TAXATION LAWS AMENDMENT (INFRASTRUCTURE BORROWINGS) BILL 1997

BACKGROUND TO THE INQUIRY

The Taxation Laws Amendment (Infrastructure Borrowings) Bill 1997 contains amendments in relation to the announcement on 14 February 1997 by the Treasurer, advising the cessation of the Infrastructure Borrowing tax concession.

The Bill was introduced into the House of Representatives on 26 March 1997 and the second reading adjourned on the same day. Subsequently, on 13 May 1997 the Senate referred provisions of the Bill to the Senate Economics Legislation Committee for inquiry and report by 28 May 1997. The Senate Selection of Bills Committee Report No.7 of 1997 stated that the principle areas of the Bill for the Committee's consideration should be the:

> *Need for transitional arrangements to ensure legitimate projects are not denied taxation benefits that are available.*

The Committee received 8 submissions to its inquiry (see Appendix 1) and conducted a public hearing on 26 May 1997 (see Appendix 2).

EFFECT OF THE BILL[1]

The Taxation Laws Amendment (Infrastructure Borrowings) Bill 1997 amends the Infrastructure Borrowings (IBs) provisions of the *Development Allowance Authority Act* 1992 (the DAA Act) and the *Income Tax Assessment Act* 1936 (ITAA) .

The purpose of these amendments to Chapter 2 and 3 of the DAA Act and Division 16L of the ITAA is to abolish the Infrastructure Borrowings (IBs) tax concession. The only exception is in respect of IBs certificates that had been issued by the Development Allowance Authority (DAA) before the time announced by the Treasurer, 12.00pm, legal time in the Australian Capital Territory, on 14 February 1997, or where the DAA had given written advice to the applicant under subsection 93P(1) before that time.

This measure responds to information which indicated that the IBs tax concession was not achieving its intended objectives. Schemes were being proposed that exploited the concession for tax minimisation purposes. Such schemes, if allowed to proceed, would have substantially increased the value of the tax benefits being captured by financiers and tax planners without a commensurate increase in funding for genuine private sector infrastructure projects. To this end, the amendments are meant to prevent:

[1] Drawn from the Taxation Laws Amendment (Infrastructure Borrowings) Bill 1997, Explanatory Memorandum.

- the effective lodging of any new Infrastructure Borrowings applications after that time;

- the effective issue of any further Infrastructure Borrowings certificates (including certificates in respect of applications currently held by the DAA, and not subject to written advice to the applicant by the DAA under subsection 93P(1); and

- variation of conditions underlying existing certificates after that time that increase tax benefits.

Government Response

The *Second Reading Speech* to the Bill explains the Government's rationale for the change:

The intention of the Infrastructure Borrowings tax concession was to allow companies reduced costs of borrowing to finance the construction of infrastructure projects. This was achieved by the borrower forgoing deductions for the cost of the borrowing, such as interest, and the lender being exempt from tax in respect of gains from borrowing, such as corresponding interest income, or eligible for a tax rebate of 36%. The intention was for lenders to pass these benefits back to the project via a lower interest rate on the borrowings.

To be eligible to use the infrastructure borrowing tax concession, an infrastructure project must be certified by the Development Allowance Authority. In the period between 1994 and 30 June 1996, the Development Allowance Authority issued certificates for 12 infrastructure borrowing projects with a total borrowing of $4 billion. At 30 June 1996, it also had six applications on hand with total borrowings of at least $2.6 billion. Over the six weeks prior to the 1996-97 budget, the Development Allowance Authority received applications for a further 71 projects with estimated borrowings of around $21.6 billion. If all these applications were certified, the revenue cost over the period 1996-97 to 1998- 99 has been estimated to exceed $4 billion.

Because of tax aggressive financing arrangements intended to be implemented in association with some of these applications, much of the revenue lost would be captured by financiers and high marginal tax rate investors rather than the intended recipients, the infrastructure projects themselves.

The previous government had introduced amendments to the legislation governing IBs to stop tax-aggressive schemes but these had not been successful in decreasing the cost to the revenue. These schemes utilise a number of features to extend the concession beyond its intention and to substantially increase the cost to revenue.

- Firstly, many start with artificially high interest rates that provide scope for the conversion of part of the expected future exempt interest receipts into a premium on the sale of the bonds. Under the IBs concession, this premium is a tax exempt receipt.

- Secondly, the interest receipts on the bond which has an artificially inflated value are also exempt.

- Thirdly, high-wealth individuals that purchase IBs at the retail level generally utilise borrowings to 'fund' the purchase of these bonds at inflated prices and obtain tax deductions for that interest, whilst the interest earnt on the bonds is tax free.

In all three cases, the additional cost to the revenue need not provide any benefit to the infrastructure project itself.

Against that background, the Treasurer (Mr Costello) announced on 14 February 1997 the cessation of the infrastructure borrowing tax concession.

On budget night the Treasurer announced the introduction of the Infrastructure Borrowings Tax Rebate to replace the Infrastructure Borrowings (IBs) tax concession. The details of this new scheme are set out in Appendix 3.

The Committee was advised by Mr Hood of Treasury when asked what is the government's policy in relation to introducing retrospective legislation, he replied:

> *"Perhaps a mention of experience might be helpful. Not only the government but also the Senate have grave reservations about any retrospectivity adverse to taxpayers, but the normal exception to that is retrospectivity to a date of announcement, subject to what is sometimes called the Macklin rule—introduction within a sufficient period.*
>
> *This morning there was some suggestion that somehow the proposed legislation is in breach of those common principles because the legislation says explicitly that legislation would be introduced with effect from the 14th to preclude new certificates, new applications and certain sorts of amendment. But it was suggested this morning that somehow that does not cover the possibility that the old law may continue to apply until new law receives royal assent. It is a commonplace with tax amendments that the old law technically applies until the new law receives royal assent.*
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> *In the particular case of the Development Allowance Authority, you are dealing with a statutory authority with a statutory duty, not a department of state subject to ministerial direction. The Development Allowance Authority has the obligation to do certain things under the existing law and, however clearly it is foreshadowed, doing those things will be nugatory if the government's policy is indeed agreed to by the parliament. I understand that the Development Allowance Authority was strongly advised that it would nevertheless have to do those things.*
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> *However, I am not aware of any other case where that sort of possibility is addressed any more clearly than it is here. A clear statement that the law is to be changed with a certain effect from a certain date means, in a great range of tax and other contexts, that certain actions which may technically be legal until amending legislation passes, will nevertheless have to be rendered nugatory, as must be the case here.*
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> *If there is an investment allowance and the government decides that it will not be available from a certain date, it may take many months before that change takes effect. I am not aware of any announcements of such changes that were in such terms as to expressly address in addition the possibility that somebody might in*

the interregnum claim the allowance and get it, but had to have it withdrawn. It seems to me an adventurous suggestion that the clear terms of the government's press release somehow did not foreshadow what they clearly stated—that certificates, after announcement, would not be issued".2

Mr Hood also provided the Committee details on how the government saw the transitional arrangements working under the new scheme;

"There were two different suggestions, as I understood it. I did not hear quite all the evidence this morning but most of it. There were two different classes of suggestion about a transitional rule that would not extend to every pending application at the time of the announcement, that is to $20-odd billion worth of projects and a revenue cost over the out years of the budget of at least $4.6 billion and quite possibly rather more.

Those suggestions were, firstly, on the basis of cases where applicants had subsequently obtained a letter of undertaking, or an actual certificate after the 14 February. The corollary, of course, of accepting that view that such cases ought to be grandfathered would be to put the Development Allowance Authority under unequivocal pressure between now and the royal assent to any amending legislation to issue further certificates.

I cannot see any plausible or defensible rule which would grandfather those who did obtain certificates between 14 February and now and not those who obtained certificates between now and the royal assent to legislation. I do not think the committee could come up with a rule either.

I am reinforced in that by the terms in which the Development Allowance Authority wrote to all applicants saying that while they believed they were obliged to act under the existing law, they drew attention to the government's announced intentions and in these circumstances, said the letter, 'I seek your advice as to what steps you would like me to take concerning your application.'

Having knocked those out, there is a somewhat narrower possibility suggested by Redbank which suggests that there be some judgment as to the extent to which a project was or is ready to proceed and the extent to which it was or is committed. It seems strange to me to ignore, in that context, the extent to which the project was or is committed, apart from any IB application or availability. Even if one does so, I think the difficulty of working out whether a project which has not commenced, or to what extent a project which has not commenced, is in fact ready to proceed, is considerable and is not really as straightforward as saying, 'Well, they give us an assurance that they are'.

Perhaps one could then embark on 20/20 hindsight and see how quickly the project is subsequently up and running. But giving the IBs first and checking the progress after seems to me fraught with further difficulties of precisely the same kind that the committee has had to address this morning."

GENERAL ISSUES RAISED IN EVIDENCE

[2] Evidence, p. E 36

Retrospective effect of the Bill

The Arthur Andersen submission stated their concern with the potential retrospective effect of the Bill. When the Treasurer announced the cessation of the Infrastructure Borrowings concession in his press release of 14 February 1997 (Appendix 4), he said measures would be introduced to prevent the issue of any further Infrastructure Borrowings certificates from the date of announcement.[3]

However, Arthur Andersen were of the opinion that DAA has continued to process and issue certificates under its governing legislation (DAA Act) after the date of the press release.

Their two areas of concern were Clause 9 - Section 93PA(2) and Clause 8(5) which have a retrospective impact on transactions which have been commenced by DAA and are entitled to be commenced in accordance with the current legislation.

Arthur Andersen stated "the prohibition against retrospective legislation is a well established convention of the Australian parliamentary process and is contained in the Senate Standing Orders." Retrospective legislation has only applied in the most extreme instances of tax avoidance and should not apply in this case as the tax concession scheme was designed to promote genuine infrastructure investment.[4]

Accordingly they recommended that the following amendments be made to the Bill:

Delete Clause 8(5); and

Clause 9: Delete new subsection 93PA(2).

AIDC is the financial advisor to the Redbank Power Project in the Hunter Valley, NSW and to the Oakey Power Project in Queensland.[5] Both of these projects have been affected by the recent decision of the Treasurer in that it has significantly penalised the projects as both have entered into contractual obligations on the basis that the infrastructure borrowings concession would be available, alledgedly making the Treasurer's announcement retrospective.

On 10 September 1996 the Treasurer announced in a press release (Appendix 5) that he had directed the DAA to cease accepting applications for infrastructure borrowings. During the ensuring months AIDC continued to work with their clients to put in place all of the essential financial arrangements for the Redbank and Oakey projects. The applications for these projects included timetables which demonstrated completion of all of these matters and drawdown of infrastructure borrowings prior to 30 June 1997. Both projects were well on time to meet those timetables.[6]

In respect to questions as to why certificates were not obtained earlier for these projects Mr S Gray of AIDC stated in evidence to the Committee:

> *"Certification should not really be available until you know, with a fair degree of certainty, the cash flows that you are going to have, the tax payments that you are*

[3] Arthur Andersen submission, No.2, p.1
[4] Arthur Andersen submission, No.2, p.1
[5] AIDC submission, No.3, p.1
[6] AIDC submission, No.3, p.1

> *going to make, and who your debt and equity funders are going to be. So it is really impossible on day one to put in your application before you have spent a lot of money to establish exactly what you are building, what service you are providing and the cash flows and financing techniques that you are going to employ".*[7]

AIDC submitted to the Committee that the Bill be amended to effectively "grandfather" projects which were certified by the DAA between 14 February 1997 and 13 May 1997. The AIDC further recommend the following amendments be made to the legislation:

I. remove the retrospective element to the proposed legislation;
II. grandfather a small number of projects which are very close to funding;
III. ensures that grandfathered projects will not utilise tax aggressive structures; and
IV. achieves the grandfathering at minimal additional cost to the Australian revenue.[8]

The Australian Council for Infrastructure Development (AusCID) is the principal private sector association which comprises 47 companies, organisations and entities involved in the many aspects of private sector delivery of public infrastructure.[9]

AusCID stated in their submission they have been a supporter of the Infrastructure Borrowings scheme since its inception and wish to make the following points against the government's decision to terminate the scheme:

- disagree with the manner and timing of the Treasurer's termination of the IB concessions as the analysis by the government and its advisers of the possible problems with the IB concession system was flawed;

- any unacceptable practices involved in the operation of the IB concession could have been targeted and alleged abuses could have been eliminated by use of other mechanisms;

- the legislation now before the Senate to terminate the IB concession is unacceptable to the majority of AusCID members because it is retrospective and goes far beyond the terms of the Treasurer's announcement of 14 February 1997; and

- submit that a range of non-abusive infrastructure projects submitted to the Development Allowance Authority (DAA) for certification will be disadvantaged if this legislation proceeds and they should be preserved.[10]

Following consultation with its members after the Treasurer's 14 February announcement, AusCID submitted a proposal to the government on 9 April 1997 on why there was a need for an IB concession scheme. It recommended:

- the government urgently enacts measures to introduce an effective incentive to encourage genuine private sector investment in public infrastructure;

[7] Evidence, p. E 20
[8] AIDC submission, No.3, p. 3
[9] AusCID submission, No. 7, p.1
[10] AusCID submission, No. 7, p.1

- the incentive be implemented through a statutory tax benefit transfer arrangement in the form of either a market instrument based tax incentive or a so-called "voucher" based tax incentive, provided in either case they meet necessary design principles. AusCID rejects an outlays based approach as an effective incentive mechanism on grounds of uncertainty, instability and administrative cost; and

- strongly urges the government to consult iteritively with industry, through AusCID, on the formulation of its proposals before they are finalised in principle.[11]

At the public hearing AusCID argued that the Bill is inconsistent with the Treasurer's press release of 14 February 1997 and should be brought into line with that announcement, as a minimum. The particular features AusCID believe are inconsistent relate to provisions which seek to retrospectively render invalid the certificates which were issued by the Development Allowance Authority following the date of the announcement on 14 February. A representative of AusCID stated in evidence:

> *"The press release made no mention of rendering such certificates invalid. It proposed to prevent the issue of further certificates but it did not specify that certificates which were actually issued subsequent to that date would be rendered invalid."*[12]

Alledged Deficiencies in the New Scheme

The Australian Constructors Association (ACA) in their submission raised three concerns with the proposed re-shaping of the Infrastructure Borrowings program. These were:

- The new scheme will be limited to private land transport (rail and road) infrastructure projects, while the former scheme included many more sectors. ACA expressed the view that while some rail projects might be able claim the rebate sometime in the future, it is difficult to identify a tollway likely to benefit from the program.

ACA strongly support the new scheme should be inclusive of each of the categories of infrastructure that were eligible under the previous scheme.

- The new scheme is to be capped at $75 million per year (including running costs). As the limit on funding and eligible categories are related, the proposed new scheme will be of limited value as a stimulus to private sector investment in the development of major private sector infrastructure.

ACA strongly support the budget for the new scheme should be capped, but at a realistic level to accommodate the expanded categories of eligible infrastructure, so around $200 million per year.

- Prior to the former scheme being moved to the DAA in 1994 the ATO administered the program. ACA were concerned that ATO had not successfully run the program in the past

[11] AusCID submission, No. 7, Attachment B, p. 1
[12] Evidence. p. E 2

and transferring the new scheme backed to them was sending a very negative message to the industry.

ACA strongly support the administration of the new scheme remain with the DAA or similar body with the expertise to properly assess infrastructure project proposals.

Mr S Gray of AIDC advised the Committee in evidence of some of the perceived problems with the new scheme which were also raised by other witnesses.

> *"The first problem mentioned was that compared to the old scheme the benefit to the projects will be lower. The reason for that is that the old scheme could access marginal taxpayers at a rate of 48 per cent. Under the new scheme, the maximum taxpayer that can be accessed pays tax at a rate of 36 per cent. Essentially, there is lower cost to the revenue for a given infrastructure borrowing and there is also less benefit to the project.*
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> *The second problem mentioned was that the new concession will possess a revenue cap of about $75 million. By my calculation, that will only support about $2 billion worth of projects. Given it will be targeted specifically on road and rail, we will probably only be talking about three to four projects being fitted in under that cap. On the other hand that can be compared to the $22 billion worth of projects that are awaiting certification at the DAA, of which, I would estimate about $5 billion to $7 billion are probably real, tangible projects—albeit, not projects that have entered into binding contractual obligation.*
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> *The third problem mentioned was that the new scheme appears to be targeted at road and rail. EPAC prepared a report on the effectiveness of the infrastructure borrowing concession. I think they made the specific point that the sort of infrastructure that would benefit least from infrastructure borrowings, and by definition a replacement scheme, would be road projects".*[13]

In respect to the question how the transitional arrangements under the new scheme would effect the projects that were not certified by 14 February 1997, Mr Barrett of ACA stated in evidence to the Committee:

> *"... in practical terms, if you want to think this through, the first year arrangements were that there would be a cap of $37½ million. One can only assume the government's intention is that there will be new legislation in place and there will be a half-year effect of the new scheme. Now, in that half year, we have 73 projects plus any additional projects that will come in. They are now going to have to reapply through a two-stage process, which is quite a convoluted process, and you will establish winners and losers. If you miss out the first time, it is still unclear whether you can come back and have a second go in subsequent years. I think one has to have a reasonable, balanced view about how equitable those transitional arrangements will be. A reasonable person would have to suggest that, while they are still in the game, a lot of those projects that are non rail-road will just drop out in the medium term because they will not be able to access it".*[14]

[13] Evidence. p. E 21
[14] Evidence. p. E 7

DAA Administration of IB Applications

The committee heard in evidence from Mr S Gray of AIDC that it appeared that DAA had not followed it prioritisation criteria when approving applications prior to 14 February 1997 in respect to both the Redbank and Oakey projects.

> *"On 14 February we had the Treasurer's announcement which served to deny these two projects access to the concession. I would like to point out that at that time both of these projects were in a very advanced state. Both had signed power purchase agreements with the relevant utilities to provide power at a price. At that date Oakey had already raised the relevant equity and the Redbank project was in the process of finalising the equity arrangements for the project. Both were finalising the construction contract arrangements and Oakey had already raised the debt and Redbank, as Mr Alper pointed out, was to go to the markets with its comprehensive debt memorandum on the Monday following the announcement. Both projects had clear timetables to completion prior to 30 June this year.*
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> *Subsequent to the announcement, AIDC held further discussions with the DAA to confirm the prioritisation criteria. As the committee members know, there were many projects that had lodged applications—the term 'a flood' was used I think by the chairman—and we sought to clarify why our project had not been certified and what the criteria were that were being adopted. We had, from previous discussions, a reasonably good idea and we wanted to confirm that and that was confirmed. The criteria that were confirmed as being utilised to process the applications and prioritise them were these:*
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> - *the certainty of the project proceeding,*
> - *the date of the drawdown of infrastructure borrowings,*
> - *the date of construction commencement, and*
> - *whether the application included a financial structure that had the essential symmetry sought by the government.*
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> *Subsequent to this date we also obtained lists of projects that had been certified by the Development Allowance Authority. What transpired from those lists was that, in the weeks leading up to the Treasurer's announcement, a group of projects were certified which included three projects that were still subject to a tender process and two other projects that further inquiries indicated were many months away from ever commencing. Given the DAA stated prioritisation criteria to us, we hold fairly grave concerns over how the projects, including those that are still subject to tender, could have been certified in priority to these two projects which had contracted and had clear timetables to commencement prior to 30 June.*
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> *It is also very important to note that both of these projects entered into contracts to provide power at a price on the basis that the IB concession would be available to them. We therefore contend that the subsequent removal of the concession that was made available, and where contracts were entered into on that basis, is effectively a retrospective action by the government.*

As is the case with these projects, AIDC advises many international companies in their endeavours in terms of investing in major project initiatives in Australia. One of the key reasons that they seek to invest in Australia as opposed to other countries in this region, is that Australia is perceived as being a country having virtually no political risk. I would contend and AIDC would contend that the actions that were taken by the Treasurer on 14 February would suggest that Australia does possess a level of political risk. In relation to that I would like to refer to an extract from the Siemens submission. As they cannot be here today, I will read a paragraph from that submission:

> *'Projects throughout the world compete for allocation of scarce capital from within the Siemens group. A critical factor in that allocation decision is the attitude of the government in each region towards new investment and the maintenance of a stable and certain financial environment, particularly in relation to incentives offered to attract such investment.'*

Since the date of the Treasurer's announcement on 14 February both of these projects have been certified by the DAA. They were certified within a matter of weeks of both projects instructing the DAA to continue processing, which I think verified the advanced state of the applications in the first place."[15]

Projects Affected by the Change in Law

Between 1 July 1996 and 20 August 1996 (Budget night) DAA received 71 application for IB concession, with estimated borrowings of $21.6 billion. On 10 September 1996 the Treasurer directed DAA not accept any further applications. Just prior the Treasurer's 14 February 1997 announcement, DAA certified four projects and since that date have certified a additional five. The Redbank and Oakey projects were both approved on 8 May 1997. The Central West Pipeline project is still awaiting certification along with 65 other projects.

Set out below is information in relation to three of these projects:

[15] Evidence p. E 18-19

Central West Pipeline Project

AGL Pipelines, administers the Central West Pipeline Project. This project comprises a 255 kilometre natural gas pipeline commencing at Moomba/Sydney and extending via Forbes, Parkes, and Narromine to Dubbo. The capital cost of the initial pipeline is estimated at $33 million. Extensions were planned for Tamworth and separate pipelines to Mudgee and Gulgong until the recent announcement.

Applications were submitted for registration under the former Infrastructure Borrowings concession on 19 August 1996 with the DAA. The use of infrastructure borrowings under the original scheme would have underwritten the financing of the Central West Pipeline Project.

AGL have advised that the project is at a critical stage where immediate decisions must be made by them regarding plant and equipment required for the project. They argued that (assuming the DAA would have issued a certificate for the project) the cancellation of the original scheme has resulted in additional financing costs which will have a negative impact on the economics of the project and which will not be offset by the proposed Infrastructure Borrowings Tax Rebate.

AGL argued that in the absence of a suitable replacement scheme, further extensions of the pipeline to other places are unlikely to be financially viable.

AGL recommend that the transitional provisions of the proposed replacement scheme be broad enough to assist in the financing of projects like Central West and other gas pipeline projects. It has put forward the following criteria in respect of natural gas pipeline projects:

- to encourage the distribution of natural gas throughout Australia as an economically viable fuel source, and thus encourage the stimulation of economic development in decentralised areas of Australia;

- to encourage the development of natural gas usage in Australia to recognise the greenhouse advantage of natural gas over electricity in Australia and further encourage the use of natural gas as a significant replacement for LPG, fuel oil and coal;

- to recognise that investment in natural gas pipelines is speculative as they require investors to take a long term view of markets and throughput revenues;

- to recognise that recent initiatives by the Commonwealth under the Gas Reform Task Force process are likely to result in the regulation of pipeline tariffs which fixes the rate of return to pipeline owners and investors; and

- to assist in mitigating tax and economic advantages enjoyed by foreign investors in the Australian energy market which cannot be matched by wholly Australian based corporations.[16]

[16] AGL Pipeline submission, No. 1, p. 2-3

Redbank

Since May 1992, National Power Australia (NPA) has been facilitating the development of a new power station in the Hunter Valley of NSW, known as the Redbank Project. Construction of Redbank power plant was to commence on 26 July 1997. However, since the announcement by the Treasurer to abolish the infrastructure borrowing scheme which National Power Australia planned to use for the project, the $300 million project has been stalled in its track.[17]

In evidence Mr Alper of National Power Australia advised the Committee that Redbank which was due to commence construction on 26 May 1997 has been put back to 26 July 1997.[18]

According to NPA the development of the project has taken five years of hard work and substantial development costs ($30 million). NPA advise that critical in the process of determining the financial viability of the project has been the abilityof Redbank to access the infrastructure borrowing concession.

National Power Australia lodged a formal application with the DAA in mid 1996. The DAA assured NPA that Redbank complied with all aspects of the IB requirements and as a result NPA proceeded to arrange funding agreements for the project.[19]

The NPA have examined the proposed replacement scheme announced by the Treasurer on budget night and state categorically that it is completely unworkable for Redbank as it would force them to delay construction of the project for around a year.[20]

Since the Treasurer's announcement that no more IB certificates would be issued, NPA have sought and received a Letter of Undertaking for infrastructure bonds from the DAA and advise them that they were ready to start construction.

The NPA recommended that the government "grandfather" the project and by doing so it would send some very important messages to investors and the public.[21] When Mr Alper was asked by the Committee why Redbank should receive special treatment over other projects he replied that there were two grounds that distinguished the Redbank project from the others. These were:

> *"Firstly, we have the letter of undertaking issued by the DAA and, secondly, we are at the construction gate—we are ready to start construction now. We were ready to start today and had to postpone that. There may be one or two other projects in that category and maybe they are deserving also for the same reasons, but I certainly would not see that as creating an opening for 10 or 50 other projects".*[22]

The gross cost to the government of approving IB certification to Redbank would be about $4.5 million in the first year and $13.5 million when fully drawn down.

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[17] National Power Australia, No. 5. p. 1
[18] Evidence, p. E 14
[19] National Power Australia submission, No. 5, p.2
[20] National Power Australia submission, No. 5, p.3
[21] National Power Australia submission, No. 5, p.3
[22] Evidence, p. E 15

Oakey Power Station

Siemens Power Ventures is the majority owner of Oakey Power Pty Ltd (OPL). OPL was selected in August 1996 by the Queensland Transmission and Supply Corporation to build a 300 MW gas fired power station in Queensland. The total project is worth $150 million and is due to start construction in July 1997.

In contemplating the relative merits of the prospective investment Siemens considered the benefits that were available under the infrastructure borrowing concession. Siemens lodged an application with the DAA around August 1996 in advance of 10 September 1996, the date the Treasurer directed the DAA not to accept any further infrastructure borrowing applications.[23]

Siemens advise that the DAA had indicated that the Oakey project qualified under the relevant legislation and would be granted a infrastructure borrowing certificate. Unfortunately the certificate was not issued before the Treasurer's announcement on 14 February 1997, although since that date Siemens has asked the DAA to continue to process their application, even though the Treasurer indicated that no certificates would be issued after 14 February 1997.

At the time of the 14 February announcement, contracts had been exchanged for the sale of power from this plant to Queensland, even though no certificate had been issued.

It was proposed the Oakey infrastructure borrowings would have been fully drawn down on day one and the annual cost to revenue would have been $2.6 million.

When the Treasurer announced on 14 February 1997 that the IB scheme would be terminated, a commitment was given that alternative arrangements would be considered in the budget context and that existing applications under the previous scheme would be able to seek consideration under future arrangements. The Government confirmed this commitment in the 1997-98 Budget with details provided of an infrastructure borrowings rebate. The Budget announcement stated that:

> *"The programme will be open for applications for assistance in respect of: private land transport infrastructure projects; project proponents which had applied for an IBs certificate by 12:00pm (by legal time in the ACT), 14 February 1997; and extensions of projects that had been certified to use IBs."*

The three projects above, which had applications with the DAA prior to 14 February 1997 will therefore be able to apply for assistance under the new arrangements. The evidence provided to the Committee from these projects appears to indicate they would sit well with the criteria outlined by the Government to apply to the new IB rebate programme. The Committee also notes evidence to the Committee that it is the intention of the Government to have legislation into the Parliament for the new programme in the Spring Sittings.

[23] Siemens submission, No. 4, p.1

RECOMMENDATION

The Committee recommends that the bill be passed.

Senator Alan Ferguson
Chairman