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BUS SA Conference 2015

“What Are My Legal Risks?”

Peter Dwyer, Partner

23 May 2015

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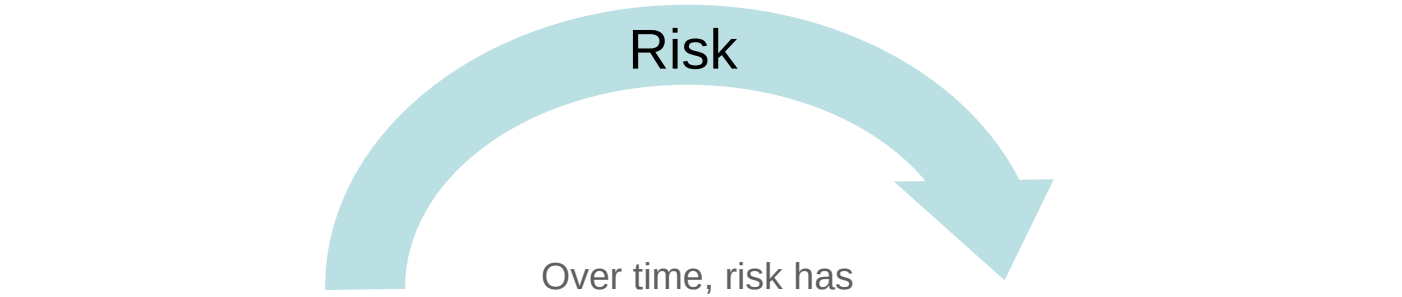
Risk Transferred to the Operator



Over time, risk has moved from the State Government to the Operator

➔ Tenders instead of right to negotiate contracts

➔ Changes in law

➔ Tougher contractual obligations

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Changes in the Law

- Passenger Transport Act 1994 (SA) and Regulations
  - > Increased emphasis on safety, compliance and driver authorisation requirements
- Occupational Health and Safety
  - > Work Health and Safety Act 2012 (SA)
  - > Work Health and Safety Act 2011 (Cth)
    - – National laws regarding training and safe systems of work
    - – Enforcement action for non-compliance

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Changes in the Law

- Fair Work Legislation
  - > Fair Work Act 1994 (SA)
  - > Fair Work Act 2009 (Cth)
- Environmental Legislation
  - > Environment Protection Act 1993 (SA)
- Disability Discrimination Legislation
  - > Disability Discrimination Act 1992 (Cth)
  - > Equal Opportunity Act 1984 (SA)
- Privacy

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Contractual Risks

- New clauses being inserted into State Government Passenger Contracts
- Termination for Convenience
  - > Providing no comfort to operators or financiers
  - > Termination even if the operator is not in default
- Warranties
  - > Warrant solvency and continuation during term of contract

Contractual Risks

- Indemnities
  - You will indemnify the State, the Minister and any other office holder against any Loss
  - No reciprocal indemnity back
- Insurances
  - Public liability insurance
  - Workers' compensation insurance
  - Insurance coverage against property damage (including third party property damage)

Contractual Risks

- No Exclusivity
- Contract Variations
- Compliance with all laws
- Key Performance Indicator ('KPI') Penalties
- Extensions of Term
  - > Discretion of Transport Department
  - > May depend on performance of KPIs by the Operator

Contractual Risks

- Certification
  - Certify to the department that legislative and regulatory requirements have been complied with eg. DDA, WHS, Environmental and FWA
- Contract Depot/Capacity
  - May cause zoning and approval issues for operators in rural areas that are running bus services from a residential property
- Performance Bonds
- Method of Payment

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Contractual Risks

- Viability
  - > Once you sign you have to comply.

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