

Emu Bay Railway (Operation and Acquisition) Bill 2009

SECOND READING SPEECH

Mr Speaker

I move that the Bill now be read a second time.

Mr Speaker, this Government recognises that rail is, and should remain, a critical part of the Tasmanian freight logistics sector.

Rail currently carries a significant portion of Tasmania's total freight task.

Rail services transport mineral concentrates on the West Coast, cement from Railton to Devonport, coal from the Fingal valley to Burnie and Railton, newsprint from Boyer to Burnie and containerised freight across the rail network linking Hobart to Bell Bay and Burnie.

In total, rail carries over 2.5 million tonnes of freight per annum. To give Members a sense of the size of the task, this is the equivalent of approximately 480 heavy vehicle truck movements every day of the year.

For some freight, such as cement, rail is the only viable means of land transport for businesses to deliver their products to the national market.

It is obvious that the cessation of rail services in Tasmania would have a serious impact on the viability of a number of important industries, in particular the mining sector on the West Coast.

It would lead to a shift of freight from rail and onto the roads, with the related concerns this brings with regard to the safety of other road users.

And it would threaten the jobs of some 140 loyal Pacific National Tasmania employees, many of whom have spent a significant portion of their lives working on the Tasmanian railway.

It is for these reasons, Mr Speaker, that in response to Asciano's announcement on 10 June this year that it intended to cease Pacific National Tasmania's operations on the West Coast's Melba Line by 30 June 2009, the Government decided that all reasonable steps had to be taken to ensure that that rail continued to be a viable transport option for industry in this State.

Following over two and a half months of detailed negotiations the Tasmanian Government and Pacific National successfully concluded a Business Sale Agreement for the purchase of Pacific National's Tasmanian rail business for the previously announced price of \$32 million.

The Government would of course have preferred not to have been put in the position where the purchase of the rail business was the only realistic option to ensure the continued operation of rail of services.

The Government has said on a number of occasions that its clear preference was to facilitate the sale of the business to a third party operator and had committed to assisting Asciano in this task.

Unfortunately, Asciano had determined that it wished to exit the State within a much shorter timeframe than it had initially indicated to the Government, meaning it was impossible for the Government to engage a third party while still maintaining continuity of services.

Nonetheless, the Government has now negotiated a Business Sale Agreement that ensures our policy objectives are met, albeit under very difficult circumstances.

As I have previously announced, under the Sale Agreement the Government will purchase all the assets of the PNT rail business, including maintenance workshops and all rolling stock and above rail assets, in addition to the Melba Line assets, which include the track and the mineral concentrates loader at the Burnie Port.

Mr Speaker, this means that for the first time in history, the strategically important Melba Line on the West Coast will be in Government ownership.

The Sale Agreement also provides for the transfer of all material contracts - including customer and supplier contracts - and all PNT employees.

From 1 December, subject to Parliamentary approval, rail infrastructure and railway operations in Tasmania will be maintained and managed by a new State-owned rail company.

In the interim, Pacific National has committed to continue to deliver rail services and work closely with the Government to ensure a smooth transition.

The Government has committed to a transition package for capital works and maintenance to support the ongoing delivery of services up until the completion of the sale process, on the basis that this investment will ultimately benefit the Government as the new business owner following the completion of the purchase.

In the spirit of supporting a seamless transition to Government ownership, I am pleased to inform the House that relevant rail customers have indicated that they are prepared to transfer their existing contracts to the new State-owned Company, conditional on the sale being completed.

I would like to emphasise at this point that the security of all Pacific National Tasmania employees' jobs is 'front and centre' in this Agreement.

It has been PNT's dedicated workforce that has kept rail services in this State running in what have been very trying circumstances.

As part of the Sale Agreement, the Government has committed to offering all PNT employees jobs on the equivalent terms and conditions as those under which they are currently employed.

In short, the Sale Agreement secures the continued delivery of rail services in this State and from this perspective it represents an excellent outcome for the Government, for industry and for the broader Tasmanian community.

Furthermore, the Agreement shows this Government's absolute commitment to the continuation of rail as a viable transport option in Tasmania and delivers the ongoing certainty that PNT's customers and its employees deserve.

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Mr Speaker, the legislative package that I am introducing today supports the Government's purchase of the Tasmanian rail

business and therefore seeks to secure the broader objective of the continued delivery of rail freight services in this State.

While the Government has signed the Business Sale Agreement, the formal completion of the transaction is still contingent on supporting legislation being passed by the Tasmanian Parliament.

Specifically, it is a condition precedent to the Business Sale Agreement that, by no later than 31 October 2009, the Tasmanian Parliament must pass legislation rectifying historical title issues on the Melba Line, in addition to ratifying the Agreement and approving the appropriation of monies necessary to fund the purchase of the business.

The legislative package being tabled today comprises three Bills: the *Emu Bay Railway (Operation and Acquisition) Bill 2009*, the *Consolidated Fund Appropriation (Supplementary Appropriation for 2009-10) Bill 2009* and the *Rail Company Bill 2009*.

In broad terms, through this legislative package the Government is seeking to achieve five main objectives:

- to obtain Parliament's ratification of the Sale Agreement;
- to address the outstanding historical title issues identified with the West Coast's Melba Line railway;
- to obtain Parliament's approval to appropriate the necessary monies from the Consolidated Fund for the purchase of the business;
- to establish a new State-owned rail company to run rail services in Tasmania; and
- to make a number of minor consequential amendments to relevant legislation.

Mr Speaker, there is a significant body of work to be completed over the coming months to complete the transition of the business, including the establishment of appropriate governance arrangements for the operation of the business.

I am introducing this package at the earliest opportunity to enable the formal establishment of the new State-owned rail company and allow for the progression of important transition planning

arrangements in preparation for the formal transfer of ownership to the Government on 30 November 2009.

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Mr Speaker, the first Bill I am introducing today is the *Emu Bay Railway (Operation and Acquisition) Bill 2009*.

The primary purpose of the Bill is to address a number of historical issues with the Melba Line that were unveiled during the negotiation of the Business Sale Agreement.

One issue that was discovered was that Pacific National Tasmania may have inadvertently been operating the Melba Line without proper authority for the purposes of the historical suite of legislation relating to the operation of the Melba Line (collectively known as the Emu Bay Railway Acts).

Under the Emu Bay Railway Acts, the Emu Bay Railway Company Limited was authorised to operate, maintain and work parts of the Melba Line. The legislative authority to operate these parts was arguably specific to the Emu Bay Railway Company Limited. In relation to other parts of the Melba Line, rights under legislation could be assigned with the approval of the Governor.

It would seem that the approval of the Governor may not have been obtained. The operating status of the railway was further complicated by the apparent failure to renew a lease of part of the railway corridor on Crown land.

While it appears that this was a simple oversight by the company, there is a technical legal argument that the Government should not purchase a railway that may have been operated without all proper legal authorities.

The Crown Solicitor has therefore recommended that this issue be corrected by way of retrospective legislation granting Pacific National Tasmania this authority.

It was also discovered during due diligence that parts of the Melba Line may currently encroach on some private freehold land.

This is not considered to be of a major concern, as these issues have never created any impediment to the continued operation of services on the Line.

Having said this, it is intended that the land title issues with regard to the Melba Line will be corrected in due course following the purchase of the business by the Government.

The legislation does not specifically deal with this issue as any land that is needed to ensure good title to the rail corridor can already be acquired under the existing Land Acquisition Act, as required.

The legislative package does, however, provide a right for Pacific National and, following business transfer the new State-owned rail Company, to continue running on the Melba Line to avoid the situation where private landowners could potentially disrupt rail services on the Line.

The legislation provides that if private landowners had any arrangements in place with Pacific National prior to the signing of the Business Sale Agreement then these arrangements may continue.

However, the legislation prevents both new access fee arrangements and the denial of access by private landowners to the portion of the railway that may run across their land to ensure that services continue to operate consistent with the status quo.

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Mr Speaker, the most significant issue discovered during the negotiation of the Business Sale Agreement was that there are some outstanding historical legal matters relating to the old Emu Bay Railway Company that require resolution before the Government can be certain that it will hold proper legal title for the Melba Line following the purchase of the business.

The issues relate to a debenture scheme established by The Emu Bay Railway Company Limited in 1925.

The scheme created a mortgage over part of the Melba Line and a charge over other assets of The Emu Bay Railway Company to secure the repayment of moneys owing to debenture holders.

It appears that the scheme was not fully wound up, nor the securities discharged, before the sale of the Melba Line by The Emu Bay Railway Company to Tasrail, which was later acquired by Pacific National.

It also appears that there may be at least one outstanding debenture under the old scheme.

These historical legal issues require resolution before the Government can be certain that it will hold proper legal title for the Melba Line following the transfer of the business.

Mr Speaker, the Government does not believe that historical title issues with the Melba Line should be allowed to frustrate the continued operation of rail services in Tasmania.

This is why the proposed legislation will have the effect of bringing to an end the securities created by the 1925 scheme as they relate to Melba Line and related assets.

The process being proposed in the legislation is similar to that employed when the Government needs to acquire private land for a recognised public purpose.

Members would be aware that under the Land Acquisition Act, the Government can exercise its power to acquire land but in doing this it must also make sure fair and appropriate compensation is paid to the owner of that land.

Similarly, this legislation will vest in the Crown all remaining interests relating to the Melba Line that are not purchased by the Crown under the Business Sale Agreement and extinguish the rights and interests of all other parties as they relate to Melba Line and related assets, but it will also provide the opportunity for anyone who is affected by the operation of the legislation to lodge a claim for compensation within six months of the completion of the business sale.

The legislation puts the onus on me as the Minister to advertise widely and to notify known potential claimants directly of their rights and options under the compensation arrangements.

Affected persons will have a six month window within which to apply for compensation.

I will be able to agree compensation claims based on independent advice provided by the Valuer-General. Any compensation amount offered must first be approved by the Valuer-General, who will use the methodology established under the Land Acquisition Act - with

any appropriate modifications - to determine whether or not to approve the amount.

Any disputes as to compensation will again be treated the same way as a dispute under the Land Acquisition Act.

This process was chosen because it is well established and provides clear and appropriate appeal rights for claimants.

Mr Speaker, both the Crown Solicitor and the Solicitor-General have reviewed the debenture scheme and considered the nature of the entitlements of the debenture holders.

Their advice is that, based on the documents they have sighted, the total amount owing on the outstanding debentures may be less than \$2,000 plus accrued interest.

However, in the unlikely event there are debenture holders that are unknown to the Government, under the terms of the Business Sale Agreement, Pacific National has agreed to allocate \$1 million of the purchase amount to a trust fund to cover compensation claims arising from the extinguishment of any rights held under the debenture scheme. Any unused funds will be returned to Pacific National at the end of the compensation process.

It should be noted that this fund will also provide for costs associated with the acquisition of any land necessary to ensure good title to the rail corridor on the Melba Line up to a total of \$1 million.

The one debenture holder of which the Government is aware has been advised of the Crown Solicitor's views in relation to the entitlements of outstanding debenture holders.

I have written to this individual personally, explaining the Government's intentions with regard to proposed legislation and the compensation regime that will be contained in it.

It has been suggested that the Government should negotiate directly with this debenture holder for the purchase of his debenture rather than pursuing its intended course of action, which is to legislate to wind up the debenture scheme and pay fair and appropriate compensation to all affected parties.

However, the Government has received clear legal advice that the purchase of the outstanding debentures will not resolve the complex title issues in relation to the Melba Line.

The main problem is that legal title to part of the Melba Line appears to be held by the original trustees of the 1925 debenture trust scheme, not by individual debenture holders.

This is why the Government has formed the view that, given all the circumstances, the most appropriate way to resolve the title issues is to enact legislation.

Mr Speaker, the Government believes that the proposed process is fair and is appropriate under the circumstances.

It achieves the right balance in meeting both the legitimate private interests of remaining debenture holders and the wider public interest of the continuation of rail services in Tasmania.

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Mr Speaker, in addition to the resolution of the complex issues I have just described, the *Emu Bay Railway (Operation and Acquisition) Bill 2009* also seeks Parliament's ratification of the Business Sale Agreement and contains a range of other provisions dealing with a number of technical legal and administrative matters necessary for the smooth transfer of the business to Government ownership and the continued operation of rail services.

As I have already indicated, the ratification of the Business Sale Agreement by the Tasmanian Parliament is a condition precedent to the completion of the transaction.

The Government considers that a transaction of this magnitude and importance should be ratified by the Parliament and this provision is included in the Bill.

Members will note that the Bill also exempts the rail network from the certain provisions under the *Boundary Fences Act 1908*. This purpose of this exemption is part of a broader effort to ensure regulatory consistency between the road and rail networks.

The road network is already exempted from the provisions of the Boundary Fences Act and the exemption of the rail network in this Bill seeks to mirror this provision for the rail network.

While in effect the rail corridor has already been exempted by virtue of the fact that it either is already, or will shortly become, Crown Land, the legislative amendment will ensure that the exemption applies specifically to the network regardless of who may own or operate the network in the future and that road and rail transport networks are treated consistently.

Mr Speaker, the Bill provides for the repeal of the suite of legislation known collectively as the Emu Bay Railway Company Acts.

The continued operation of these Acts is unnecessary given their specific historic ties to The Emu Bay Railway Company, which is now in administration and no longer holds any assets or interests connected with the Melba Line.

There are also some minor regulatory and administrative changes that need to be accommodated to reflect the fact that, subject to completion of the Business Sale Agreement, the Melba Line will come into Government ownership for the first time.

For instance, the *Rail Infrastructure Act 2007* will be amended to include the Melba Line in the definition of the Tasmanian rail network for regulatory purposes.

Action is also being taken to amend the definition of the rail network by Ministerial Order to clarify the start and end points of a number of lines. This Order does will not, however, remove any rail lines from the current definition of the Rail Network.

It should also be noted that when the State-owned rail company takes over management and maintenance of the rail network, Ministerial Orders designating the State-owned Company as the Rail Infrastructure Owner and an order revoking Pacific National Tasmania as the Rail Infrastructure Manager under the Rail Infrastructure Act will also be required.

It is anticipated these Orders will be Gazetted upon completion of the Business Sale Agreement. This action will enable the State rail company to exercise all of the powers and functions under the Rail Infrastructure Act to assist with its management and maintenance of the State's rail network, including the Melba Line.

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Mr Speaker, I emphasise again that there is a clear imperative to pass this legislative package as soon as possible to allow for the progression of important transition planning arrangements in preparation for the formal transfer of ownership to the Government on 30 November 2009.

It is important in moving forward that we have a firm legislative basis in place for the transfer of the rail business to Government ownership.

Moreover, the passage of this legislation will provide much needed comfort and certainty to Pacific National Tasmania employees, rail customers, and the broader Tasmanian community and send a clear message that the recent era of uncertainty with regard to the future of rail services in Tasmania is coming to an end.

I believe that the deal that the Government has brokered for the purchase of the Tasmanian rail business, and the outcomes it will deliver, has the overwhelming support of both industry and of the broader Tasmanian community.

I therefore call on the Tasmanian Parliament to support the continuation of rail services in this State by passing this important package of legislation.

I commend the Bill to the House.

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