Speech by

Andrew Powell

MEMBER FOR GLASS HOUSE

Hansard Tuesday, 31 August 2010

MOTOR ACCIDENT INSURANCE AND OTHER LEGISLATION AMENDMENT BILL

Mr POWELL (Glass House—LNP) (4.12 pm): I rise today to speak on the Motor Accident Insurance and Other Legislation Amendment Bill 2010. As mentioned by previous speakers and as outlined in the explanatory notes, this bill has three significant elements and a number of other minor amendments. Importantly, the bill aims to reduce delivery and acquisition costs and promote greater price competition within the CTP scheme so as to deliver premium savings to motor vehicle owners. It also updates the state's third-party access regime, contained in part 5 of the Queensland Competition Authority Act 1997. To complement the enhancements to the QCA Act, the bill will also make amendments to the Transport Infrastructure Act 1994 which are specific to QR National's corporate governance framework.

As mentioned, the bill also makes further amendments to the TI Act in the following areas: it strengthens the existing provisions dealing with priority for regularly scheduled passenger services; it inserts new provisions into the TI Act to preserve existing passenger and non-coal freight train paths; and it enshrines in legislation the government's rather belated commitment that future toll increases on the Gateway Motorway, the gateway extension motorway and the Logan Motorway of Queensland Motorways Ltd will be limited to the annual consumer price index.

Other speakers have addressed—and no doubt further speakers will also address—the elements of the bill that pertain to CTP, asset sales and increases to tolls. So I would like to focus my comments on the changes to the Queensland Competition Authority Act, the QCA Act. Competition policy in Queensland has been developed with the assistance of the 1995 competition policy agreement drawn up by COAG. The agreement required the Commonwealth government to assist states and territories in their development of third-party access regimes. As noted in the government's June consultation paper—

> Third party access regimes create a regulatory framework to enable fair and reasonable access by third parties to significant natural monopoly infrastructure facilities such as electricity grids, gas pipelines, rail tracks and port channels. Access regulation is intended to apply where owners or operators of natural monopoly infrastructure have the potential to exercise market power by denying access to their facilities or charging excessive prices, thereby hindering or preventing competition within a dependent market.

As the consultation paper goes on to state, establishing legislation that protects the right to seek access to such services is, therefore, imperative.

Queensland's third-party access regime is modelled on part 3A of the Commonwealth Trade Practices Act 1974 and it has been in place for more than a decade. As such, it was based on an environment in which eligible infrastructure facilities were predominantly publicly owned with limited private investment. Accordingly, it was envisaged that third-party access regulation would almost exclusively be applied to publicly owned facilities. Since the nineties there has been an increasing prevalence of private investment in these significant infrastructure facilities. The bill therefore seeks to update and enhance the regime to reflect these changes and provide increased certainty for regulated businesses and their customers. As contained in the explanatory notes, the bill will achieve this by: making it more explicit that the regime only applies to services provided by significant infrastructure facilities; introducing a pre-expiry review to assess whether significant infrastructure should again be declared; being more explicit on the

matters the ministers must consider when making an access code; and removing deemed decision for access declarations. The bill, it is suggested by the government, will also improve efficiency through promoting more timely regulatory processes.

In making these changes the bill must also make amendments to the TI Act, specifically around the vertically integrated operations of QR National. The original proposals as circulated in the consultation paper earlier this year included that the majority of directors of QR Network's board must be independent of the executive management of the QR group; that access agreements between QR Network and its related entities must be approved in advance by the QR Network board; and that the directors of QR Network must not approve an access agreement with QR National unless the directors are reasonably satisfied the agreement is at arm's length.

It is interesting to note that, unlike the pronounced and now substantiated amendments to the QCA Act, these proposals were not supported by either the Queensland Resources Council or Asciano, a transport company that includes Pacific National rail operation and Patrick ports and stevedoring businesses. In its submission the Queensland Resources Council states—

QRC considers that the proposed amendments to the TIA, in their current form, will not achieve their intended purpose of ensuring 'the independence of the QR Network Board from the QR Group'. Consistent with past commercial and policy practice, QRC will be looking to the State Government to address specific matters relating to QR National's vertically integrated structure and consequential perverse ownership incentives, including the extraction of monopoly profits from the supply chain by withholding investment or delaying infrastructure expansions, to be addressed within the network lease agreement between the State and QR National.

Asciano was stronger in its objection, stating—

... there are a number of areas where the amendments are not sufficient to prevent anti competitive behaviour by incumbent monopolists. In particular, the non discrimination and governance controls around QRNetwork are ineffective and the term of the declaration is inadequate.

Asciano continues—

The corporate governance controls are ineffective. In particular a director of a QRNational company can be a director of QRNetwork and the board of directors of QRNetwork can take into account the interests of a QRNational company in addition to its own interests in making decisions. This governance framework facilitates and encourages QRNetwork to prefer the interests of its related above rail operator over those of third party rail operators. At a minimum there needs to be a majority of independent directors on the QRNetwork board, with independent meaning independent from any QR related companies.

It appears the government was listening—at least in this instance and perhaps for a change—for the final amendments we see in this legislation will enhance the governance of the QR Network board from the QR National group by requiring the majority of directors of the QR Network board to be independent of the executive management of the QR National group and prevent QR Network directors from approving an access agreement with QR National unless they are reasonably satisfied the agreement is on arm's lengths terms.

As I said earlier, establishing legislation that protects the right to seek access to significant natural monopoly infrastructure facilities is imperative. It is also imperative that monopolies such as QR Network are transparent and seen to be independent in their decision making around such access decisions. It appears that this bill may improve our state's legislative response to these imperatives.