



Speech by

**Hon. Paul Lucas**

**MEMBER FOR LYTTON**

Hansard Wednesday, 24 November 2004

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## **TRANSPORT INFRASTRUCTURE AMENDMENT BILL**

**Hon. P.T. LUCAS** (Lytton—ALP) (Minister for Transport and Main Roads) (4.33 p.m.), in reply: I thank all honourable members for their contributions. In relation to the reference to the Scrutiny of Legislation Committee, I will have to talk to the Clerk and seek advice from the Leader of the House. I may not be able to respond immediately to that. It might be something I will have to respond to later on. The Clerk is in a meeting and I have not had a chance to establish from him what the situation is. I would have thought at the present time that the committee is seized of the power to analyse the bill, and that once the committee is seized of the power to analyse the bill it has the power to analyse the bill. How long the committee takes to analyse the bill does not stop it from having the power to do that. I am not here to give Clerk's advice to the member, but I will have a look at that issue.

**Mr Wellington:** If the minister could indicate that he is happy for the committee to consider it and report back.

**Mr LUCAS:** I do not have the ability to empower the committee. I would be the last person who would be afraid to have the committee take a good look at it. I have no issue with that myself. We will see what is said.

It was a very regrettable incident. The member for Gregory is frequently the fount of very good and sage views of the world. As he said, he would not have wanted to have been in the position that I was in. I hope that no-one else is ever in that situation either. It is not very nice to get a call at 1 a.m. and be told that there is a major rail accident and there is a likelihood that there will be significant deaths. Fortunately, there were no deaths and no life-threatening injuries. However, it is of great concern that we had this incident.

In my ministerial statement the other day I thanked the various people involved in this incident. I place on the record again my thanks to them. I acknowledge that other members have thanked the people who assisted, whether they be rail workers, emergency services workers, Salvos or health workers. You name them, they have all done a fantastic job.

What this legislation and investigation is about is fundamentally ensuring that I or no-one else gets a telephone call again because an accident happened that could have been prevented if we had understood the proper causes. I cannot guarantee that any investigation will necessarily find the proper causes. In the case of the 747 that crashed off the coast of Newfoundland, a few years after they are still not sure what went wrong. They think it may have been a spark in a pump or a tank that was empty. They do not know.

Most times investigations do find out what happened. After great forensic examinations, which take a long time, they do find out what happen. Sometimes they initially think that something was the cause of the accident but subsequently find out that it was something else. We would be very wrong to prejudge this investigation. We know that the data logger indicated that the train was speeding, but there may be all sorts of reasons why that was the case. We should not jump to conclusions prior to the investigation.

We want to try to establish what went wrong and how, in the future, these factors can be avoided. It does not matter from the point of the view of the investigation if what went wrong is that someone did the wrong thing. It is about actually putting in place processes to help control someone doing the wrong thing in the future. If we were talking about an aviation accident it could be that I was silly and flew an aeroplane

when I was full of alcohol. We could, and I am making this up, have an alcohol testing machine in the aeroplane to protect people from doing the wrong thing and thus protect others. The purpose of this investigation is to actually prevent these things happening again.

The member for Burnett raised issues that I presume will be the sorts of things that the investigation will look at. I will not tell them how to conduct the investigation. I would presume that they will look at how the evacuation took place and what would be a better way of doing it. They will consider all those sorts of things, I presume. They are highly relevant areas for the investigation.

One of the other things that these investigations look at are human factors. They will look at how people interact with each other. There is a principle in the aviation sector that they call crew resource management. That is about ensuring multiple operators—say, two pilots of a plane or two drivers of a train—interact appropriately.

I have actually sat in a diesel tilt train coming out of Cairns. It is very interesting to see the two drivers working. They will say, for example, 'Level crossing ahead. I see a red car.' They cross chat all the time. Crew resource management is about encouraging all those who are part of the team to interact. Even a flight attendant down the back of the plane who sees smoke under this principle would not say, 'I am not going to tell the captain that because I will get abused. What do I know about it.' It is about encouraging everybody to interact. It is those human factors that are considered as well. The flight attendant or the captain may not have caused the fire in the engine but it is how they react to that issue. They will look at that as well.

This is about doing everything in our power to get to the crux of the situation. I accept the bona fides of everyone's contribution here. I understand full well why people would want to express their concerns. The member for Gladstone indicated that she was concerned about the fact that we will provide some protections for people who are required to provide information to the inquiry and that it casts a slur on them. I have to respectfully disagree with that point. It does not do that.

If a person is in a situation where to provide information can potentially incriminate them, then any competent legal adviser would advise them that they ought to decline to answer those questions on the grounds that they may tend to incriminate them. It is a fundamental principle of criminal law from hundreds of years ago that no person is required to answer questions that may tend to incriminate them.

The member says that we are covering things up. Given there is a \$15,000 fine, a person has actually got to answer a question. But if a person is made to answer questions, which breaches the old protections that the criminal law provided for people, then they are entitled to expect to have protections for the answers that they provided.

The member for Maroochydore raised a number of issues. If I miss any of them, I am happy to deal with them in the consideration in detail stage. She asked about blood alcohol testing. I am not aware whether the rail safety investigators undertook blood alcohol tests. I would imagine that the police would have probably done that in the context of their investigations. I do not think rail safety investigators have the equipment to do that. If police do that that is part of their investigation.

The first people in charge of a scene are the police. Before anything else, they need to satisfy themselves that it is not a deliberate criminal act—that is, that it was not a terrorist act, it was not due to somebody putting a rock on the track or someone sabotaging something. They will not let anyone else near the scene until they satisfy themselves of that fact. They also determine whether someone was negligent. That is the role that they perform. We know that that is the role they perform because the commissioner took a decision to release the data logger information which he obviously had access to as part of his investigation.

In relation to blood tests, I am advised that the police will take a blood test as part of their investigations and it is likely that the results will be provided by police to RSOs or the board of inquiry. Once obtained it becomes restricted information for the purposes of the act which means its disclosure by our investigators is restricted, but this does not apply to police.

There would be no need for the RSO or board of inquiry to conduct its own blood test. The fact that the police have provided the blood test in no way hinders their use of the blood test result in relation to their investigation or possible prosecution. That is the information that they have. One could not get the information from the inquiry without the appropriate protections, but one can get it from the police in the normal course of events. The police use that information themselves. That is part of the normal police investigation.

The member for Gregory asked what I thought was a good question. Are we going to extend this type of legislation to other types of accidents—that is, those involving trucks and buses? The Commonwealth legislation extends to trains, planes and ships. That is its power. This is specific to rail safety investigations. That is essentially a policy question. That is something that we can have a look at. But we do not need to have a look at it in an expedited fashion.

Having said that, one of the differences between rail and aeroplane crashes on the one hand and road crashes on the other is that regrettably road crashes are very common and the causes and factors are fairly well understood. Whilst there might be individual instances that vary, rail crashes and air crashes of major proportions happen so rarely that they actually do not warrant actual special study. In respect of air crashes, one of the reasons we have cockpit voice recorders is that sometimes the people who are in the air crashes do not survive because of the nature of aeroplanes.

There is a difference. That is something that is essentially a policy decision, but it is not something that we need to decide today. It is quite an intrusive power to require answers. If the community thought that that was necessary, we could do that all the way down to car crashes or indeed other things. The answer is that they are not well understood. While the member for Gregory is in the chamber I should add that Queensland Rail's safety record is a very enviable one. The last fatality were two deaths in 1985 at Trinder Park. Since then there have been no fatalities. When one takes into account level crossing incidents and the like, the rate of fatalities for Queensland Rail per 100,000 is a quarter of those in Victoria and New South Wales. That is adjusted for population, and there are a lot of freight trains in this state. That gives the member a bit of an idea as to our situation.

The member for Moggill asked if we are protecting QR from liability. The answer is no. He also asked if we are restricting the rights of individuals. No. He also asked why this legislation is applied retrospectively. It is only applied retrospectively from 16 November, because the investigators set about their task at that point in time. Indeed, they were on the scene immediately. I am not sure of what time they were provided with their commission to investigate, but they may indeed have conducted inquiries prior to the formal commission being provided to them by the department to investigate it. Therefore, I am advised that it is necessary to go to the time of the accident. I want to make this clear: this does not protect from disclosure records that are in existence for the purpose of being records of, say, QR or of Queensland Transport—that is, those sorts of things that are in existence and not created for the purpose of this inquiry.

Things that go to the inquiry are protected in that the inquiry gets them. It is much like a doctor in that if I provided a doctor with some information about myself they are not really at liberty to disclose it. However, that does not mean that the information that I have provided to them is not able to be disclosed through other people or is in the hands of someone else who might have created it for me. That is really the distinction. Frankly, it is a pretty easy distinction to understand. This is about information that is in existence—that is, maintenance records, staffing rosters and all those sorts of things. However, the data logger specifically is excluded so therefore it is available. Those sorts of things are out there. The point is—

**Dr Flegg** interjected.

**Mr LUCAS:** Because it is about statements that were provided. If the inadmissibility provisions started today, then there would be statements that were taken by the rail investigators between the 16th and today that would not have the protection that is intended. This is about affording that protection. The maintenance records of the train, for example, were in existence long before 16 November. For example, the member has heard that QR said that the track inspecting high rail went over it two days beforehand. This is a record that presumably is available somewhere if that was relevant to someone's view of court proceedings, or the police might want to look at it. So it does not affect those sorts of things. The member for Gladstone raised a similar issue.

I think it was the member for Maroochydore—maybe someone else—who raised the issue of FOI. First of all, they asked about the CEO and why does the CEO have the power to do it. Essentially, after the investigation is over, the CEO is the custodian of the material. The CEO is the accountable officer. In fact, in the Commonwealth legislation it is the executive director who would be the relevant public servant in charge of that under the Commonwealth legislation. The CEO is the person who has that ability to provide that information. I should note as well that of course the legislation provides that the report must be tabled in parliament. It is not a case of the minister getting it and saying, 'No, I don't like that.' It must be tabled.

Again, I come back to this point: who chairs it? The Commonwealth chairs it and also has half the members on the inquiry. Rest assured, the Commonwealth ATSB will not be mucking around. It will not cop mucking around from the Queensland government if it thought that was what was happening—please be rest assured about that—and I would not expect it to. One reason that the decision was taken to appoint it was to give that sort of assurance to people so they knew that the Commonwealth was involved in this. I should say to the honourable member that at the Australian transport council meeting the other day we worked on national rail safety regulations. Part of it will include looking at this so that in the future we might actually have more uniform legislation in this area.

What about getting access to material that is restricted? The first thing is that the CEO can provide access to it. Why would the CEO want to provide access to it? First of all, there are the provisions that talk about safety. The CEO might say, 'By providing some information here, I can actually educate people as to what went wrong.' Indeed, as the member for Nanango's husband is a licensed pilot, she would be aware that every two months he gets a copy of the flight safety digest, which in fact often contains that sort of information. It does not identify people but talks about those issues so people can read it and say, 'Hang

on. Look what happened. I could have done that.' Those are the sorts of reasons why a CEO might decide to release that. Similarly, there may be information that might be of assistance to people in legal proceedings that the CEO can release without it actually impacting upon the general provisions.

The other thing I should say about this, member for Maroochydore and others, is that the freedom of information provisions here are not an absolute prohibition. They are not gone; they are subject to the public interest disclosure provisions in the Freedom of Information Act. The decision maker could take a view in relation to what the public interest is. People can agree or disagree on that, but the Information Commissioner of course has the overriding power in relation to what is a public interest issue. So it is not only the CEO on the one hand; on the other hand there is the public interest test under the freedom of information legislation in the Information Commissioner's hands.

There was a question about the regulations by the member for Nicklin. I am told that the regulations have not yet been formulated, but we would be looking to base them on the Commonwealth regulations, and I can provide the member with a copy of them. They are basically with me. There is just one thing that troubles me that the member for Nicklin raised. He asked this: what happens if the investigation reaches certain conclusions and a civil or a criminal court reaches others? First of all, there are different standards that apply for a criminal conviction compared to a civil conviction. I am not referring to this case. It may be that someone does not have the mental capacity to be prosecuted, but there still might be a civil claim because they are vicariously liable on behalf of someone, for example. One of the reasons we compel people to answer questions in a safety investigation is that we want to find out what happened.

I do not want to have a criminal law debate here, member for Nicklin, but we might get a lot more convictions if people are required to answer questions from the police and are required to give evidence in court. It is not for me to say that that should be the way and that I am here today to overturn a few hundred years of criminal law, but that might be more the way one might think about these things. I am not suggesting that we should do that, but that is really more the point. In criminal law there are things that are not admissible. For example, in criminal law you are not able to admit the previous criminal history of someone. In a civil case that may or may not be relevant. Maybe in an accident investigation it may be relevant. There are different rules that apply so different conclusions can be reached quite legitimately and are quite bona fide. I think that is all of the issues.

**Mr Wellington:** Can you get some guidance from the Clerk about the Scrutiny of Legislation Committee?

**Mr LUCAS:** The Clerk has indicated to me that he shares the member's view of the interpretation. I will have to take some advice on the government's position in relation to that.

**Mr Wellington:** I certainly can't support it then if you are not prepared to have it before the House, but that's your call.

**Mr LUCAS:** No, that is something that is not for me to indicate to the member without actually consulting others. I do not make decisions in relation to legislation by myself. These are cabinet decisions and, indeed, it is something that I would need to talk about with the Leader of the House. In principle, I would have thought that anyone can examine the legislation on an ongoing basis. I do not have a problem with it, but I will have to take some advice in relation to it. I might be able to do that—

**Mr Wellington:** Is it possible for you to get that advice before we actually vote on it?

**Mr LUCAS:** The problem is that I am just about to sit down. We are just about to vote in relation to this bill. That is the difficulty. Maybe the member might want to see what happens at the third reading stage. Obviously, I have to stay here and answer questions in the consideration in detail stage. I commend the bill to the House.