Submission
No 27

INQUIRY INTO LEASING OF ELECTRICITY INFRASTRUCTURE

Organisation: JMA Parties

Date received: 14/05/2015

Our Ref: 150514: Electricity Infrastructure

The Chair
Select Committee on the leasing of electricity infrastructure
Parliament House
Macquarie Street
Sydney NSW 2000

14 May 2015

Dear Sir,

Re: Submission to the Select Committee on the Leasing Of Electricity Infrastructure

The JMA Parties have asked me to refer the following information to your committee. It may be relevant to the committee when considering how to ensure that governance practices when leasing of the infrastructure are constructed if all parties in a Public-Private Partnership ("the partnership") are protected at law if they invest funds with government.

Recommendations

In light of the JMA Parties experience with their government partnership since 2004, the following issues might be considered relevant when the government is considering leasing the State's electricity infrastructure. The recommendations are:

> A government body would be required to investigate complaints by the public in relation to the proposed agreement, and, when doing so, would have to consider any maladministration, dishonesty and unconscionable conduct ("improper conduct").
>
> The Ombudsman's office, if it were the government body authorised to carry out investigations in relation to the proposed government-lessee agreement, would require sufficient funds and explicit powers.
>
> If the government body found any elements of improper conduct, it would have a duty to refer it to the Department of Public Prosecution for possible prosecution.

The matters set out in points above would be established by legislation.

Background

The Jenolan experience suggests that the current framework for government partnerships does not have sufficient force, adequate legislation or appropriate regulation to ensure disputes are effectively resolved.

The Jenolan disputes have, in the JMA experience, related closely to your terms of reference:

- Any other matter (point g):

  There must be effective governance procedures to resolve disputes

  There has been a significant imbalance of resources available to the JMA Parties to obtain a fair and just settlement

- The responsibilities of any lessee(s) to maintain, improve and replace infrastructure and the ownership of infrastructure that has been upgraded or replaced (point c):

  This, in the JMA Parties experience, would necessitate the government doing likewise.

- The regulatory framework for the electricity distribution and transmission networks and the proposed Electricity Price Commissioner (point d):

  There must be a structured relationship allowing all financially interested parties, in the partnership, to file submissions with regard to changing legislation, and, in particular, to determine whether it is fair to all parties.

Key Issues

The JMA Parties are a group of twenty-five people, with families, that were simply collateral damage in the Jenolan experience, one of the very early public-private partnerships.

There are several issues, which the JMA Parties found, that compromised damaged the integrity of subsequent governments the Jenolan partnership that damaged the stakeholders, including the government.

A new government has powers to enact the legislation that changes during the term of the partnership, as new governments have new policies. These changed policies can affect stakeholders without their consent.

Therefore, legislation must remain during the term of the contract unless (say) 75% of the stakeholders approve any terms of a changed contract. There also

must be exit provisions for those stakeholders not accepting the changes if they are binding. This is necessary to accept the considerable imbalance in resources between government and banks and the public that, in this case, would have a considerable stake in the partnership.

Additionally with changes in the terms of the partnership introduced by any new government, there must be remedies available to stakeholders so that disputes are not unduly protracted.

The JMA Parties experience is an example of how governments and major banks can fail to deal with disputes appropriately. The major bank and the government could operate virtually unrestricted because of the relative size of the parties and the imbalance of their resources.

The NSW Government attempted to deal with ineffective governance issues by introducing the *Independent Commission Against Corruption Act* 1988 (NSW) legislation. This, in recent years, has demonstrated the importance of oversight by an independent regulator.

The Federal Government did likewise in the banking sector in 1991. The Martin Committee recommended banks publish their practices in the form of a contract. The banks varied these contracts, unilaterally and secretly, which have resulted in class actions into dishonest banking practices, since 2010.

In summary, given the size of a $17-20 billion venture, and a history of practices by governments and banks since 1990, would have to be addressed by effective legislation and appropriate regulation.

Evidence

The information contained in the following presentations suggests that it would be inappropriate to consider further partnerships, until the necessary protection and appropriate legislation is in place.

The evidence in relation to the JMA experience and problems dealing alleged impropriety by governments and banks is documented that can be found under the following links:

The Jenolan story is published at www.jenolanstory.com.

The problematic banking practices is published at www.bankinfoline.com

The Australian Banker's Problematic Code can be found at:
http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.aph.gov.au%2FDocumentStore.ashx%3Fid%3D85a93159-bf61-4fae-8370-43fdee42cc53&ei=NhlUVYXpBY_78QWM3YHwCw&usg=AFQjCNEYYxfQPfI9I9

QUtEpYBcyvgRGujQ&sig2=-lCL4ZnFTTOrayn0sUOEPg.

The National Australia Bank Limited v Rice [2015] VSC 10 can be found at http://www.austlii.edu.au/au/cases/vic/VSC/2015/10.html.