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AUSTRALIAN
CONSTRUCTORS
ASSOCIATION

**HOUSE OF REPRESENTATIVES STANDING
COMMITTEE ON INFRASTRUCTURE AND
COMMUNICATIONS**

***INQUIRY INTO INFRASTRUCTURE PLANNING
AND PROCUREMENT***

SUBMISSION BY AUSTRALIAN CONSTRUCTORS ASSOCIATION

APRIL 2014



**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON INFRASTRUCTURE AND
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1. INTRODUCTION

General

1.1 The Australian Constructors Association (ACA) welcomes the opportunity to lodge a submission to the Standing Committee's Inquiry into Infrastructure Planning and Procurement.

1.2 The Committee's terms of reference raise issues that have been the subject of analysis and assessment in Australia and elsewhere for some time. They have been the subject of recent review by the Productivity Commission and Infrastructure Australia as well as by the Government of the United Kingdom.

1.3 The ACA commends the following reports and reviews to the Committee as they contain significant material of relevance to the Committee's deliberations:

- Inquiry into Major Project Development Assessment Processes – Productivity Commission Research Report issued December 2013.
- Inquiry into Infrastructure Costs – Productivity Commission Draft Report issued March 2014.
- Building Australia's Future – A review of Approval Processes for Major Infrastructure (Infrastructure Australia, June 2009).
- Efficiencies in Major Project Procurement: Volumes 1 and 2 (Infrastructure Australia, June 2012).
- Infrastructure UK and HM Treasury – Infrastructure Cost Review (December 2010)
- Infrastructure UK and HM Treasury – Infrastructure Cost Review: Annual Report 2011-12 (April 2012)
- HM Treasury – Infrastructure Cost Review: Annual Report 2012-13 (June 2013)

1.4 The ACA's approach to the terms of reference provided to the Committee will be based on the ACA's views as to the current policy and functional impediments to the development of new infrastructure to achieve increases in productivity and consequential support for living standards.

1.5 In this submission, the ACA will make a number of recommendations focused upon advancing structural change to the way governments approach the development and approval processes impacting on the implementation of infrastructure projects.

The Australian Constructors Association

1.6 The ACA represents the nation's leading construction contracting organisations. A list of ACA members is attached (**see Annexure**). The ACA is dedicated to making the construction industry safer, more efficient, more competitive and better able to contribute to the development of Australia.

1.7 ACA member companies operate in a number of market sectors including:

- **Engineering construction incorporating public and private sector infrastructure**
- **Commercial and residential building**
- **Contract mining**
- **Oil and gas operations**
- **Process engineering**
- **Telecommunications services**
- **Environmental services**
- **Maintenance and related services**

1.8 ACA members operate globally, with member companies operating in Australasia, Europe, North and South America, Africa and the Middle East. Collectively ACA member companies have a combined annual revenue in excess of \$50 billion and employ over 100,000 people in their Australian and international operations.

1.9 The ACA has four (4) key objectives:-

1. **To require the highest standards of skill, integrity and responsibility of member companies.**
2. **To represent the interests of major contractors to government and other decision makers.**
3. **To enhance and promote the status of construction contractors and the industry which they serve.**
4. **To facilitate the exchange of technical information and encourage further research.**

2. SUMMARY OF ACA POSITION REGARDING TERMS OF REFERENCE

2.1 The ACA submits that Australian governments and their agencies are operating pursuant to a variety of limitations to their ability to plan for, develop and deliver major infrastructure projects that maximise the benefit for communities and achieve all of the expected outcomes from project delivery. This situation adds time and cost to projects for both government clients and the building and construction industry in general.

Current Issues Impacting on Infrastructure Projects

2.2 Some of the limitations may be summarised as follows:

- Projects announced by governments and then implemented having regard to the state of the electoral cycle and in the absence of careful analysis and development, may subsequently lead to the collapse of proposals with attendant cost implications

for developers, contractors and the public, or may fail to deliver the productivity and sustainability outcomes that could otherwise be achieved.

- The absence of a long term, reliable pipeline of infrastructure projects planned outside electoral cycles militates against the capacity of governments to strategically plan for and implement projects over a longer period because land acquisition costs may subsequently be prohibitive, or land use planning decisions may result in significant downstream community objection.
- Where governments develop longer term strategic planning for urban and rural development and infrastructure, those plans may fail for lack of ongoing communication and engagement with the community, or if they are not supported by land acquisition or legislative structures. Long term plans also fail where subsequent governments reject them without adequate analysis or demonstrated evidence, or dispose of land assets that may have been available for project delivery.
- Apart from peak agencies in government with historical project development and management skills, such as road agencies, there is a perception of inconsistency in the project management skills and internal expertise within government to adequately develop and manage large scale infrastructure projects.
- Procurement models and commercial risk management differ from government to government and even between agencies within the same government. This results in confusion for tenderers seeking consistency of approach, adds to cost and time pressures and does not support the capacity for a project to receive financing at best market rates available.
- There is inadequate involvement of constructors and related professional entities in the development of project proposals and documentation prior to tender, or once preferred tender status has been awarded. This reduces the capacity of governments to meet ultimate goals by stifling innovation and impacting on project cost or outcomes.
- The perception that greater numbers of shortlisted tenderers will achieve a cheaper or more innovative outcome is not a given and, in fact, in the absence of substantial changes to procurement practices, could increase the risk of achieving the best project outcome and result in excessive bid costs for tenderers.
- Inadequate consideration of whole of life aspects of projects through concentration on achieving lowest cost outcomes may satisfy short term budgetary considerations, but potentially results in longer term operational or replacement costs.
- Competition between or within governments as to which entity is responsible for managing project control and delivery may lead to a failure in the delivery model or fragmentation of stakeholder input leading to time and cost delays.
- Conflict between federal and state legislative and regulatory structures leads to duplication of effort, confusion and additional cost where competing issues or responsibilities have not been identified or addressed. This is a particular issue where federal and state governments are involved in joint project responsibilities.

- Attempts by individual government agencies, or by local government or other groups involved in decision making or implementation processes, to use those projects to achieve tangential outcomes such as the development of unrelated infrastructure, should not be permitted as it leads to increased costs and delay of projects at the expense of more efficient use of relevant resources.
- A lack of accountability on governments and their agencies in terms of their performance in the identification, development and delivery of major projects is a potentially significant issue leading to cost overruns and poor quality outcomes.

Recommendations for Reform

2.3 The ACA has identified in para 2.2 above a number of constraints on governments achieving the best outcomes from their infrastructure projects. Many of the issues identified have previously been recognised in a number of forums and in the various reports and papers referred to in para 1.3 above, amongst others.

2.4 The ACA recognises that addressing the impact of the above issues is not an easy task given the legislative, administrative and operational constraints that exist, but notes that the Council of Australian Governments has previously identified the issues and there have been various announcements that action is to be taken to address the various issues. However, the industry is yet to see a consistent approach adopted across governments to address the problems.

2.5 The ACA considers that there is scope for governments to address some, if not all, of the structural problems provided that the frameworks that are implemented are structured so as to permit them to operate on a long term basis and without undue interference. This is likely to require legislative change to ensure that processes agreed to in the short term survive on an ongoing basis.

2.6 The ACA recognises that governments in more recent times, in particular in NSW but emerging elsewhere, have demonstrated a willingness to address a number of previously identified barriers to the development and financing of infrastructure projects. Set out below are a number of recommendations that the ACA considers would enable the issues to be addressed:

- Governments should commit to long term strategic planning for infrastructure based on objective analysis as to need complemented by appropriate cost analysis and underpinned by a legislative framework which ensures that the pipeline of work will be implemented unless there are exceptional overriding reasons to adjust the plan.
- Governments should take action, in conjunction with long term planning, to secure parcels or corridors of land to ensure that implementation costs are reduced and the community has a clear understanding of the impact of development near areas identified for major projects.
- Governments should take greater steps to involve the private sector in the development of infrastructure proposals at an early stage (paid for where appropriate) so that tendering and procurement processes will be more effective in achieving innovative outcomes and in addressing long term sustainability issues and reducing tendering costs.

- Governments should develop infrastructure delivery/lead agencies to be responsible for delivering, or coordinating the delivery of, identified major infrastructure projects. This model has been effective in areas such as Sydney's Darling Harbour Precinct and others in Australia and overseas. Existing agencies, such as Infrastructure Australia or Infrastructure NSW are useful models that could be further enhanced and given responsibility in this area.
- Infrastructure delivery agencies should be supported by the introduction of a strategic assessment model along the lines of that which has been identified by the Productivity Commission through its inquiry into major project development assessment processes. The expansion of the use of bilateral agreements and related approval processes underpinned by a regime that accredits lead agencies for overall decision making is supported.
- Delivery agencies must be made responsible for projects through the development and measurement of key performance indicators and governments should be required to publicly report against those key performance indicators on an annual basis in a manner similar to that being implemented in the United Kingdom pursuant to the 2010 Infrastructure Cost Review Report.
- Existing procurement models operating in Australia need to be subject to an independent root and branch review with the opportunity for the private sector to have input into that review and there should be a requirement for all agencies to comply with the agreed procurement model and to report against that compliance on an annual basis.
- Funding structures for projects should be established at the commencement of each project and funds committed in a way that ensures that projects may proceed notwithstanding changes in specific governments. The recycling of capital from asset sales should be adopted by all governments.
- Once development assessment approvals have been determined by the nominated decision maker, it should not be possible for entities to use localised approval or compliance regimes to destabilise approvals or seek to achieve outcomes that are unrelated to the core project outcomes.
- Decision making entities should be required to be transparent and publish the reasons for decisions and maintain a stakeholder communication program. However, once decisions are made regarding major projects, they should only be able to be reviewed on the basis of error of law.

3. CONCLUSION

3.1 To achieve long lasting reform in infrastructure planning and procurement requires a holistic approach to the issues. Action that is merely tinkering at the edges will not result in long term benefits and may well have a detrimental effect should industry stakeholders and external financiers form the view that Australian governments are unable to effectively coordinate their activities to develop and implement essential infrastructure.

3.2 To underpin necessary changes will require all governments to engage in a serious consultative process incorporating where necessary the ceding of powers or decision making to identified ministers or agencies to make core decisions and manage projects. This will need to include, where necessary, provision to ensure that operational decisions based on a publicly transparent assessment of all relevant factors are not able to be destabilised through spurious appeals or interventions except on judicial grounds.

3.3 There is a need for transparency, accountability and effective communication of reasons for decision making to be incorporated in any new delivery model to ensure that the community may be satisfied decisions have been made having regard to all relevant issues. Further, Governments need to be accountable through annual reporting against key performance indicators to ensure that appropriate rigour is incorporated into project development and delivery models to assure stakeholders and financiers as to the commitment of government to specific projects in the pipeline.

April 2014

ANNEXURE

MEMBERS OF AUSTRALIAN CONSTRUCTORS ASSOCIATION

BGC Contracting Pty Ltd

Brookfield Multiplex Limited

CH2M Hill Australia Pty Ltd

Clough Limited

Downer EDI Limited

Fulton Hogan Ltd

Georgiou Group Pty Ltd

John Holland Group Pty Limited

Laing O'Rourke Australia Construction Pty Limited

Leighton Contractors Pty Limited

Leighton Holdings Limited

Lend Lease Building Pty Ltd

Lend Lease Construction & Infrastructure Australia Pty Ltd

Lend Lease Engineering Pty Ltd

McConnell Dowell Corporation

Thiess Pty Ltd

UGL Limited

Watpac Limited