

November 9th, 2005

The Committee Manager
Public Accounts Committee
Parliament House
Macquarie Street
SYDNEY NSW, 2000

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Dear Sir

Infrastructure Partnerships Australia (IPA) is a new peak industry forum which has been established to lead the national debate in Australia on infrastructure needs and in identifying possible solutions towards improved planning, project delivery and operation of infrastructure in conjunction with the private sector.

IPA is dedicated to improving the provision of infrastructure in Australia, recognising the well documented positive relationship between infrastructure capability and economic productivity and performance. IPA seeks to pursue its aims through an explicit development of relationships between the public and private sectors. The development of real partnerships and greater mutual understanding of the motivations and operations of each sector sit behind IPA's role; a greater understanding, raising of levels of knowledge and awareness and sharing of experience should lead to each sector becoming more insightful of the capacities, capabilities and requirements of the other.

IPA is acutely aware of the complexity associated with the formation and delivery of infrastructure, particularly in ensuring infrastructure services are 'fit for purpose' and can be managed effectively over the course of their very long economic life. To this end, IPA endeavours to create a community of learning among public and private infrastructure practitioners that will support realistic expectations and enduring outcomes as well as greater opportunities for private sector to contribute and work in close co-operation with government in developing infrastructure and services.

IPA welcomes the opportunity provided by the Committee's inquiry to advance a number of principles and issues relating to Public Private Partnerships (PPPs). In doing so, we are seeking to be positive, acknowledging that all processes are capable of improvement and forward looking, and the nascent market for PPPs is no exception.

This submission does not seek to devote effort towards promoting the concept of PPPs. The Inquiry's terms of reference do not appear to be directed to testing the concept of PPPs but to improving its overall effectiveness balancing requirements of government through its public policy goals and commercial considerations that the private sector bring to bear.

This submission raises various issues which would improve or increase the effectiveness of processes associated with PPPs and the opportunities for infrastructure and services to be provided through PPPs.

The Committee's inquiry is timely. At present there is an abundance of capital in the Australian economy looking for opportunities to invest. At the same time there are recognised deficiencies and gaps in both the quality and quantity of infrastructure servicing the economy. Whilst there is an appetite for investment of capital in the Australian economy, the opportunities for doing so in the infrastructure arena are limited. Accordingly, these willing funds are being invested in other sectors of the economy or overseas, where opportunities are being made available. The time is right, but the window of opportunity may be limited for government to take advantage of available capital by offering appropriate commercial proposals for the consideration of the private sector.

IPA is cognisant of the importance that infrastructure investment needs to be both timely and strategic. Indeed, in light of the prolonged expansion of the Australian economy it is inevitable that infrastructure shortages and bottlenecks may occur within certain sectors of the economy. IPA does not support the view that there is an infrastructure crisis per se, however this does not negate the fact that Australia is at risk of an infrastructure shortage in the next decade. Federal, state and local governments alike must work in a concerted way in ensuring that infrastructure needs are rigorously assessed and anticipated so that central assets are built and commissioned to support the ongoing expansion of the economy. The challenge at this stage is to identify how to realise opportunities for developing infrastructure and services in a coherent, consistent and timely manner in partnership with the private sector.

Strategy

A State Infrastructure Strategic Plan was published by the NSW Government in December 2002. It has not been updated. However, the processes surrounding this Plan and the principles and procedures which were contained in that document relating to the strategic development of infrastructure proposals are to be applauded, and should be revisited with a view to re-adoption of the process.

In effect, the processes and procedures envisaged the systematic identification of Capital Investment Strategic Plans (CISP) by individual agencies on an annual basis as part of the Budget Cycle. Accepted CISP projects were then to be consolidated into a State Infrastructure Strategic Plan (SISP), which would be updated annually and would look forward 10 years (i.e. listing of infrastructure projects for a rolling 10 year period).

The CISP and SISP process would import a great deal of rationality into the identification of projects. It would effectively provide a 'pipeline' of projects, which could be examined as to suitability for PPP, reviewed in terms of ongoing or changing need or priority and provide some assurance of progress in supply of infrastructure.

Unfortunately this process appears to have been interrupted by the formation of the Department of Infrastructure, Planning and Natural Resources, its reorganisation and the commencement of some strategic planning exercises. This interruption has seen a

stalling in the process of an ongoing systematic and transparent approach to infrastructure project identification and active engagement with the private sector.

IPA would strongly endorse a return to rigorous and integrated planning and assessment arrangements envisaged under the SISP process.

Projects identified in the SISP may be revisited upon production of strategic arrangements (such as the Metropolitan Strategy), which is an advantage of reviewing the SISP annually. Indeed, the imminent release of the Metropolitan Strategy should be seized as an opportunity to reinitiate the SISP process. This would further assist line agencies and private sector companies alike in capability planning to ensure the right mix of technical and skilled personnel are available to meet the requirements of government. Indeed, a deeper pool of service providers in the private sector is important to ensuring governments are satisfied that tender responses represent best practice and (globally) competitive.

It's not just about projects

The critical importance of a proper strategic basis for addressing infrastructure needs is to ensure an alignment between the nature of projects being pursued and the public policy outcomes which are sought from the projects.

It is properly the role of Government to establish both specific and general public policy objectives of public infrastructure.

Government should concentrate on the "outcomes" it requires from infrastructure and PPPs. It is important to recognise that, owing to the extraordinarily long 'economic life' of infrastructure, the process of articulating the appropriate public policy objectives is complex and should not be underestimated. Failure to properly articulate the public policy goals can result in the misspecification of contractual relationships and the potential divergence between "expected outcomes" and "actual outcomes". For example, in respect of road networks, additional infrastructure will have implications in terms of patronage not only for the new facility but the other roads in the network. Owing to the highly integrated and inter-connectiveness of the road network, private sector actions and motives need to be aligned so that management of a 'single transport' project is highly complementary to the rest of the road network. IPA believes this issue is the essential element to strengthen future infrastructure projects involving both public and private sector interests.

IPA submits that Government might address itself more clearly and strategically to establishing its goals, objectives, service standards and public policy outcomes in respect of infrastructure. This clarity might assist in focussing and improving both planning and contractual processes.

Government – Private Sector Interface

It is appropriate for there to be clear responsibilities and effectively a 'one-stop-shop' for infrastructure within the Government. Indeed, the establishment of an Infrastructure Implementation Group is a welcomed and positive step in demonstrating the

Government's resolve to stream-lined and simplify processes towards infrastructure project delivery.

Responsibilities should be clearly determined for compilation of a State Infrastructure Development Plan; contact points for the private sector generally, or for individual projects; approval responsibilities; determination of processes for pursuing infrastructure development; policy and priority setting; financial commitments etc.

IPA is available to work with government to establish processes that can further build towards a more productive engagement with the private sector.

Expertise in Government

Government must possess the relevant expertise to allow it to confidently and competently undertake PPP's as well as infrastructure processing generally. This is inclusive of the appropriate identification of projects which might be brought to the market, to effectively structure projects which might be offered to the market and to effectively evaluate and negotiate market offerings. Government must possess expertise to allow this to be confidently and competently undertaken.

Private sector parties have observed that considerable delays and increased costs have been encountered in the processing of PPP offerings due to lack of experience and expertise on the government side of the transaction. Private sector participants would prefer to deal with government parties who are effectively able to "speak the same language" in transactions and accordingly speed decision making and increase confidence in the process.

It appears that expertise is diluted within the public sector. Some agencies may possess expertise, others may not be as well equipped. The role of the Treasury in overseeing the processes on the government side demands there be expertise in that organisation and the means to properly communicate with relevant agencies. What might be observed is that some processes run well and others not so, this varies from agency to agency. It is recognised that the IIG will be important to addressing areas within government in need of mentoring and intervention.

At present PPP issues tend to be negotiated at the agency level (with Treasury oversight). It is submitted that this is not necessarily efficient, as the core competencies of an agency do not normally extend to PPP transactions. Expertise must be either contracted-in or the best be made from in-house resources; neither is efficient or cost-effective and levels of confidence would not be high. These costs and lower levels of confidence tend to drag on transactions and delay outcomes, which increase costs to all parties.

There is merit in the establishment of a Centre of Excellence and expertise within government which could act on behalf of agencies to operate PPP transactions. This would consolidate best practice and process and would benefit from a depth of experience and deal flow. Establishment of a consolidated centre for PPP transactions within government would improve levels of competence, confidence and timeliness. Such an approach would also enable greater relationship building between the public and private sectors, improving capability and capacity on both sides. Despite the merits

of such an approach it is important that line agencies remain central to setting objectives and construction of the public policy objectives.

Consistency in Government

As noted earlier, there appears to be a deficiency in the strategic approach towards infrastructure generally, and PPPs specifically, it is essential that this be addressed. Additionally, the 'agency-led' approach towards identification of infrastructure requirements and PPP opportunities has a problem with lack of consistency. Different agencies even take differing views and approaches towards these issues which need to be managed well before government undertakes contractual negotiations.

For example there is little transparency in determining which projects might be brought forward for consideration. The Government's "Guidelines for Privately Financed Projects" notes that the Government will determine the boundaries between core (exclusive government provision) and non-core (potential for private sector participation) activities. This distinction is central to PPP/PFP opportunities. However, there is no process around these determinations. Although the Guidelines indicate that the nature of such determinations will be made known at the Expressions of Interest stage of any potential PFP/PPP, by implication it follows there will be little transparency on those projects which are determined to remain exclusively the province of government provision.

IPA submits that the process of determination of core/non-core activities is pivotal to PPP/PFP opportunities. There should be a more systematic and transparent process of determination of the nature of activities, as the current arrangements potentially pre-empt the input of the private sector and the innovation that may be applied to the provision of government services.

There is merit in examining the proposal, recently announced by the Prime Minister, where there would be public disclosure of reasons "why not" to provide a service or activity via a PPP. This has the effect of challenging the "status quo" and therefore alters the onus currently in favour of persisting with existing methodologies for government provision of services or activities.

There would be considerable merit in the Government undertaking a comprehensive audit of its development and service provision activities to clearly determine opportunities for private sector participation and to define on-going government obligations. Such a review would be significant and might alter the way in which the Government addresses its functions and budgets in the future – it would potentially herald a fundamental reform of government. Such audit should involve private sector representation, to ensure there is proper recognition of private sector capability and thinking 'outside the square'.

Consistency in processes for dealing with PPP projects, standardisation of documentation and greater discipline in timeliness have all been raised by private sector participants as issues which properly warrant attention by the Government.

We submit that the Government should strive for consistency, as far as possible, in its handling of PPP projects. This might be facilitated by a more coordinated approach as noted earlier in our recommended Centre of Excellence proposal.

There would be considerable merit in seeking a standardisation of documentation, procedure and process as far as practicable. Consistency in documentation (or contractual terms) would potentially reduce legal costs and facilitate greater levels of comfort of parties with the nature of documentation. Too often it appears that each project 'reinvents the wheel' in terms of its documentation, which means not only greater complexity in settling a project but far more difficulty in monitoring or auditing the progress of projects over time. With concession periods of 25-30 years for some projects, intractability of documentation can be detrimental over time as personnel responsible for monitoring projects or enforcing contractual terms inevitably change.

Timeliness of process has been an issue of constant concern to private sector proponents. Government has called for submissions or tenders to be lodged at certain time points, yet its own evaluation processes are not subject to time disciplines. Costs arising from uncertain timing or delays in notional timeframes can be considerable to the private sector parties. Often, private sector parties will assemble a group of people with relevant expertise to participate in the development of a response to a government call; should proposals proceed to further stages such teams will reassemble. However, when timeframes slip or projects be delayed then the scheduling of the reconvening of bid teams becomes more complex, inconvenient and costly.

We recommend that there should be greater discipline on government parties in meeting time frames. As delays impose direct costs to the private sector, there may be a case for some reimbursement of costs to inconvenienced private sector parties.

Coordination in Government

The Premier's recent announcement of 'step-in' powers for the Infrastructure Implementation Group (IIG) is welcome. In addition, IPA submits that as a complement to "last resort" intervention role envisaged for the IIG, a standing arrangement might be contemplated where the Government's efforts and expertise are consolidated and all PPPs are coordinated. This could be further supported with a "champion" for projects, who/which can drive matters to conclusion, break down barriers and otherwise coordinate government activity relating to an infrastructure proposal.

Industry seeks minimisation of bureaucracy and process. A 'one-stop-shop' approach to facilitation would not only be well received but would have considerable efficiency benefits.

Government must also ensure that it is coordinated in its attitudes towards PPP projects. Situations have arisen in the past of Government sponsored projects be stymied by action, or lack of action, in areas of the public sector. IPA congratulates the Government on the recent amendments to the Environmental Planning and Assessment Act which consolidate decision making responsibilities in respect of major infrastructure development. The abilities for one-stop approvals and concept approvals are very positive actions. Desirably other jurisdictions should follow the NSW example in respect of this legislation.

Government should ensure that its strategies align and infrastructure projects reflect this. Unfortunately, many infrastructure projects have been pursued as 'agency' initiatives rather than coordinated strategic initiatives, and there has been a concentration on the delivery of specific projects rather than the relationship of and coordination between projects or on the outcomes sought of projects.

IPA would be pleased to further expand upon recommendations contained in this submission or to present to the Committee should this be sought. Contact may be made through Mr Peter Staveley at Infrastructure Partnerships Australia on telephone (02) 9240 2014.

Yours sincerely

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