

Conclusion: The History and Destiny of Long Term Contracts

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This book contains detailed papers on various legal issues which commonly arise before and after long term contracts are entered into. My objective is to attempt to rise above the detailed legal issues which have been the focus of the individual papers and to address broader characteristics commonly found in long term contracts. That endeavour will be assisted by a brief consideration of the history, and the destiny, of long term contracts.

I should first disclose that, like many members of the legal profession, I have spent large amounts of time, and derived fees which correspond with that time, dealing with issues that arise under long term contracts. This is hardly surprising given that long term contracts are commonly a feature of significant resource development projects and, of course, the economy of Western Australia has been focused upon the development and exploitation of natural resources for many decades now. In that economic context I spent almost two years of my life engaged virtually full time in a dispute arising from a royalty provision in a contract which enabled a major mining company to develop an iron ore mine and which applied for the life of the mine. Another two years of my life was largely devoted to a dispute between a coal mining company and an electricity provider which was the purchaser of coal under a take or pay contract of 25 years' duration. Another year of my life was spent preparing for and appearing in an arbitration which was to fix the price of gas to be supplied to an electricity provider under a long term contract. Almost another year was spent preparing for and litigating a dispute arising under a long term contract for the management and operation of a casino.

There seems to be little doubt that long term contracts supply good grist to the legal mill. It is useful to reflect on why this is so.

Allocation of Risk

I do not purport to have any expertise in economics, having given only fleeting attention to the subject during the course of my studies. However, from my naïve and unsophisticated viewpoint, it seems that a major difference between a short term contract and a long term contract is the degree of risk borne by the parties under the latter species.

This is a preview. Not all pages are shown.