OPINION

New oportunities for innovation

by DOUG JONES

THE LABEL may be new, but in Australia the idea certainly isn't. There is now widespread interest in Australia in "public private partnerships", a term which has relatively recently migrated from the UK. But in practice PPP approaches have long been applied in Australia—and in some areas of innovation, we probably lead the world.

The private sector has a long history of involvement in the provision of Australian infrastructure and related services.

The key contractual structure of build, own, operate and transfer (BOOT), later forming the backbone of Australia's PPP experience, first became common in Australia in the late 1980s, especially in the transport sector.

BOOT meant new facilities could be provided at minimal costs to governments, with the operational risks being transferred to the private sector but with ultimate ownership being retained by the governments. Recent examples have included the Melbourne CityLink tollway, the Sydney M2 and Eastern Distributor tollways, the Sydney Airport Link railway stations and many items of Sydney Olympic infrastructure.

But the wider PPP story in Australia really kicked off with the adoption in 1995 of the National Competition Policy and the development of "best value" regimes.

These reforms to competition laws opened up government business enterprises and monopolies to competition.

Initially the reforms saw a vigorous push for the privatisation of state-owned assets, with the Federal Government leading the way by selling off over A$45 billion of commonwealth assets. Privatisation at the state level centred on the offloading of energy and transport interests.

These privatisations were preceded and paralleled by a much smaller number of greenfield investments under which the ownership of the new infrastructure was retained by the private sector.

The era of large-scale privatisation now seems to be over, however. Not only are there few large assets left to sell off, but the political mood has changed.

But even though outright privatisation is now less of an option, concepts of "best value" remain of prime importance. So Australian governments have had to explore more subtle methods of accessing private sector resources.

At the same time, while BOOT structures have met many government requirements, and are still frequently employed, the basic form does not always cater for the specific requirements of individual projects or facilities.

For instance, the standard BOOT structure has to be overhauled or discarded if:–

❑ A government seeks to base remuneration on levels achieved by the contractor rather than the services provided;

❑ The parties seek to move away from conventional adversarial contracting and towards relationship contracting; and/or

❑ The facility is not able to generate sufficient returns to private sector investors on a "user pays" basis.

The result, over the last few years, has been a series of ad hoc applications of innovative contractual approaches, including performance-based contracting, "managing contractor" models, project alliancing and strategic (long-term) alliancing.

Although these approaches initially appear quite disparate, there is in fact an essential coherence in their application, in that they show a new flexibility on the parts of government departments and agencies.

Rather than applying a "default" contracting strategy, a greater effort is now being made to develop contracting strategies suitable for each project or facility.

Now that Australian governments of all political persuasions have accepting the fundamental premise that the private sector has a legitimate place in providing infrastructure and related services, the specifics of financing and remuneration, risk allocations, obligations and ownership structures are matters of circumstance.

It is for this reason that Australian governments are starting to apply the label "PPP" (or in some cases "Public Private Initiative") to their currently preferred approach to infrastructure provision.

Private social infrastructure

"PPP" is seen to indicate public and private sector collaboration without spelling out the precise nature of private sector involvement.

Longer standing project delivery strategies such as BOOT and design, construct and maintain (DCM) are now simply considered members of the PPP family.

A further manifestation of this flexibility is the rejection of "no-go zones" on the kinds of infrastructure which might be the subject of PPP.

In the past, "economic" infrastructure (transport, power, water, telecommunications, etc) was generally treated differently to "social" infrastructure (schools, hospitals, justice facilities, policing, etc).

The PPP approach in Australia now takes the view that governments should be open to private sector involvement in both kinds of infrastructure, subject to:–

❑ The reservation to the governments of "core" services; and

❑ The recognition that social and economic infrastructure usually rely on different revenue bases.

Because the end-use revenue sources usually able to be accessed for "economic" infrastructure are unavailable for "social" infrastructure, part of the PPP task is to develop alternative remuneration structures—but this does not mean "social" infrastructure is beyond the scope of the PPP approach.

The well-established members of Australia's PPP family include BOOT, design and construct (D&C), operate and maintain (O&M) and design, construct and maintain (DCM) contract structures. The principles and applications of these structures will be familiar to most readers.

The more interesting recent domestic variations of PPP are in the areas of performance-based contracting and "relationship" contracting.

Examples concerned with the provision of new infrastructure include:–

❑ Moves to shape contractual obligations and remuneration structures to attain government objectives with greater accuracy, either by procuring the precise service that the government requires, rather than the physical infrastructure needed to provide this service, or through performance-based remuneration; and

❑ Project alliances, perhaps the most innovative form of relationship contracting, under which the fundamentals of the contract are altered so that the parties align their commercial interests and cede almost all their ordinary rights to bring claims.

Many government departments and agencies, tired of the disputation and general culture of defensiveness and waste characterising conventional construction contracts, have been promoting relationship contracting, initially through "partnering" under conventional contracts but more recently in the area of project alliancing.

Australia is undoubtedly a world leader in this approach. There have even been discussions of an impending paradigm shift towards non-adversarial contracting, based on the robustness and apparent successes of the project alliances completed so far.

Prominent examples have been the recently opened National Museum of Australia in Canberra, elements of the Port of Brisbane motorway and the Northside sewerage tunnel in Sydney.

Innovative PPP examples concerned with the operation, maintenance and upgrading of existing infrastructure include:–

❑ Franchises under which operating risks, control and entitlements to revenue are transferred to the private sector for finite concession periods, the most sophisticated illustrations being a series of rail franchises let by the Victorian government in 1999;

❑ Long-term "strategic" alliances, approaching as nearly as possible the formation of true partnerships between governments and private sector organisations, for the provision of maintenance and/or management services on a cost-plus basis with built-in incentives for meeting government objectives; and

❑ The letting of maintenance contracts with different components specifically tailored to differing needs (for example, under a Department of Defence contract the same contractor is required to manage the maintenance of buildings by others and directly maintain plant and equipment on a planned, preventative basis).

So despite some tax law driven handicaps, there is enormous scope for the application and elaboration of PPP forms for transport, health, utilities and other infrastructure projects in Australia-especially in the light of the run-down condition of many existing infrastructure assets.

The adoption of the PPP label has given governments' policies a new coherence, flexibility and vigour, and it is beyond doubt that there will be further development in this area. ■

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❑ Lend Lease Corporation's group senior executive, human resources, **David Findley**, and its global chief information officer, **Albert Aiello**, have joined the board of Bovis Lend Lease. In addition to his present role, David Findley will take on the new role of global human resources director for Bovis Lend Lease. He will be responsible for the strategic direction and co-ordination of Bovis Lend Lease's Findley and to their regional/operational CEOs. David's existing global HR team in the UK and Australia will continue to provide HR policy and operational support. At an executive level, he will also address issues such as succession planning, executive remuneration and development.

❑ *National crane company LCR Lindores Group has appointed* ***Bill Te Oka*** *as its Bovis Lend Lease, working on major projects such as Sydney International Airport. He is responsible for the marketing and operation of LCR Lindores Group's mobile and tower cranes and engineering services in NSW. Cox has spent the past 12 years in financial positions within Lend Lease Corporation, predominantly in the property services arm of Bovis Lend Lease. He is responsible for risk management*

Hospital and on the redevelopment of heritage buildings and landmarks.

❑ The Asphalt Institute in the US has hired Peter Grass as its president. Grass has been a commissioned officer with more than 20 years experience in the US Army Corps of Engineers.

❑ Specialist Carriers and Rigging Asso-

Construction Contractor
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