

26 November 2009

Trade Practices Amendment (Infrastructure Access) Bill 2009

Second Reading

Mr BRADBURY (Lindsay) (1.12 pm) — It gives me great pleasure to rise to speak in support of the [Trade Practices Amendment \(Infrastructure Access\) Bill 2009](#) and to do so after the member for Werriwa, who has made some significant contributions to this debate. I would like to reinforce some of the points that he has made, but I would also like to address some of my comments to the statements made earlier by the member for Cook. It was interesting to hear the member for Cook talk about the infrastructure needs that we face in this country, particularly with a larger and growing population. But, as the member for Werriwa pointed out quite succinctly, the member for Cook has not been in this place all that long—in fact, he was elected to the parliament at the same time as I was, at the last election—and perhaps he can be forgiven for showing some ignorance as to what occurred in this place and what occurred on the watch of the former government. When it comes to infrastructure spending, the Howard government was missing in action. Those on the other side very rarely put up a defence when it comes to infrastructure spending. They seek to try to turn to a fresh page and start to look forward, rather than try to defend the very poor record of the former government.

When it comes to infrastructure, we can go back and have a look at the many, many—in fact, over 20—warnings from the Reserve Bank in relation to some of the pressures that were leading to rising interest rates when those on the other side last held the treasury bench. When the coalition were last in government, the Reserve Bank issued warning after warning in relation to infrastructure bottlenecks. The failure of the former government to do anything to address those infrastructure bottlenecks clearly contributed to the inflationary pressures that ultimately led to the highest interest rates that we have seen for quite some time. They were the party, of course, that promised that they would keep interest rates at record lows.

The Reserve Bank is meeting today and will be deliberating on the future direction of interest rates. But— notwithstanding the decisions it takes today—clearly interest rates are at a much better level, in terms of affordability for people right around this country and where they are placed at the moment, than they were when we as a government came into office. In no small measure, the failings of the former government were as a result of their failure to address some of these infrastructure bottlenecks.

So it is interesting to hear the member for Cook talk about the challenges that we face. He did not provide a lot of commentary in relation to this particular bill, which I assume he supports. I assume that because these are good initiatives and good measures that will provide greater certainty to those private investors who are looking to invest in nationally significant infrastructure. Essentially, that is what this bill is about. It is about ensuring that, in that balancing act between not duplicating infrastructure and maintaining fair and reasonable access to nationally significant infrastructure, we are able to do that in a way that does not provide a disincentive for investment in new, nationally significant infrastructure. This

bill addresses some of those concerns that have been voiced by many throughout industry and, indeed, by many of the key regulatory bodies.

It is worth noting that the proposals contained in this bill draw upon recommendations from a number of significant regulatory bodies over a number of years. More recently, we have seen COAG recommending some of these proposals, as have the Productivity Commission, the National Competition Council, the Australian Competition and Consumer Commission and the Australian Competition Tribunal. But, even more significantly, we have heard the calls for the types of reforms that are proposed here coming from those in industry—those who have provided the capital, who have invested in the new nationally significant infrastructure facilities that our country has seen in recent times, and those who might be proposing to do so in the future.

I note that the member for Cook also, in the only attempt to defend the record of the former government, offered up waterfront reform as being the most significant contribution that the former government had made in improving productivity. I will let others judge the success or otherwise of those measures. But, as I said earlier, when the former government left office the Reserve Bank was making repeated warnings about the failure to meet the levels of productive capacity that our nation needed in places such as our ports. So, whatever decisions they took, they failed against that benchmark. But, if waterfront reform is in fact one of the key achievements of the former government, then that is perhaps a more polite way of expressing the ongoing commitment to Work Choices and labour market deregulation that is so central to the beliefs of those on the other side.

We saw that from the new Leader of the Opposition today—in some of his first comments as the Leader of the Opposition, breathing life back into the body that is Work Choices. He wants to give it another name; that was pretty clear from what he had to say today. But he certainly was not hammering that final nail into the coffin of the corpse that is Work Choices. In fact, he was breathing life back into it. Members in this place would be well aware of his ongoing commitment to driving down the terms and conditions of working people right around this country. For those who might have forgotten that, it is incumbent upon all of us to remind them over the coming period.

The member for Cook also made some comments in relation to airport capacity and the Richmond RAAF base. I put on record that the government, in the minister for transport's statements, has made it very clear that no decisions have been taken in relation to the current reviews of airport capacity that are being undertaken. But I would like to read a couple of comments from the press release that was issued by the Hon. Anthony Albanese, the Minister for Infrastructure, Transport, Regional Development and Local Government, on 23 November this year. Importantly, in that statement, the minister said:

... the Government will not engage in speculation about individual locations.

So there was certainly nothing to verify the suggestions in relation to Richmond RAAF base that are being made by those opposite. But, to my mind more importantly, the statement also says that the white paper and the government's response:

... will also consider the future of the Badgerys Creek site given the Government has ruled it out as an option for a second airport. This will focus on how the site can provide a stimulus for jobs and economic development for western Sydney.

The member for Cook did not offer a view on this; perhaps some of the other speakers later in this debate might choose to do so. But my understanding is that it remains opposition policy that a second Sydney airport be built at Badgerys Creek. In fact, when they left office the position that prevailed was the retention of the Badgerys Creek airport site for Sydney's second airport. I have not seen any statements made since, by anyone on that side of the chamber, that they were walking away from their commitment to preserve Badgerys Creek as an option for a second airport.

So if the member for Cook truly wants to point towards a failure by this government to take decisions in

a consultative way on airport capacity—and the government, I might add, is currently going through an extensive consultative process through the white paper process—if that is the criticism that the member for Cook is levelling, let us just take a couple of steps back and look at what a debacle the handling of the Badgerys Creek site had been under the former government.

After all the toing and froing that occurred in the many years prior to the former government leaving office, the best position that they were able to come up with in relation to meeting future airport needs in the Sydney Basin was to retain in government ownership the Badgerys Creek airport site with a reservation over that site, as expressed in the Airports Act, with a commitment to roll out an airport on that site if and when it was required. There was no alternative planning for any sites elsewhere and no alternative process.

If the member for Cook is serious about holding up governments and their willingness to deal with airport related issues as being a measure of success or otherwise when it comes to infrastructure planning, the former Howard government got a fail with a capital F. We as a government are committed to working through these matters and to trying to address some of the key productivity challenges of our economy. Infrastructure is a central challenge of that nature.

In relation to the bill that is before the House, I mentioned earlier that there have been some recommendations that have come forward from various bodies, including the Productivity Commission, and I note that the House of Representatives Standing Committee on Economics is currently undertaking an inquiry into raising the level of productivity growth in the Australian economy. This has been a very interesting inquiry. I am pleased to be a member of the committee and involved in that inquiry. I note that the Productivity Commission, in a submission dated as recently as September this year—and the content of their submission was reaffirmed in their verbal testimony—made a number of points in relation to infrastructure and the need to streamline the process for access approvals and to deliver greater certainty when it comes to investment in infrastructure for those private holders of capital that might be willing to undertake such investment. The Productivity Commission's submission, on pages 46 and 47, says:

More broadly, good regulation is central to Australia reaping the potential benefits from private investment in infrastructure. Competition regulation has a key role. Third party access regimes for 'essential facilities' have been modified in recent years to reduce their potentially inhibiting effects on investment. But further legislative amendments are needed following a Federal Court decision in 2007 that has raised questions about the sustainability of the light handed approach for airports, posing risks for investment in infrastructure more generally ...

That was the Productivity Commission. Having made earlier recommendations for governments to take action when it comes to this particular area, they raised it once again in that inquiry—an inquiry focused on how we can lift and improve Australia's productivity to reap the benefits of continued prosperity in this economy. They highlighted third-party access arrangements and nationally significant infrastructure as a key consideration that should be on the table for government reform, as indeed it is in this particular bill.

The national infrastructure access regime was introduced back in the mid-nineties and emanated from the deliberations of the Hilmer committee and the reforms that flowed from that process. Essentially this regime is concerned with the development of both competitive and efficient markets. It is about ensuring that we are not duplicating essential infrastructure but that adequate arrangements are in place to provide access seekers with access to nationally significant infrastructure. Under current arrangements there are effectively three pathways: an access seeker may apply for a declaration of an infrastructure service; a certified state or territory infrastructure access regime may provide access; and, thirdly, the provider of an infrastructure facility may have an access undertaking that sets out the terms and conditions of the access.

Infrastructure services may be declared for a number of reasons. The primary reasons an infrastructure service may be declared are: where access would promote a material increase in competition in another market; where it would be uneconomical to develop another facility to provide the service; where the facility is of national significance; where access is not the subject of an effective state or territory access regime and therefore denying that second pathway; where access can be provided without undue risk to human health

and safety—and that is to be repealed; and where access would not be contrary to the public interest. A declaration, of course, does not provide a right to access but it provides a right to arbitration by the ACCC if commercial negotiations do not lead to a successful resolution in respect of access arrangements.

The essential problem with the current set of arrangements is that the process ends up being far too lengthy and, as a consequence of that, far too costly. I know that there has been some criticism from some quarters. I have seen some of the criticism coming from the legal fraternity. Clearly, when it comes to the costs associated with the existing set of arrangements, one of the outcomes the government would hope for from these proposals is that it would streamline the process and would eliminate some of that cost associated with the ongoing legal wrangles that might be associated with battles over third-party access.

Earlier in the debate the member for Robertson referred to various disputes regarding BHP and the Fortescue Metals Group. When one looks at the amount of time that those particular disputes took before a resolution was achieved, regardless of which side of the debate one comes from, that is clearly evidence that the current set of arrangements do not provide for a speedy determination of these matters and, as a result, cost all parties a great deal. That detracts from the productivity benefits that would otherwise be reaped from investment in such infrastructure.

The bill establishes time limits for decision making about third-party access to the infrastructure. It also limits reviews of those decisions to the information that was provided to the original decision maker. That stops the opening and reopening of new matters of dispute and determination. The bill also provides greater certainty for potential investors in new infrastructure. Under the existing access regime, a private investor who is considering building an infrastructure facility cannot determine with any certainty whether or not the services that are to be provided by that proposed facility would be declarable. Obviously that gives rise to great regulatory uncertainty for the investor. This bill provides for an upfront decision to be made by the designated minister. If the minister decides that a service provided by a proposed facility would not meet the test for declaration, then it cannot be declared for at least 20 years, providing the investor with the certainty of knowing that for the next 20 years no such declaration can be made. The bill improves regulatory certainty by enabling a service provider to submit to the ACCC an access undertaking which includes one or more terms that will apply for a certain period beyond the expiry date of the undertaking.

When all of these measures are combined, the bill provides a number of sensible improvements to the infrastructure access regime that currently prevails. It provides a streamlined approach for determining whether or not declarations are to be made and, most importantly, it provides private investors—private capital—with the certainty of knowing that, once a decision has been made by the designated minister, they can undertake a substantial investment in a nationally significant project and do so without the uncertainty of having someone reopening these matters throughout. This means a significant dividend will be paid to the Australian economy and our productivity into the future.