;
- c. it be an instruction to the committee that it hold at least one hearing in Perth; and
- d. the following witnesses be invited and answer questions:
 - i. Department of the Environment and Energy compliance and environmental standards officers,
 - ii. the Minister for the Environment and Energy, Mr Josh Frydenberg,
 - iii. Federal Legal Counsel to the Minister and the Department,
 - iv. the Western Australian Minister for Environment, Mr Albert Jacob, the Office of the Environmental Protection Authority, in particular, senior compliance managers Mr Ian Munro and Mr Paul Zahara,
 - v. the proponent, Main Roads Western Australia,
 - vi. Leightons contractors,
 - vii. subcontractors completing the surveying work, fencing and trapping,
 - viii. witnesses who have directly documented breaches with federal approval conditions, and reported these to the minister, and
 - ix. other witnesses as determined by the Environment and Communications References Committee.¹

Background

1.2 The Perth Freight Link is a \$1.9 billion project intended to improve freight infrastructure and traffic congestion in Perth, by providing a direct high-standard freight connection between the Roe Highway and Fremantle Port.² Its implementation has been designed in three stages:

1 *Journals of the Senate*, 6 February 2017, p. 997.

2 Department of Infrastructure and Regional Development, *Perth Freight Link* at http://investment.infrastructure.gov.au/projects/ProjectDetails.aspx?Project_id=052776-14WA-PKG (accessed 21 February 2017).

- Section One—Roe Highway Extension (Roe 8): A 5.2 kilometre four lane dual carriageway from the Kwinana Freeway to Stock Road and an interchange connecting to Stock Road.
- Section Two—Winterfold Tunnel: a surface route along Stock Road between Roe 8 and Winterfold Road, then a 3.3 kilometre tunnel proceeding North-West to the Stirling Highway/High Street junction.
- Section Three—Roe Highway pinch point widening: Widening of a 1 kilometre section of the existing Roe Highway between the Tonkin Highway and Welshpool Road, to alleviate a pinch point on the heavy vehicle charging network.³

1.3 This inquiry is predominantly concerned with Section One Roe 8, see Figure 1.1 below for the route.

Figure 1.1: Route for the Roe 8 extension



Source: Main Roads WA, 'Roe 8 Highway Extension: Location' at <https://project.mainroads.wa.gov.au/roe8/NewsInfo/Pages/location.aspx> (accessed 27 February 2017)

Proposed benefits of the Freight Link

1.4 The Department of Infrastructure and Regional Development provided an overview of the proposed benefits of the project on its website:

The Perth Freight Link project will deliver significant travel time savings for freight and passenger vehicles across the Perth network. It will also

3 Department of Infrastructure and Regional Development, *Perth Freight Link* at http://investment.infrastructure.gov.au/projects/ProjectDetails.aspx?Project_id=052776-14WA-PKG (accessed 27 February 2017).

improve road safety, reduce transport costs and improve the efficiency of heavy vehicle movements between Perth's industrial areas and the Port of Fremantle. The project is also expected to reduce freight traffic and congestion on local arterial roads, resulting in improved safety, reduced noise and enhanced amenity. The project will also provide a more effective southern connection to the Murdoch Activity Centre, which, when fully developed has the potential to account for 35,000 jobs.

Further, the project will deliver environmental benefits through non-stop traffic movements, resulting in lower fuel use, less exhaust emissions and reduced noise levels.⁴

1.5 The Department of Infrastructure and Regional Development also provided a summary of how the Freight Link will complement other infrastructure projects in Western Australia:

The project will complement the Australian Government's investment in the Gateway WA and NorthLink WA projects. Together, these substantial network improvements will establish the Roe Highway as the preferred East-West route into the Port of Fremantle. The current Inner Harbour is operating well below capacity and as the Port grows to reach its anticipated capacity of 1.2 million containers per year over the next decade, this growth will significantly increase current freight volumes. The Perth Freight Link project will address these challenges and in the long term the Roe Highway Extension will service not only the Inner Harbour but also the Outer Harbour.⁵

Funding for the Freight Link

1.6 The Perth Freight Link was first announced by the Commonwealth Government on 19 May 2014, as part of the Infrastructure Growth Package contained in the 2014–15 Commonwealth Budget.⁶

1.7 This committed the Commonwealth Government to providing \$925 million in funding, with a further \$650 million contributed by the Western Australian Government.⁷ A further \$260.8 million was committed by the Commonwealth on

4 Department of Infrastructure and Regional Development, *Perth Freight Link* at http://investment.infrastructure.gov.au/projects/ProjectDetails.aspx?Project_id=052776-14WA-PKG (accessed 21 February 2017).

5 Department of Infrastructure and Regional Development, *Perth Freight Link* at http://investment.infrastructure.gov.au/projects/ProjectDetails.aspx?Project_id=052776-14WA-PKG (accessed 21 February 2017).

6 The Hon Malcolm Turnbull MP, Prime Minister, 'Perth Freight Link to improve road safety and ease port access', *Media Release*, 12 April 2016.

7 Note: both these commitments incorporated previously committed funds, namely: \$59 million earmarked for Leach Highway/High Street Fremantle upgrades in the 2013–14 Commonwealth Budget; and \$59 million committed by Western Australia to upgrades of High Street, Fremantle in the 2015–16 Budget. See 'Infrastructure Growth Package—addition to the Infrastructure Investment Programme for new investments' in *Commonwealth Budget 2014–15: Budget Paper No. 2: Expense Measures*, p. 175; and Government of Western Australia, *Budget 2015–16: Budget Paper No. 2 Budget Statements Volume 2*, p. 818.

12 April 2016 for tunnelling some of Section Two of the Perth Freight Link.⁸ This means the Commonwealth's contribution to the project is currently almost \$1.2 billion of the total funding of around \$1.9 billion.

1.8 The committee understands that recently released documents obtained under Commonwealth freedom of information (FOI) legislation indicate that the cost of the project could be much higher than forecast.⁹

The Freight Link Business Case and its assessment by Infrastructure Australia

1.9 To support the project, the Commonwealth and state governments developed a Business Case for the Freight Link, outlining its development, funding, implementation and proposed benefits. Although the full Business Case remains confidential, a 30-page executive summary of the Business Case was released in December 2014, omitting 'commercially sensitive material'.¹⁰

1.10 The Executive Summary estimated total costs for all stages of the Freight Link would be \$1.575 billion (discounted to represent 2014 dollars), based on a P50 cost estimate (i.e., assuming a 50 per cent probability that the cost estimate would not be exceeded).¹¹

1.11 The Business Case noted that the project was 'economically viable' and projected it would deliver a benefit-cost ratio (BCR) of 2.8:1, with the major benefit stemming from 'a 9 ½ minute travel time saving and a \$8.15 saving per trip for freight vehicles (Kwinana Freeway to Fremantle)'.¹²

1.12 The full Business Case was used by the board of Infrastructure Australia to assess the Freight Link proposal in May 2015.¹³ Although Infrastructure Australia recommended that the project was viable, it expressed some serious reservations about its estimated budget and BCR return. Most significantly, Infrastructure Australia estimated total capital for the project at \$1.742 billion (nominal, undiscounted and using a P90 estimate)—almost \$200 million more than the total capital forecast by the Business Case.¹⁴

8 These documents are available for download at www.rethinkthelink.com.au/2017/02/17/perth-freight-link-foi-documents-released/ (accessed 2 March 2017).

9 See Andrew O'Connor, 'Perth Freight Link: FOI documents revealing cost blowout outdated, Government says', *ABC Online*, 23 December 2017 at www.abc.net.au/news/2017-02-23/main-roads-documents-reveal-cost-blowouts-for-roe-8/8297972 (accessed 27 February 2017).

10 *Perth Freight Link: Business Case Executive Summary* (December 2014).

11 *Perth Freight Link: Business Case Executive Summary* (December 2014), pp. 27–28.

12 *Perth Freight Link: Business Case Executive Summary* (December 2014), p. 3

13 Infrastructure Australia, *2014–2015 Assessment Brief: Perth Freight Link*, p. 1.

14 Infrastructure Australia, *2014–2015 Assessment Brief: Perth Freight Link*, p. 1.

1.13 Given this, Infrastructure Australia estimated the Freight Link would deliver a BCR return of 2.5:1, smaller than the Business Case's BCR of 2.8:1.¹⁵

1.14 Infrastructure Australia also clearly stated some other assumptions that informed the Business Case estimates were founded on unrealistic expectations:

The costs estimated for this stated BCR exclude costs associated with the heavy vehicle tolling system thereby underestimating capital costs but included a CPI adjustment for the real capital cost estimates thereby overestimating capital costs. Including these offsetting cost impacts, consistent with Infrastructure Australia and National Transport Guidelines, this would result in the BCR remaining at 2.5:1.¹⁶

1.15 Recently, FOI documents obtained by Ms Allanah McTiernan MP indicate that costs could be much higher, even than the capital costs estimated by Infrastructure Australia. Mrs Kim Dravnieks, Coordinator, Rethink the Link, gave the committee a summary of what these documents reveal about the Freight Link project:

Only now, just days before a state election, have we finally received documents to examine that were fought for through the Freedom of Information Commissioner and the arbitration tribunal. These documents show the extreme haste with which this project was put together and the disregard for due process.¹⁷

Criticisms of the Freight Link

1.16 Since its announcement in the 2014–15 Budget, the Freight Link Proposal has accrued a great deal of criticism from many sectors, including local government and communities that will be affected by the project, as well as from the private business and transport industry that the Freight Link was designed to assist.

1.17 These concerns were summed up by the Senate inquiry undertaken by the Rural and Regional Affairs and Transport References Committee (RRAT committee) in the previous parliament. The inquiry tabled a report on 3 May 2016, which considered the many criticisms that have been levelled at the project.¹⁸

1.18 The RRAT committee's report was highly critical of the development and implementation of the Freight Link. It recommended that the Commonwealth's commitment to the Freight Link project should be frozen, as:

15 A P90 estimate assumes a 90 per cent probability that the project will be completed to its forecast budget—a more cautious estimate of capital costs than the P50 estimate used by the Business Case.

16 Infrastructure Australia, *2014–2015 Assessment Brief: Perth Freight Link*, pp. 3–4.

17 Mrs Kim Dravnieks, Rethink the Link, *Proof Committee Hansard*, 23 February 2017, p. 3.

18 The inquiry webpage, including its report, the 228 submissions received and the transcripts of evidence from its two hearings can be accessed at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Perth_Freight_Link

This amount of funding [for the Freight Link] is a once-in-a-generation opportunity to invest in the infrastructure needs and long-term economic prosperity of Western Australia.

However, if the Perth Freight Link proceeds, it will blow this opportunity on a project that will not achieve what it proposes to do, and is not wanted—not only by the communities that it would run through but also by the business and transport sectors it purports to assist.¹⁹

1.19 The RRAT committee considered that the Freight Link was 'poorly and hurriedly conceived by the Commonwealth' with 'no consultation with the government of Western Australia'.²⁰ Moreover, it found that Infrastructure Australia's approval of the project was 'lukewarm at best', and noted the potential for the estimated cost of the project in the Business Case to blow out massively in the project's implementation.²¹

1.20 In this, it suggested that the Business Case was 'fundamentally flawed', and that there was insufficient consultation and transparency in the project's development—including a failure to consider potential options for infrastructure to support Western Australia's freight capacity and transport network.²²

1.21 The report noted that the implementation of the Freight Link had already been subject to uncertainty and delay, due to court challenges to the Roe 8 stage on environmental and indigenous heritage grounds.²³

1.22 It was also clear to the RRAT committee that the development of the project had lacked a sufficient consultation process with the local governments, industry stakeholders and the communities who would be affected the most by its construction. In particular, the committee noted the strong community opposition to the project who had not been consulted sufficiently on several issues, including:

- the damage the Roe 8 extension would do to the natural environment of the Beeliar Wetlands;
- the uncertainty faced by families who lived along the Freight Link's proposed route, particularly those whose houses were being forcibly acquired by the state government; and
- negative effects due to increased traffic flows, air pollution, and potentially more dangerous roads in some areas.²⁴

19 Senate Rural and Regional Affairs and Transport References Committee, *Decision to commit funding to the Perth Freight Link project* (May 2016), p. 57.

20 Senate Rural and Regional Affairs and Transport References Committee, *Decision to commit funding to the Perth Freight Link project* (May 2016), pp. 57–58.

21 Senate Rural and Regional Affairs and Transport References Committee, *Decision to commit funding to the Perth Freight Link project* (May 2016), pp. 58–59.

22 Senate Rural and Regional Affairs and Transport References Committee, *Decision to commit funding to the Perth Freight Link project* (May 2016), p. 58.

23 Senate Rural and Regional Affairs and Transport References Committee, *Decision to commit funding to the Perth Freight Link project* (May 2016), pp. 59–60.

Environmental approval

1.23 The *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) requires a person taking an 'action' that is likely to have a significant impact on a matter of national environmental significance to obtain approval from the Minister for the Environment and Energy.

1.24 The Roe 8 stage of the Perth Freight Link passes through the Beeliar Regional Park between the North Lake and Bibra Lake. These areas are considered high value environmental with potential impacts on listed threatened species and communities, and listed migratory species. It also encompasses Aboriginal heritage areas.²⁵ As a consequence, the proponent (Main Roads Western Australia) referred the proposed action for approval on 22 June 2009.²⁶

1.25 Public comments on the referral were invited by the Department of the Environment and Energy (the department) with submitters providing comments on concerns about the impact on migratory birds and Carnaby's Black Cockatoo populations that are known to occur in that area, social impact on the community, Aboriginal and National Heritage and the Beeliar Wetland system.

1.26 It was decided that the proposed action was a controlled action and environmental assessment would be undertaken in accordance with the EPBC Act. Assessment was conducted under the bilateral agreement between the Commonwealth and Western Australia by the Western Australia Environmental Protection Authority (EPA).

Western Australia EPA approval process

1.27 In September 2013, following a Public Environmental Review, the EPA advised the department that it had published its Assessment Report which recommended that the proposed action be approved with conditions. On 2 July 2015, at the conclusion of the state appeals process, the Western Australian Minister for the Environment, the Hon Dean Nalder MLA approved the project.²⁷

24 Senate Rural and Regional Affairs and Transport References Committee, *Decision to commit funding to the Perth Freight Link project* (May 2016), p. 47.

25 *Perth Freight Link: Business Case Executive Summary* (December 2014), p. 3.

26 Department of the Environment, *Statement of reasons for a decision to approve an action under the Environmental Protection and Biodiversity Conservation Act 1999* (Cth), p. 1.

27 'Roe 8: Roe Highway extension gets environmental green light', *PerthNow*, 3 July 2015 at www.perthnow.com.au/news/western-australia/roe-8-roe-highway-extension-gets-environmental-green-light/news-story/6b410604c3c5bace3b568adc734f449f (accessed 27 February 2016); see also Department of the Environment, *Statement of reasons for a decision to approve an action under the Environmental Protection and Biodiversity Conservation Act 1999* (Cth), p. 2.

1.28 The approval conditions included the development of plans and surveys.²⁸ These include details of conditions contractors must meet regarding the treatment of the flora and fauna of the Beeliar Wetlands, and stipulations on the monitoring of the ecological health of wetlands through the construction process.

1.29 They also include plans designed to mitigate the effects of construction on the site, including provisions to: prevent the introduction of weeds; minimise the impact of dust created by the works; prevent the introduction of any disease and pathogens—including dieback; and provide directions for the management of any potential contaminants, including acid sulphate soils and asbestos.

1.30 In announcing environmental approvals for Roe 8, the Western Australian Minister for the Environment highlighted a number of initiatives to mitigate the impacts of construction:

- provision of fauna underpasses to maintain fauna connectivity and develop plans to manage and monitor fauna and flora, wetland health and water drainage;
- purchase of 10 packages of land identified by the Department of Parks and Wildlife to satisfy all or part of the 523 hectares of native vegetation offset requirements for the project;
- provision of nesting hollows for birds and the trapping and tagging of more than 100 southern brown bandicoots living in the area and relocating them to the offset areas;
- building the road on land partly cleared for overhead power lines in order to minimise the environmental footprint;
- undertaking a wetland restoration program at North Lake and Horse Paddock Swamp;
- building two bridges through the wetlands—a 120 metre long bridge over Roe Swamp and a 70 metre bridge over Horse Paddock Swamp;
- employing a top-down construction approach at Roe Swamp Bridge to minimise clearing footprint and compaction during construction; and
- ensuring wetlands bridges are used in required locations to maintain ecological connections for local fauna.²⁹

1.31 The plans, and potential contraventions of their conditions, are discussed further in the following chapter of this report.

28 These plans are all available at Main Roads WA, 'Management Plans' at <https://project.mainroads.wa.gov.au/roe8/environment/Pages/managementplans.aspx> (accessed 28 February 2017).

29 The Hon Dean Nalder MLA, Western Australian Minister for Transport, 'Environmental approval for Roe 8', *Media Release*, 22 October 2015.

Commonwealth approval process

1.32 The Commonwealth approval process was completed on 21 October 2015 with approval being given, under section 133 of the EPBC Act, to construct the highway. The approval of the proposed action was made with 16 conditions. The conditions included:

- adherence to clearance limits outlined in the WA approval conditions in order to minimise impacts to threatened species and communities and migratory species;
- to avoid and mitigate impacts to black cockatoos, during the breeding season (August–December), within 7 days prior to clearing, the approval holder must ensure all potential nesting trees are investigated to detect the presence of black cockatoos using hollows with the investigation being undertaken by a suitably qualified and experienced person. Should any black cockatoos be detected using a hollow in a tree or trees, the approval holder must:
 - clearly identify all such trees with fencing and signage that must be located within two (2) metres of the base of each such tree;
 - not clear any such tree or any vegetation within 10 metres of any such tree; and
 - undertake all reasonable measures to avoid any such tree from being cut down, felled, removed, killed, destroyed, poisoned, ring-barked, uprooted or burned until a suitably qualified and experienced person has verified in writing that the hollow(s) in each such tree are no longer being used by black cockatoos.
- in order to minimise impacts to threatened species and communities, and migratory species, the approval holder must develop and implement all Plans or Surveys, in accordance with the requirements of the WA approval conditions;
- to offset the loss of black cockatoo habitat, prior to commencement, the approval holder must provide the department with written evidence that funds have been provided to the Department of Parks and Wildlife for the acquisition of an environmental offset property;
- within three months of every 12 month anniversary of the commencement of the action, the approval holder must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of any Plans or Surveys as specified in the conditions. Documentary evidence providing proof of the date of publication and non-compliance with any of the conditions of this approval must be provided to the Department at the same time as the compliance report is published;
- upon the direction of the Minister, the approval holder must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to the Minister. The independent auditor must be approved by the Minister prior to the commencement of the audit. Audit

criteria must be agreed to by the Minister and the audit report must address the criteria to the satisfaction of the Minister.

- the approval holder must maintain accurate records substantiating all activities associated with or relevant to the conditions of approval, including measures taken to implement the Plans or Surveys required by this approval, and make them available upon request to the Department. Such records may be subject to audit by the Department or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the Department's website. The results of audits may also be publicised through the general media; and
- unless otherwise agreed to in writing by the Minister, the approval holder must publish all Plans or Surveys referred to in these conditions of approval on their website. Each management plan must be published on the website within 1 month of being approved.³⁰

Legal challenges to Roe 8 on environmental grounds

Environmental challenges to Roe 8

1.33 A challenge to the EPA's approval of the highway extension was lodged in the Western Australian Supreme Court by the Save Beeliar Wetland Group. Supreme Court Chief Justice Wayne Martin found that the EPA's assessment and subsequent recommendation to the WA government was invalid. Professor John Bailey commented that:

...the EPA was found to have taken no account of its own published policies at the time, and specifically the policy that said that for significant residual impacts to critical environmental assets, such as those impacted by Roe 8, environmental offsets would not be an appropriate means of rendering the proposal environmentally acceptable.³¹

1.34 However, the Western Australian Government won an appeal with a unanimous decision from the Court of Appeal which found that the EPA was not obliged to take its own policies into account. The court found that policies were a permissive relevant consideration, not a mandatory relevant consideration.

1.35 On 16 December 2016, the High Court found that there was 'insufficient grounds' for Save Beeliar Wetlands to appeal the Court of Appeals decision.³²

1.36 Prior to the finding of the High Court on 16 December, the Western Australian government erected temporary fencing on the site on 4 December 2016, in preparation for clearing work to begin.³³

30 Department of the Environment, *Approval, Roe Highway Extension*, EPBC 2009/5031.

31 Professor John Bailey, The Beeliar Group, *Committee Hansard*, 23 February 2017, p. 41.

32 'Roe 8: Aboriginal heritage appeal drawn up against Perth Freight Link extension', *ABC Online*, 22 January 2016 available at www.abc.net.au/news/2016-01-22/roe-8-perth-freight-linkaboriginal-heritage-appeal/7108804 (accessed 27 February 2017).

Indigenous heritage challenges to Roe 8

1.37 A challenge to Roe 8 was lodged in the Supreme Court of Western Australia, arguing that the Beeliar Wetlands was a site of Indigenous spiritual significance.³⁴ This case was dismissed on 24 August 2016.³⁵

Order for the production of documents

1.38 On 13 and 14 February 2017, the Senate agreed to orders for the production of documents related to the Perth Freight Link. The first order of 13 February 2017 related to the production of the business case and cost benefit analysis for the Perth Freight Link:

That the Senate—

- (a) notes:
 - (i) the Abbott-Turnbull election commitment that infrastructure projects attracting more than \$100 million of federal funding would require a full cost benefit analysis,
 - (ii) that the Abbott-Turnbull Government has committed funding now worth \$1.2 billion to the Perth Freight Link for which no business case has ever been provided, for which Stages 2 and 3 have not even been planned or assessed, and which does not reach the Port,
 - (iii) that it is important that Federal money granted to a state be spent in a manner that represents value for money and that the Senate has an oversight obligation in this regard, and
 - (iv) public interest immunity in response to Senate orders for the production of documents must not just be asserted, rather established;
- (b) rejects the grounds for public interest immunity made in relation to six previous Senate orders for production of documents, concerning the release of the business case, and specifically those made by the Minister for Finance on 19 April and 1 September 2016;
- (c) orders that the full business case and cost benefit analysis for the Perth Freight Link be laid on the table by the Minister for Finance by no later than 12.30 pm on 14 February 2017; and
- (d) resolves that, if the documents specified in paragraph (c) are not laid on the table by 12:30 pm on 14 February 2017, the Minister for Finance be required to attend the Senate at that time and provide an explanation for his

33 Main Roads WA, 'Roe 8 site activity' at <https://project.mainroads.wa.gov.au/perthfreightlink/newsinfo/Pages/default.aspx> (accessed 27 February 2017)

34 'Roe 8: Aboriginal heritage appeal drawn up against Perth Freight Link extension' *ABC Online*, 22 January 2016 available at www.abc.net.au/news/2016-01-22/roe-8-perth-freight-linkaboriginal-heritage-appeal/7108804 (accessed 27 February 2017).

35 Irena Ceranic, 'Perth Freight Link: Roe 8 Aboriginal heritage appeal thrown out', *ABC Online*, 24 August 2016 at <http://www.abc.net.au/news/2016-08-24/roe-8-perth-freight-link-aboriginal-heritage-appeal-thrown-out/7780698> (accessed 27 February 2017).

failure to table the documents, and that at the conclusion of the explanation any senator may move to take note of the explanation.³⁶

1.39 Later that day, the Senate agreed to a further order for production of documents related to investigation of nesting trees:

That the Senate—

- (a) notes Condition 4 of the federal approval decision for the Roe Highway Extension, which specifies that all potential nesting trees are to be investigated to detect the presence of black cockatoos using hollows within 7 days prior to clearing, and that the investigation must be undertaken by a suitably qualified and experienced person; and
- (b) orders that there be laid on the table by the Minister representing the Minister for the Environment and Energy, by 5 pm on 13 February 2017, the following information:
 - (i) the date the investigation of nesting trees was completed,
 - (ii) how the investigation was undertaken,
 - (iii) the qualifications of the person/s who undertook the investigation, and
 - (iv) a copy of the investigation, including all results.³⁷

1.40 In response to the first order of 13 February 2017, the Minister for Finance, Senator the Hon Mathias Cormann, noted that the Senate had on five previous occasions passed orders for the production of documents related to the Perth Freight Link business case and the cost-benefit analysis. The Minister stated:

In response to those orders the government has provided all the information and all the documents that it could provide without harm to the public interest. The information and documents not provided in response to all these Senate orders in relation to the Perth Freight Link documents were either cabinet-in-confidence documents for the WA state government or contained information that is commercial and sensitive in nature. If they were released in a full and unredacted form they would prejudice commercial negotiations and/or would potentially damage the relations between the Commonwealth and a state government, namely the Western Australian state government, namely the Western Australian state government.³⁸

1.41 The Assistant Minister to the Prime Minister, Senator the Hon James McGrath, also tabled documents previously tabled concerning related orders for the production of documents.³⁹

36 *Journals of the Senate No. 27*, 13 February 2017, pp. 917–18.

37 *Journals of the Senate No. 27*, 13 February 2017, p. 920.

38 *Senate Hansard*, 14 February 2017, pp. 1–2.

39 *Journals of the Senate No. 27*, 13 February 2017, p. 918.

1.42 In response to the second order for the production of documents, the Special Minister of State, Senator the Hon Scott Ryan, tabled a letter to the President of the Senate from the Minister for Education and Training, dated 13 February 2017, responding to the order for the production of documents.⁴⁰ The letter stated that:

The Department of the Environment and Energy has been informed by the Office of the Environmental Protection Authority of Western Australia that:

- The Office of the Environmental Protection Authority has had auditors on site for each day of the works.
- All potential nesting trees in the area to be cleared were investigated on 14 December 2016, prior to the commencement of clearing work on 19 December 2016.
- The Office of the Environmental Protection Authority is collating detailed information regarding the potential nesting habitat, including the dates on which investigations occurred, the person who undertook these investigations and the outcomes of their investigations. This task is expected to be completed by Friday, 17 February 2017.

The Department of the Environment and Energy has also been informed by the Main Roads Western Australia that although no Cockatoo nests were observed to be present in any of the trees to be cleared, as a precautionary measure, trees that were identified with hollows were retained *in situ* for the remainder of the breeding season.

The Department of the Environment and Energy has requested the abovementioned information from the Office of the Environmental Protection Authority and will respond further to the Senate's Order on the next sitting day of the Senate after the information is received.

1.43 On 14 February 2017, the Senate agreed to the following order for the production of documents:

That the Senate—

- (a) notes, in relation to the Perth Freight Link 'Roe 8' Highway extension, that significant breaches have been documented and reported to the Minister in relation to approval conditions and management plans, relating to dust suppression, asbestos management, and trapping and relocation of endangered species; [and]
- (b) orders that there be laid on the table by the Minister representing the Minister for the Environment and Energy, by no later than 12.45 pm on 15 February 2017, the following documents:
 - (i) a summary of correspondence or reports made to the Minister for the Environment and Energy or the Department of the Environment and Energy with evidence of compliance breaches with approval

40 *Journals of the Senate*, 13 February 2017, p. 923.

conditions since construction commenced, and the response to each, and

(ii) a record of the dates, times and locations where state or federal compliance officers have been on site since construction began.⁴¹

1.44 On 15 February 2017, the Minister for Finance, Senator the Hon Mathias Cormann, tabled a letter to the President of the Senate from the Minister for Education and Training responding to the order of the Senate of 14 February 2017.⁴² The Minister's letter provided the following information:

The Department of Environment and Energy has advised that neither the Minister nor the Department has received correspondence or reports with evidence of compliance breaches with approval conditions.

The Department of Environment and Energy has also confirmed that state or federal compliance auditors have been on site on each day of works since construction began.⁴³

Conduct of this inquiry

1.45 The committee received five submissions. These submissions are listed at appendix 1 of this report, and can be accessed through the committee's website.⁴⁴

1.46 The committee held a public hearing in Perth on 23 February 2017. A list of witnesses who gave evidence at this hearing can be found at Appendix 2 of this report, and a Hansard transcript of evidence is available on the committee website.

Participation of the Western Australian government and contractors

1.47 The terms of reference for this inquiry stipulated that the committee invite the Western Australian government Minister for the Environment, some senior officers from the state's EPA and the agency Main Roads Western Australia.⁴⁵

1.48 Moreover, the terms of reference also stated that certain contractors undertaking work on the Roe 8 extension would be called to give evidence at the public hearing, namely Leightons, and any subcontractors responsible for surveying, fencing and trapping work.

1.49 The committee notes that both the Western Australian government and relevant contractors declined the committee's invitation to attend the hearing and give evidence.

41 *Journals of the Senate*, 14 February 2017, p. 948.

42 *Journals of the Senate*, 15 February 2017, p. 979.

43 Letter from Senator the Hon Simon Birmingham, Minister for Education and Training, to the President of the Senate, dated 15 February 2017.

44 The committee's webpage can be found at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications

45 *Senate Hansard*, 16 February 2017, p. 22.

1.50 The committee understands that the Western Australian government entered a caretaker period in early February 2017 for the state general election on 11 March 2017. However, the committee also notes that the Western Australian government has consistently displayed an unwillingness to be transparent about the Freight Link, including repeatedly refusing to participate in the RRAT committee inquiry into the project in the 44th Parliament.

1.51 Given this, the committee would like to express its disappointment that the Western Australian government and relevant contractors have not assisted the work of this inquiry.

Structure of this report

1.52 This report consists of two chapters:

- this chapter sets out the administrative details of the inquiry, and gives a brief background of the Perth Freight Link project; and
- the second chapter outlines the issues raised by submissions and witnesses, as well as the committee's views and recommendations.

Acknowledgements

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