



ECONOMICS AND GOVERNANCE COMMITTEE

Members present:

Mr LP Power MP (Chair)
Ms NA Boyd MP
Mr ST O'Connor MP
Mr DG Purdie MP
Ms KE Richards MP
Mr RA Stevens MP

Staff present:

Ms T Struber (Acting Committee Secretary)
Ms M Salisbury (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE QUEENSLAND COMPETITION AUTHORITY AMENDMENT BILL 2018

TRANSCRIPT OF PROCEEDINGS

MONDAY, 5 MARCH 2018

Brisbane

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The committee met at 1.02 pm.

CHAIR: Good afternoon. I declare open the public hearing for the committee's inquiry into the Queensland Competition Authority Amendment Bill 2018. I would like to acknowledge the traditional owners on the land on which we meet. My name is Linus Power. I am the member for Logan and chair of the committee. Here with me today are the deputy chair, Ray Stevens, the member for Mermaid Beach; Nikki Boyd, the member for Pine Rivers; Sam O'Connor, the new member for Bonney; Kim Richards, the new member for Redlands; and Dan Purdie, the new member for Ninderry.

On 15 February 2018 the Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships, the Hon. Jackie Trad, introduced the bill to parliament. The parliament has referred the bill to the Economics and Governance Committee for examination with a reporting date of 15 March 2018. The purpose of this hearing is to hear evidence from stakeholders who have made submissions as part of the committee's inquiry.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing orders and rules of parliament. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules as endorsed by the committee are available from the committee staff if required. All those present today should note that it is possible that you might be filmed or photographed during the proceedings. I ask everyone to turn off their mobile phones or switch them to silent.

Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. As parliamentary proceedings under the standing orders, any person may be excluded from the hearing at my discretion or by order of the committee.

I would like to now welcome representatives from the Queensland Resources Council and the DBCT User Group.

BARGER, Mr Andrew, Policy Director, Economics and Infrastructure, Queensland Resources Council

CUNNINGHAM, Mr Tom, Policy Manager, Economics and Local Content, Queensland Resources Council

MACFARLANE, Mr Ian, Chief Executive, Queensland Resources Council

MOORE, Mr Ken, Anglo American, Dalrymple Bay Coal Terminal User Group

CHAIR: Good afternoon. I invite you to make a short opening statement after which committee members will have some questions for you.

Mr Macfarlane: Thank you very much, Chairman. The QRC has a very strong interest in this piece of legislative amendment. It has the potential to impact not only directly on our members but also on the state government through royalties and through the jobs of many Queenslanders who rely on the resources industry. It is a highly technical area and on that basis I am going to pass to Andrew Barger to go through the technical aspects.

Mr Barger: It is the first time we have appeared before this committee so I would like to thank the committee for the opportunity to appear today and congratulate you all on your appointment. It is good to see so many new faces in a parliamentary committee. Like the chair, we would like to acknowledge the traditional owners on whose country we meet today and offer our respects to their elders past, present and emerging.

You have probably had a chance to read our submission. It is a bit of an interesting one because essentially we almost dismiss the bill in the opening page, fully support the intent of the bill but offer some suggestions for an amendment. I just want to give some context for that given that it is a slightly tangential approach to a bill.

First of all, the first job of an industry association is to talk about an industry association. We are the peak body for mining and energy companies in the state. We provide a collective voice from exploration right through to minerals processing. Today we are particularly appearing for our coal members. There are some facts and figures in our submission about the importance of the coal industry. Listening to the committee's questions this morning about state significance versus national significance I thought it might be useful if I could seek leave to table a one-page fact sheet which steps through the economic significance of the coal industry, because I think that context is helpful for the committee.

CHAIR: You have leave to table that paper.

Mr Barger: That just provides some context about the economic importance to the state of the coal industry in terms of jobs, royalties and particularly the number of local businesses that the industry supports through its spending. That is relevant to the bill that you are here to hear about today.

The QRC's position is that we support the QCA amendments. We understand the imperative to have the competition criteria aligned with the national criteria. I have to say that I feel a bit sorry for you. The criteria are fairly complicated. Economic competition tests are never designed for non-specialist readers so you are grappling with some messy details at the moment.

The other point that our submission makes, as well as supporting the change in the criteria, is to say that the role of the people who administer them, the Queensland Competition Authority, is incredibly important. Given that the industry relies for much of its transport infrastructure on natural monopolies, the regulation of the Central Queensland coal corridor as a below-rail monopoly is really important. Equally, you will hear Ken and the DBCT users talk about the regulation of ports, particularly DBCT, as also being important.

The reason our submission asks for an amendment not considered in the bill is: part of the process set down in the QCA Act is that a sunset clause with a declaration of the rail network will expire on 8 September 2020. Before that expiry date, the bill describes a process where the QCA conducts a review of the criteria to satisfy itself or convince itself that there is not a case that the assets be declared and makes a recommendation to the minister, who in this case is the Treasurer. She then has to revisit those decisions against each of the six criteria. The reason the bill today is important is that you are essentially changing the goal posts slightly for those two assessments.

There is another thing that is keeping the industry awake at night a little bit. If that recommendation goes to the Treasurer to say, 'Yes it looks like a monopoly. We think you should declare it,' and the Treasurer comes to the same decision, there is an opportunity for that decision to be judicially reviewed. September 2020 seems like a long way away but for the industry potentially there is quite a protracted technical, complicated, expensive process—perhaps 18 months—of reviews. There will be lawyers, engineers and economists and lots of expert reports commissioned and tabled as evidence. It is an expensive, difficult, uncertain process.

The request that the industry is making of the committee today is to see full merit in that review process but recognising the uncertainty that that generates for the industry. The cure for that uncertainty is to amend the date at which the declaration expires, so to extend that date from 2020. Ideally we would say indefinitely, but at least add a 10-year period to it. That is the standard period that rail access is contracted for. The effect of that is to preserve the status quo so that it is very clear to the industry. If you are negotiating contract extensions or you are looking at planning an upgrade in your mine, you understand the regulatory framework that is going to exist under which your coal will be hauled.

That is the background for the submission that we have made today. We fully support the role of the regulator and completely understand the need to update the competition criteria and align those criteria with the national criteria, but changing those criteria and dropping them into a review process creates quite a protracted period of uncertainty for an industry that generates more export revenue than any other in Queensland. That is the reason we are asking the committee to add an amendment to the bill which would extend that declaration date.

CHAIR: Mr Moore, do you wish to speak on behalf of the Dalrymple Bay Coal Terminal User Group?

Mr Moore: Thank you, Mr Chair—only to echo the points made by Andrew and the QRC. Clearly the DBCT users, as users of the network, have the same concerns about the ongoing regulation of the network. Because DBCT is also currently regulated, we have similar concerns. I might also add that the privatisation of both of those assets was committed to under a long-term

regime, so long-term leasing with a view that regulation would continue and oversight by the QCA. As Andrew has highlighted, that is something that we think actually assists to avoid the uncertainty that may come with any new regime and that the status quo should prevail.

Mr STEVENS: Andrew, earlier today we heard from the department that this legislation basically mirrors the federal government legislation of 2010 in relation to all the issues to be dealt with and that the only major difference between the federal legislation and the state legislation is the quantum and interest of the project. In other words, the federal government legislation identified the big projects of national significance. Are there any other changes that you are aware of between this legislation and the federal legislation?

Mr Barger: My understanding of the answer this morning was that they were talking specifically about the criteria, so the six competition criteria. In that context, yes, my understanding is that really the only distinction is that degree of economic importance from national and Commonwealth to state in the Queensland legislation.

Mr STEVENS: You support that view?

Mr Barger: Yes. I think the Treasury answer this morning was a good one about the different frame of reference.

Mr STEVENS: Ken, in its submission the Dalrymple Bay Coal Terminal User Group says that the absence of a legislative extension to the coal terminal and rail network creates significant risk in requiring QCA to carry out the proposed review process with little to no guidance and this has already caused investment uncertainty within the Queensland coal industry. Could you please provide some examples of how the proposed amendments have already caused uncertainty within the Queensland coal industry?

Mr Moore: Certainly. I will do my best. The statement in the submission about that particular aspect is really around the proposed changes to the legislation on the basis that they would be parallel between federal and state. They have not really been tested. All of the litigation to date has really been pre the Productivity Commission review and outcome which has obviously led to the proposed legislative changes.

The point that the user group is trying to make in the submission is that it makes it very difficult for industry, for example, to form a view about risk given that the new criteria have not been tested yet. As to the point I was making before about long-term investment certainty, whether it is existing users or new entrants to the market looking to ramp up or introduce new production that would be access seekers not only to the network but also to DBCT, having that lack of regulatory certainty could potentially impact the likelihood of that investment proceeding on a long-term basis.

CHAIR: Thank you very much for your contribution. Thank you for the clarity of your answers and the brevity and directness of your submission. We also have your written submission. Thank you very much for your time.

COLLINS, Mr David, Acting Group Executive Network, Aurizon Network

CHAIR: Good afternoon. I invite you to make a short opening statement after which committee members may have some questions for you.

Mr Collins: Thank you very much, Mr Chairman and members of the committee. Aurizon Network appreciates the opportunity to raise with you our concerns around the Queensland Competition Authority Amendment Bill. Our network operates the Central Queensland coal network, which is the rail network that supports one of Australia's most important export supply chains. Our concerns with the bill relate to the proposed removal of certain references to the pricing principles within the QCA Act. In our view, those provisions that are sought to be removed as part of this bill emphasise the importance of the pricing principles and they should be retained. The removal of these provisions, together with the accompanying explanatory notes which state that each principle need not be satisfied in every instance, means that the pricing principles will no longer be as central to the scheme of regulation and that access providers, such as us, cannot be sure that they will recover their efficient costs of providing the declared service and the legislated rate of return on that investment. We believe that the proposal has some very serious financial implications not just for access providers such as us but also for everyone who uses major infrastructure services. We believe that these proposed changes have been made without sufficient assessment of the regulatory risks or impacts involved.

The impact of poor regulatory decision-making on investment and the funds available for investment in Queensland cannot be overstated. Whilst not applicable to this bill in particular, we have seen recently the major impact that a regulatory decision can have on the supply chain and on the market. Within days of the QCA publishing its draft decision on Aurizon Network's UT5 submission late last year—in December—the financial markets wiped \$1½ billion off the value of the Aurizon group. This was largely in response to the QCA saying that Aurizon Network should receive the lowest return on investment of any significant regulated business in Australia. The draft decision, in our view, contains significant errors and misconceptions by the QCA and its consultants which we believe compromises Aurizon Network's ability to efficiently maintain the export supply chain infrastructure for customers.

It is also worth mentioning that the QCA's final decision on UT5 will have retrospective effect and will apply to Aurizon Network from 1 July 2017. It is for this reason that, as a responsible listed entity, we have already begun to adjust our operating practices to align with the draft decision. If we did not do this and the final decision remains substantially in line with the draft, we would face even greater financial consequences than we do already. We will of course continue to contest the QCA's draft decision as part of the normal designated regulatory process.

As I mentioned before, the provisions in front of the committee today will not affect the current UT5 regulatory process. However, we are concerned about their effect on future regulatory processes. From our perspective, any increase in the discretion that the QCA holds to effectively relegate the pricing principles has some potentially serious implications for the economy. Even a marginal increase in discretion will exacerbate an already difficult position. This would not be in Queensland's economic interests and we believe that it would not be in the interests of the competitiveness of the Queensland economy.

We are here today to request that the committee recommend that all the references to the pricing principles in the act be retained and, therefore, that the proposed amendments relating to the pricing principles themselves should not be supported. However, if the committee is not minded to support this position, we request that the committee as a minimum look at rewriting the explanatory notes to ensure that the fundamental importance of the pricing principles is recognised. I will be pleased to provide any further information that would be of assistance to the committee. Thank you.

CHAIR: Do any members have questions for David?

Mr STEVENS: You mentioned the pricing principles being applied by the QCA to Aurizon in particular. It is an opinion that I am asking for. Does that reflect the QCA's opinion of your pricing regime as it currently stands and that it would better service the community if the three criteria were taken into account?

Mr Collins: Our view of the QCA's draft decision with regard to UT5 is that it does not meet the requirements of the existing pricing principles around meeting the efficient cost of providing the service and also providing a return that meets the economic, regulatory and commercial risks that we face. Our view is that if the provisions that are up for discussion today were removed then the discretion the QCA has is even broader than it is currently. That is one of the key concerns that we have.

CHAIR: This morning Treasury gave a public briefing and was asked questions about the pricing principles. Did you manage to see that?

Mr Collins: I received an overview of what was said. I did not actually witness it, but I heard an overview.

CHAIR: I may be paraphrasing it, but they feel that the pricing principles still had a role within the process. Do you have any response to the way they phrased it?

Mr Collins: I have a couple of things. Under the existing provisions of the QCA Act, the QCA must have regard to the pricing principles in setting prices for Aurizon Network. The explanatory notes that supported the QCA Act when it was enacted talked about 'the pricing principles must provide overriding guidance'. Under the provisions that are being proposed in the bill that is before us now, the QCA would no longer have to ensure that each of those pricing principles was met. It says in black and white in the explanatory notes that each of the pricing principles does not need to be met. Why would that be of concern for us? That would be because one of those principles is that we earn a return that is adequate to compensate us for the regulatory, commercial and operating risks that we face.

That is our key concern. It is around the primacy of those pricing principles and the existing requirement that they must be considered versus what is proposed in that not every one of them needs to be met. That is the key part of our concern.

CHAIR: Okay. There being no further questions, I thank you very much for your submission and your participation in the proceedings today. That concludes the hearing. I thank very much all the witnesses who have participated today and I thank the Hansard reporters. A transcript of these proceedings will be available on the committee's web page in due course. My understanding is that there were no questions taken on notice, so I declare this public hearing for the committee's inquiry into the Queensland Competition Authority Amendment Bill 2018 closed.

The committee adjourned at 1.26 pm.