

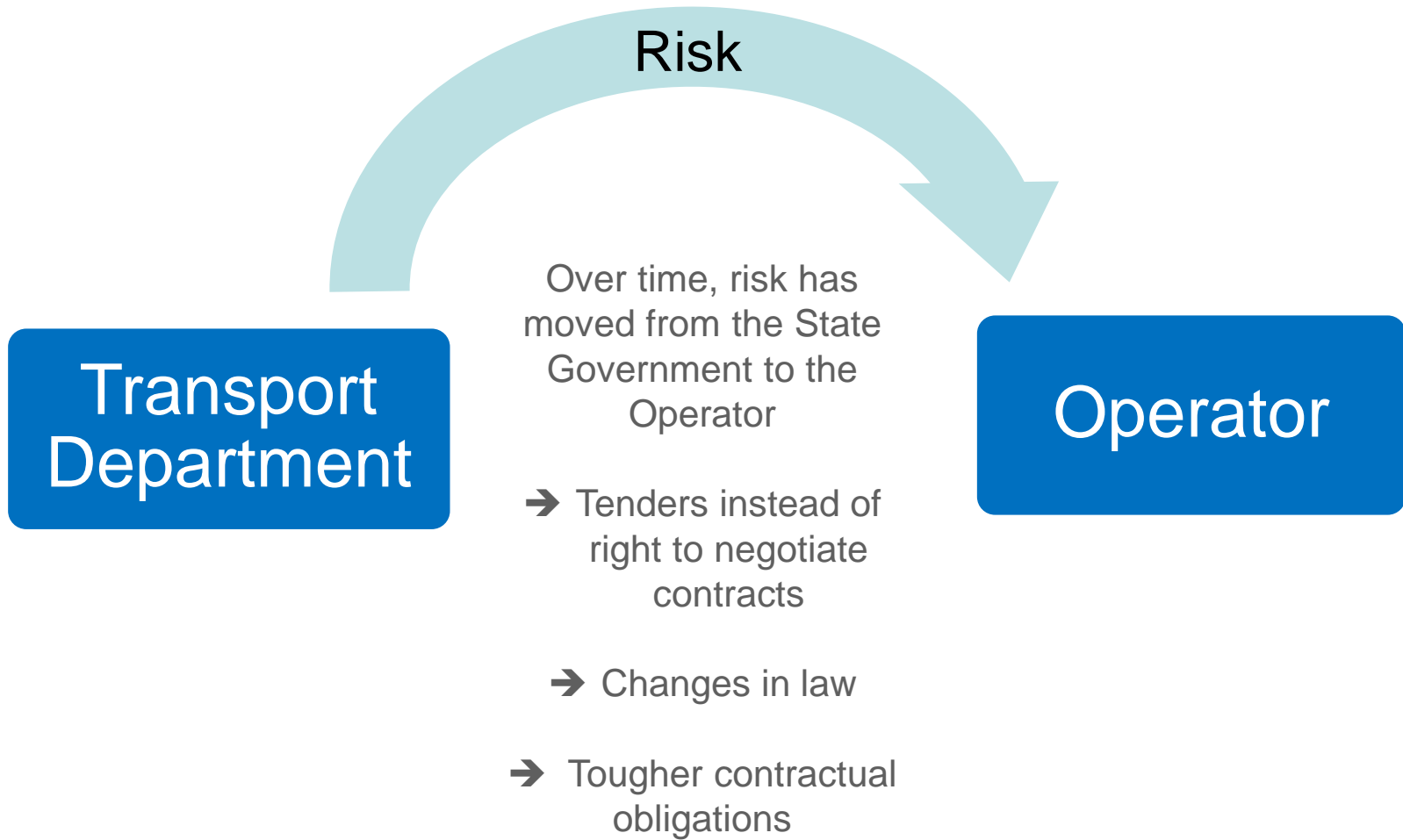


# “What are my legal risks?”

Peter Dwyer, Partner

29 September 2015

# Risk Transferred to the Operator



# 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



# 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)



# 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

# 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 e.g. 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





# Contractual Risks

## Viability

- > Once you sign you have to comply.





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