Speech by

Hon. Andrew Fraser

MEMBER FOR MOUNT COOT-THA

Hansard Wednesday, 13 February 2008

QUEENSLAND COMPETITION AUTHORITY AMENDMENT BILL

Hon. AP FRASER (Mount Coot-tha—ALP) (Treasurer) (12.01 pm): I move—

That the bill be now read a second time.

The purpose of the bill is to amend the Queensland Competition Authority Act 1997, the QCA Act. The QCA Act provides the legislative framework for economic regulation in Queensland including—

- a monopoly prices oversight regime;
- a third-party access regime; and
- a competitive neutrality complaints mechanism.

The QCA Act has been in place for over a decade. This bill aims to bring the act up to date and be better equipped to deal with economic regulatory issues as they are today. The bill also implements the Queensland government's reform agreed to by the Council of Australian Governments, COAG.

In February 2006 under COAG's Competition and Infrastructure Reform Agreement, state governments agreed to establish a simpler and consistent national approach to economic regulation of significant infrastructure. The intention is to encourage greater investment in regulated export related infrastructure in particular.

The bill will improve the QCA Act by increasing certainty for regulated entities operating within Queensland's regulatory framework. This improvement is obviously good news for Queensland as Queensland will also be the first state to implement the COAG recommendations. This timely and decisive response shows how committed this government is to doing what it can to attract and encourage investment in significant infrastructure in the state. This reform sets infrastructure delivery front and centre for the Queensland Competition Authority. I move that the remainder of my speech be incorporated in *Hansard*.

Leave granted.

The first part of the Bill extends the existing prices oversight regime for state government business activities to also cover certain private sector monopoly or near monopoly businesses. The bill also introduces a new 'light handed' price monitoring regime.

The prices oversight and monitoring regime will only apply to private businesses that are already nominated under the state's third party access regime. This means only private sector businesses that have monopoly power and are provided by infrastructure facilities including port, rail, wholesale petroleum, gas, water or sewerage may be affected.

Mr Speaker, we are doing this because we recognise the increasing role the private sector plays in providing essential monopoly services to the community. Prices charged for these services can have a critical impact on the efficiency of those industries, which rely on these essential inputs. In the absence of a competitive market, it is important that there be an independent oversight of prices in order to ensure that services are provided at the most efficient level possible and at the most efficient price.

It provides the option for a consistent regulatory framework, particularly in cases where there is State regulation of a public sector activity in the same industry.

The bill also introduces an option for light-handed price monitoring regulation of monopoly businesses. Price monitoring regulation improves the level of price transparency as the authority obtains pricing data from a monopoly business at defined periods and periodically releases the data and any recommendations publicly on an ongoing basis. This is a light-handed transparent approach which allows regulated businesses to operate commercially with minimal interference from the regulator.

Under the prices oversight regime, recommendations made by the authority cannot be enforced by the authority or ministers. At this stage and in keeping with a light-handed regulatory approach that encourages minimal interference, the regime is a 'name and shame' model which is intended to provide monopoly businesses with an incentive to price fairly through a process that informs customers about the prices they are paying and the level of service they receive.

However, if a business is found to persistently abuse its position of market power in the delivery of essential services, the government is able to apply a more intrusive and decisive regulatory approach. Moving to regulate the business under the state's third party access regime (or further legislative amendment to allow pricing recommendations to be enforced) can incentivise a business to price efficiently.

Mr Speaker, while the government is committed to providing a light-handed approach that aims to attract investment in regulated infrastructure in Queensland, where necessary, we will do everything possible to protect the interests of Queenslanders when it comes to ensuring the fair supply of essential commodities.

It is anticipated, as proposed by the Queensland Water Commission, the new local government water retailers be subject to the new price monitoring provisions.

The second component of the bill implements a number of the recommendations in COAG's Competition and Infrastructure Reform Agreement. As I indicated earlier, Queensland will be the first state to implement these reforms which will streamline and simplify regulatory policy. The key changes involve introducing a new objects clause and pricing principles into the third party access regime. The bill also introduces new time limit provisions to regulatory decision making processes.

Including the new objects clause places an emphasis on efficient investment in and use of infrastructure. The new pricing principles will provide overriding guidance for the authority and ministers when making regulatory decisions. It will also help ensure that decisions are made on a more consistent basis over time as they will be made in the context of the overall objectives of the QCA Act. These new provisions in the QCA Act will help provide greater certainty for investors, access providers and access seekers as to how the QCA Act will be applied in particular circumstances. Again this will benefit and encourage infrastructure investment in Queensland.

The bill also establishes new time limit provisions in the third party access regime, which means the authority is directed to finalise its regulatory decisions within a six month time frame.

This provision recognises that timely decision making needs to be balanced with quality decision making. Accordingly, important processes such as public consultation periods are not included in the time frame. Further, the authority is able to make a decision outside the six month period provided it presents the government with written notice of the reasons for the delay.

To achieve the time frame required in the bill, it is important all regulatory participants have the opportunity to respond to requests for information from the authority in a timely manner. That is why the time limits will impose additional discipline on all participants in the regulatory process.

However, if providing information and responsiveness are found to be a problem in meeting the six month time limit, then the government will consider introducing appropriate legislative sanctions to provide support. Sanctions relating to the acquisition of information could take the form of, for example, financial penalties or compulsory acquisition of information.

Finally in respect of COAG's Competition and Infrastructure Reform Agreement, the bill provides an immunity from regulation for infrastructure that is developed under a competitive tender process approved by the Australian Competition and Consumer Commission (ACCC) under relevant Trade Practices Act 1974 provisions.

This up-front immunity is proposed on the basis that a competitive tendering process can substitute for the regulation of prices that can be charged by a natural monopoly. This sort of immunity can simplify the regulatory process, add certainty and enhance timeliness. It should be noted the commencement of this provision will be delayed until the guidelines for the competitive tender process are finalised by the COAG working group.

A major improvement to the QCA Act incorporated in the bill is the introduction of 'Binding Rulings' under the third party access regime. This new section in the QCA Act will allow the authority to make a decision on a regulatory matter prior to or outside of a formal regulatory process. Binding rulings will allow the QCA to provide greater clarity and regulatory certainty prior to infrastructure investments being made.

By providing regulation in advance, binding rulings will reduce the risk faced by regulated entities and significantly encourage investment in regulated or potentially regulated infrastructure in the state. The rulings will also encourage more strategic and forward looking types of investment in infrastructure which involves spare capacity. Often investment decisions in regulated assets are made simply on the basis of capacity required to meet foundation contracts or existing demand. Further, the rulings may be used to provide regulatory certainty where investments are required urgently to meet extraordinary circumstances.

Finally, there are two further miscellaneous provisions in the bill that the authority will be required to take into consideration in third party access decision making processes. Firstly, the bill requires the authority to consider the effect of excluding assets for pricing purposes on a regulated entity's returns. While the authority cannot, nor should it, guarantee a return on all regulated investment in infrastructure, the risk of the regulator removing assets from the asset base and therefore decreasing the regulated entities rate of return can have an adverse effect on the incentives for the industry to invest in strategic significant infrastructure over time. This provision ensures the authority explicitly takes this potential impact into account.

Secondly, the bill requires that the authority should not reject a draft access undertaking on the basis of a minor and inconsequential matter. This provision signals a preferred regulatory approach whereby the authority does not question minor details that have no real effect on regulatory outcomes. While the authority is ultimately the judge of what it considers minor and inconsequential regulatory issues, the provision indicates that the authority should not become overly involved in access undertakings submitted by regulated entities.

In conclusion, the policy objectives which have driven the development of the bill are critically important in a growing state like Queensland where we need to be able to respond to the export market in a timely way. In particular, we need to ensure the regulatory framework supports and encourages investment in essential infrastructure.

Mr Speaker, I am pleased to say this has been achieved through broadening the range of options to include a lighter handed form of regulation such as the price monitoring provisions and providing access to binding rulings which will be an essential element of regulatory certainty. Furthermore, implementing the COAG recommendations will improve the quality and timeliness of decision making and outcomes under the QCA Act. I commend the bill to the House.