



Speech by

Fiona Simpson

MEMBER FOR MAROOCHYDORE

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TRANSPORT (RAIL SAFETY) BILL

Ms SIMPSON (Maroochydore—LNP) (2.34 pm): The future of our transport network depends on having a safe and reliable rail and road network. The legislation before the House, the Transport (Rail Safety) Bill, pertains to rail safety. Efficiency without safety is false economy, but rail systems without continual improvement threaten not only safety standards but also competitiveness. Thus, a regulatory framework should not only police the standards of safety but also support continual improvement which allows both of these objectives to be fulfilled in their rightful order and balance.

Queensland has not had stand-alone rail safety legislation. It has had a legislative framework but not dedicated legislation. The legislation before the House will allow us to go beyond what was a mutual recognition framework to a national uniformity framework. The purpose of this bill is to provide rail safety legislation that will form part of a system of nationally consistent rail safety laws.

The bill sets out legal duties and operating requirements that are to be applied on a nationally consistent basis to all parties responsible for rail safety. It is intended to underpin future national regulations as well as compliance codes and guidelines. This has been described as a co-regulatory approach to rail safety. There has been a cooperative approach to rail safety across boundaries but, because of the lack of national uniform legislation, it has not always been consistently applied.

This bill will be built on the current and ongoing reform agenda which is moving towards a single national rail regulator. I acknowledge today the announcement that Queensland will be the base for the heavy trucking industry safety regulator. We know that a similar national rail regulator will also be instituted eventually under national legislation. The location of that regulator is still to be advised and formulated.

Ms Nolan: I think it's going to be South Australia.

Ms SIMPSON: Thank you, Minister. While there is a place for strong state rights—that is, a brake and a check of accountability on the power of a centralist government—there is a strong case for uniformity and coordination of services for the public interest in the shifting of goods, people and ownership of operations across state boundaries. While historically the rail networks of Australia have reflected the independent nature of the states—with different gauges, laws and practices governing their operations—this move towards a regulatory framework which is consistent across Australia is a natural progression and one that is welcome.

I support the principle of these nationally consistent laws, although I still support the right of continual improvement that allows for the states, where it is appropriate, to respond legislatively for their unique circumstances and with flexibility. I think it has been recognised by a number of state jurisdictions that they still have some unique needs, and that has been reflected in a differing approach on some issues to the legislation before these parliaments. But, broadly, the national uniform legislation has been the platform that has been put towards these parliaments.

What we see in this legislation is based upon a model bill which was developed in conjunction with representatives of all jurisdictions, the rail industry and rail unions and which receives legal effect when reproduced in each jurisdiction's legislation. The National Transport Commission, the NTC, developed a national model Rail Safety Bill in 2006 and national model Rail Safety Regulations. This bill will enact the

regime which was initially promoted and has since been subject to negotiation through these various jurisdictions, and it adopts the intent and embraces the principles of national consistency.

A revised deadline of December 2008 was set by the Council of Australian Governments, COAG, for implementing these agreed reforms in a nationally consistent and coordinated way. As the House has been advised, we have seen these bills come forward in Victoria, New South Wales, South Australia and Tasmania. Currently, the bill has been put to Western Australia and the Northern Territory.

We support the principle of these nationally consistent laws. I do know, however, that a number of issues have been raised in the Scrutiny of Legislation Committee report, and I will refer to those later in the consideration in detail stage. One of the disadvantages of nationally consistent legislation is that sometimes principles are put forward in these formats which are not always consistent with individual state drafting rules and considerations.

Australia has some of the safest rail systems in the world. However, as this state knows, when an accident occurs there is potential for great injury and death. Tragically we have seen in recent years examples in Queensland where there have been rail accidents, particularly at level crossings, which have ended in tragedy. This parliament has seen reports in regard to those incidents and recommendations put forward to address these matters. One of the most pertinent points at this time is the issue of level crossings—not only the regulatory framework and how that is addressed but also the physical infrastructure that is in place.

I acknowledge that money has been allocated to upgrade a number of level crossings to improve the visibility of those crossings, to enhance the warning systems around those crossings and in some instances to add boom gates. But there is still a very real issue of the sheer number of level crossings, particularly across the National Highway but also on many other roads, be they local or state government roads or private access roads.

This legislation also seeks to regulate the interface between the rail operations—the physical infrastructure—and neighbouring roads. As the minister acknowledged in her second reading speech and as is contained in this legislation, level crossing accidents pose the biggest risk to safe rail operations. With the size of the road network that we have in Queensland, that is a continual issue. There is no doubt that more needs to be done regarding the physical infrastructure around that road interface, but this regulatory framework for the first time will require state and local governments and private road owners to enter into agreements with rail transport operators with regard to how they will together manage the level crossing safely. This is an issue on which I am seeking the minister's feedback. While we agree with the principle put forward regarding the matrix of risk and how this is to be managed, the reality is that there are very disproportionate relationships between some of the parties and how they are able to negotiate those agreements.

One of the concerns with the size of the rail network in Queensland is that there are a lot of small property owners or individuals who may find that their only access or the key access to their properties is across rail lines. Historically, some of those relationships have been managed well in regard to Queensland Rail. There are other circumstances of which my colleagues have made me aware where there have been very difficult relationships with individual landowners and even threats of having that access removed.

First and foremost there must be safety, but there needs to be recognition that, in negotiating these agreements with some of the larger rail operators—and certainly as there is a move towards more private operators as a result of the sale of assets and those who have third-party access to the existing rail network—some individual landowners may find it very difficult to not have an unreasonable shifting of risk to themselves. I seek the minister's assurance that the government will maintain its interest in ensuring that there is a fair balance of power, that people do not have risk shifted to them that is unfair and unwarranted, and that they are in a place to fairly negotiate.

I think this issue of fair access to people's property is very pertinent. In today's paper there is another story in regard to a new private rail line. It is a reality that people will be seeking to build rail lines and there will be people who will be seeking to buy rail lines from the government in the upcoming asset sale, but this creates a different relationship. Historically it has been through QR and the government for people to negotiate fair access and manage the risks around these crossings. We will now have a situation where many people may find themselves negotiating with a major corporation and will have some concerns about whether they will be able to maintain fair and safe access to their properties.

I thank the minister for the briefing notes put forward by the minister's office and department. I note that some answers to questions which we raised from the briefing came through late this morning. The issue of the interface was one of the matters that we raised. There was some further explanation in those notes in regard to the rail safety regulator, but I ask for the minister's assurance once again. Given that the rail safety regulator is a position which will be removed from the state's jurisdiction to become a national regulator, there is still a need for the state to maintain the public interest and ensure that those who are

perhaps in a disadvantaged position and who have to negotiate have fair access to government assistance. I seek the minister's assurance in that regard.

This opens up another arena as well, and that is the tourist and heritage lines. I acknowledge that this is also specifically mentioned in the minister's second reading speech. In the briefings I have been assured there has been consultation with a number of bodies which are providing rail service in the tourism and heritage arena. These bodies are staffed mainly by volunteers, some with professional backgrounds and many who have the intention of doing the right thing and safely operating their rail lines but not necessarily with the resources of government or corporations. I note there have been verbal assurances that assistance will continue to be provided to help them comply with this new regulatory framework. I also seek the minister's assurance today in regard to education and assistance for these bodies. Yes, we need good regulation to keep people safe, but it can be quite onerous for the volunteers who operate these bodies. To do it on their own is quite a burden. I seek the minister's assurance that there will be assistance to help these bodies meet their legal requirements, that those requirements are measured in accordance with the risk that people carry, and that they are able to keep doing their good work in providing another very rich experience of rail travel but one that is based upon tourism and heritage.

As I have mentioned, there are a number of rail crossings across the state. Some have physical barriers. Some are separated with flyovers. Some have boom gates and others do not. I want to address a couple of examples of crossings that have been of continuing concern. This legislation is about sharing the risks between the operators and parties involved in this infrastructure. However, there is still an onus on government to ensure there is a program to physically improve that infrastructure, particularly where there is an interface with traffic and where there is a high risk to the public and those who are driving our trains and working on the tracks. Still of great concern is the situation with Telegraph Road. The fact is that the urban land development area of Fitzgibbon is in this area at this intersection, and there is already a tremendous amount of pressure for an upgrade at this intersection. We have seen tremendous traffic congestion as well as the dangerous situation of people becoming frustrated and trying to dangerously dart through level crossings.

There is never any excuse for people breaking the law and risking their lives and the lives of others to get around boom gates. However, this is an example of a level crossing whose time has passed. It needs to be addressed. There needs to be a program to have traffic fly over and not be stopped at this level crossing. The fact that there is a major development area proposed that will pour more traffic into this area will only compound the problem. It is one thing for the government to say that it has population targets, but it has to meet its responsibility for the infrastructure to address this issue. I seek the minister's advice today as to when this critical piece of infrastructure will be addressed at this location.

Another area of concern is Robinson Road. Once again, this is another example of an area that is not only a frustration for motorists but also there are real safety concerns when it comes to the amount of traffic going over this rail level crossing. I understand that the Brisbane City Council is willing to fund 50 per cent of the upgrade. Traditionally, that has not always been the proportion proposed. This is a case where the council has done a lot of the planning work and has wanted to progress this critical piece of infrastructure. It is time for the state government to step up to the plate and embrace the fact that there would be bipartisan support for this proposal if the government would come on board and do its part.

It is all very well to say that there is going to be a sharing of risk and responsibility under this regulatory framework but if the state government does not do its job and put the infrastructure in place then the regulation is just a piece of paper. We need the hard infrastructure. We need to have programs to ensure that there are continual improvements in the infrastructure, not just continual improvements made by the rail workers operating these systems. I seek the minister's commitment and assurance that money will be put into that program—and not just with regard to the particular examples I have given but others across the network that pose a risk to public safety.

It is probably more good luck than good management that there have not been more accidents at a number of these places. The fact is that now not only is people's safety at risk but the efficiency of the network is at risk. People are in conflict with boom gates in these highly congested areas and this cannot be tolerated any more. Accidents and delays around these pieces of infrastructure are having an impact beyond just that of people's personal safety. It is impacting on the broader community's ability to go to and from work. Increasingly, we are seeing delays across the network because of these kinds of failures and conflicts at rail level crossings.

I acknowledge that there has been money put aside for building gantries at bridges. This addresses one of the issues which has impacted on rail safety and rail performance time wise. More needs to be done with regard to the physical improvements to these level crossings so that conflict is lessened.

I want to also address a number of recommendations that were put forward by the federal House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government in its report tabled on 22 June 2009 titled *Level Crossing Safety*. This inquiry came out of a

previous report into train illumination. It was to look at a broad range of possibilities to improve rail safety. I would be interested in the minister's response to a number of these recommendations.

I know that the state has been moving towards putting speed cameras on level crossings to improve safety. There are other propositions in this report, some of which have been trialled in some areas. It is still the case of what the future program of improvements will be. Some of the recommendations from that report were: consistent penalties should exist across jurisdictions; 80 kilometre per hour speed limits at level crossings located on roads which currently have higher speed limits; issues related to the visibility of locomotives; research regarding auxiliary lighting on trains; further trials of passive rumble strips at selected level crossings across the country; the trial of active rumble strips; research into intelligent transport systems; research into the feasibility of a cut-in warning system which would warn motor vehicle drivers of oncoming trains as they approach a level crossing; a national database which aggregates data from level crossing crashes and fatalities in all Australians states and territories; and a revised national railways safety strategy as part of the new national transport policy.

There are a number of measures proposed such as speed limits at level crossings and research into intelligent transport systems. The cut-in warning system is one proposition that has been put to me by some manufacturers in this state. I understand there are others in Australia of this view. There are some overseas jurisdictions who have implemented this technology. I seek the minister's feedback as to what investigations this government and the department are undertaking with regard to some of that new technology.

One of those pieces of technology that I understand has been proposed but is yet to be trialled in Queensland is the cut-in warning system. There is an emitter on trains that alerts technology in vehicles. That technology would have to be fitted in vehicles. I understand there has been a call for a trial of this so that consideration can be given as to whether this could be of benefit not only at rail level crossings but also to alert people to emergency vehicles.

Today with a lot of people driving with their iPods on or their radios on there is a lot of concern about a lack of driver awareness and the possibility that technology such as this can cut through that. I understand that there are overseas jurisdictions that have this. Without this being trialled we cannot rubber stamp it. It needs to be assessed to see its cost-effectiveness. I seek the minister's feedback as to what technologies have been considered.

Another important change coming through that will not only impact on rail regulation but also impact on other government legislation is workplace health and safety changes. There has just been a High Court case with regard to the reverse onus of proof involving workplace health and safety. That was the Kirk case. That has implications across many jurisdictions. Many would say that it is about time there was a fair regime and that the balance was right—that is, where people are liable and responsible for their actions they should certainly face the full weight of the law if they do wrong. But there is a danger in going into the territory of reverse onus of proof. With the workplace health and safety laws that has been the subject of a recent legal case.

I seek the minister's advice with regard to changes to workplace health and safety provisions in this legislation and how that particular court ruling will be applied. What will the new provisions with regard to workplace health and safety in this legislation mean in terms of a change to current practices?

One of the other issues with regard to the implementation of standards relates to alcohol and drugs. The explanatory notes explain what will occur with regard to an investigation. I seek the minister's advice as to what is proposed with regard to the standards for testing. Will there be mandatory random alcohol and drugs testing, particularly if people are operating heavy equipment or trains? This is a question that has to be asked. We like to think that everybody is doing the right thing. These regulations are here to ensure that the public is safe and that other workers operating around these facilities are safe. I seek the minister's advice as to whether there will be mandatory random testing for those who are operating trains and other heavy equipment or those in a position to effect public safety.

As I have mentioned, this legislation is based on a national model of legislation. But there have been variations to the legislation in other jurisdictions to meet certain local requirements. I would also seek the minister's advice as to what the variations are within this piece of legislation to the model bill and the reasons for those variations and how they will still maintain a platform of coordination across jurisdictions?

Controversially, the state is facing the sale of a number of its assets. There are already third party operators upon the tracks in Queensland. But this government is also proposing to sell below rail. That has obviously raised concerns with us about a lack of prudence with regard to the state budget but also future operations.

This legislation is theoretically supposed to impact on all owners and operators in an equal way. We are still yet to see the regulations. We are yet to see the list of guidelines that will operate under this legislation. We are still yet to see how the sale of Queensland assets is going to manifest in a real way.

First and foremost, safety needs to be upheld. First and foremost, the public interest needs to be upheld. Without seeing what the regulations will be, this parliament is at a disadvantage—that is, increasingly as these guidelines come forward they are not necessarily subject to disallowance, as guidelines themselves tend not to be subordinate legislation that comes back for the scrutiny of the parliament, and that can be a major concern. As the Scrutiny of Legislation Committee has noted, there are some abhorrent provisions with regard to not only fundamental legislative principles but also regulations that will in effect amend the act. These Henry VIII provisions have been frowned on but have been increasingly creeping into the way legislation is drafted.

There are also some quite stringent penalties put forward in this bill. As I understand it, that is to ensure there are the highest levels of safety reached. But, once again, that must be balanced with people's ability to reasonably present themselves in a fair way and have access to a jurisdiction that will balance the rights and liberties of the individual with public safety issues.

In supporting this legislation, it is still the role and responsibility of government to ensure there is investment in infrastructure to protect the public interest and to protect the safety of those who are operating in these environments. What we have seen in recent years with the tragedy of the crashes particularly in North Queensland is a growing awareness that, with an increased population and freight task on the roads, these conflict points with rail are highly dangerous.

More needs to be done to ensure that safety and early-warning systems are put in place so that these events can as much as possible be prevented. Nobody wants to see the tragedies that we have seen in recent times. Nobody wants to see these tragedies replicated anywhere, let alone in urban centres where there is a high risk of conflict where vehicles come in contact with level crossings. I urge the government to start investing in the upgrades of these level crossings and not keep putting it off and passing the buck to other jurisdictions. It is time these critical concerns were addressed, because regulation alone will not keep people safe. With regard to the legislation before the House, as I have stated, we support the principle but wait to see the guidelines that will come forward.