

LEGISLATION INTRODUCED TO PARLIAMENT A POTENTIAL BOOST FOR NSW CONSTRUCTION INDUSTRY

Michael Bampton, Partner

Steven Blanch, Partner

Michael Wright, Partner

Lucas Keogh, Senior
Associate

Mark Paige, Senior Associate

Henry Davis York Lawyers,
Sydney

INTRODUCTION

The infrastructure spending spree that is the Commonwealth Government's Nation Building and Jobs Plan (the Plan) has been followed up in New South Wales by the Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009 (the Bill).

Released on 3 February 2009, the Plan includes \$14.7 billion for investment in schools infrastructure across Australia, of which NSW's share is expected to be approximately \$5.2 billion. The proposed infrastructure projects are country-wide, providing contractors and sub-contractors with prospective contracts with welcome shelter from the wider impacts of the global financial crisis.

In response, the NSW Government announced on 18 February that it would introduce legislation to fast-track the approval, procurement and delivery of all projects under the Plan and the Bill was introduced to the NSW Parliament on 4 March 2009.

THE NATION BUILDING AND JOBS PLAN (STATE INFRASTRUCTURE DELIVERY) BILL 2009

The object of the Bill is to ensure the timely delivery in NSW of the infrastructure projects funded by the Commonwealth under the Plan to implement the COAG partnership agreement of 5 February 2009. Key aspects of the Bill include:

- establishment of the role of the Infrastructure Co-ordinator General (ICG);
- that the ICG will be responsible for planning and implementing the timely delivery of the infrastructure projects;

- the requirement that NSW Government agencies co-operate with the ICG in relation to infrastructure projects;

- provision for the ICG to take over delivery of infrastructure projects on behalf of NSW Government agencies; and

- the power of the ICG to streamline the planning and other approval processes for infrastructure processes.

Examples of development that is to be funded under the Plan include development for the purposes of:

- multi-purpose halls and libraries, science and language centres and maintenance and minor building works for government and non-government schools;
- social housing;
- community infrastructure provided by local councils (such as halls, community centres and sport and recreation facilities); and
- land transport infrastructure (such as the repair of roads, the installation of railway boomgates and road safety 'black spots' projects).

ROLE OF THE INFRASTRUCTURE CO- ORDINATOR GENERAL

Establishment of the role of the ICG is a requirement of the Commonwealth Government funding (noting that any ongoing administration or maintenance costs associated with the expenditure responsibility remain with the states). The NSW Government has announced the appointment of Bob Leece (former Deputy Director General, Olympic Coordination Authority (OCA) and former CEO of the Olympic Roads and Traffic Authority (ORTA)) as the ICG.

The ICG will have many functions. They will include planning and overseeing a program for the delivery of infrastructure within the timeframes required for Commonwealth funding and to advise on appropriate tendering and procurement procedures for the delivery of infrastructure projects within those timeframes. The ICG must have regard to the project delivery timeframes required for Commonwealth funding of infrastructure projects when exercising his functions under the Act.

An intent of the Plan is that various amounts of the funds made available under the Plan must be spent within relatively short time frames. For example, the commencement time periods for primary schools require that work at 20% of the schools must commence by June 2009, 40% by July / August 2009 and 40% by 1 December 2009. This limited timing will have a serious impact on the tendering and procurement procedures for the delivery of those projects.

IMPACT ON PLANNING AND DEVELOPMENT

The ICG will have wide powers from a planning perspective. The ICG may, for example, declare that an infrastructure project (or an infrastructure project of a specified class) is exempt from all or any specified 'development control legislation'. This is a wide power as 'development control legislation' means provisions made by or under the *Environmental Planning and Assessment Act 1979* (NSW) or any other Act which prohibit development or which require the approval of any person or body before development is carried out, and extends to the provisions of other Acts referred to in section 75U of the *Environmental Planning and Assessment Act*

1979 relating to requirements for authorisations or to the giving of orders or notices.

IMPACT ON PROCUREMENT AND TENDERING

The current procurement procedures in place in NSW include the NSW Government Procurement Guidelines—Tendering Guidelines (December 2006) and the NSW Government Code of Practice for Procurement (the Code) (2005). It will be interesting to see to what extent the ICG complies with Guidelines and the Code in order to meet some of the relatively short time frames required by the Commonwealth Government. Additionally, it will be noteworthy to observe whether the ICG intends to use any contracts other than the current NSW Government Standard form documents (where GC21 is used for construction contracts valued at \$1 million or more (or of lower value with complex contractual requirements)).

CONCLUSION

The intent of the NSW Government is that the Bill, when enacted, will apply until all the proposed infrastructure projects have been completed. The Bill provides that the exercise of the functions of the ICG are to be reviewed by a joint committee of both houses of the NSW Parliament as soon as practicable after a 12 months from the commencement of the Act.

Based on the sense of urgency of both the Commonwealth and NSW Governments, it can be assumed that the Bill will become law shortly. Once it becomes law, the Bill will enable the NSW Government and the ICG to meet various requirements of the Commonwealth Government and utilise funds made available

under the Plan. We anticipate that the time requirements for tenders relating to projects funded under the Plan will be short which will place additional pressure on prospective tenders.

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