

REPORT OF PROCEEDINGS BEFORE

PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO PUBLIC PRIVATE PARTNERSHIPS

At Sydney on Friday, 18 November 2005

The Committee met at 9.00 a.m.

PRESENT

Ms N. Hay (Chair)

Mr G.J. Aplin
Ms K.K. Keneally
Mr G. R. Torbay
Mr J. H. Turner
Mr S. J. R. Whan

ANDREW COUNCIL, Commercial and Contracts Task Force, Australian Construction Association, Level 4, 51 Walker Street, North Sydney,

JAMES DAVID BARRETT, Executive Director, Australian Construction Association, Level 4, 51 Walker Street, North Sydney,

DAVID HUDSON, Vice President, Australian Construction Association, Level 4, 51 Walker Street, North Sydney, and

MARK SNAPE, Commercial and Contracts Task Force, Australian Construction Association, Level 4, 51 Walker Street, North Sydney, sworn and examined:

CHAIR: Thank you for appearing before the Committee today. The Committee is pleased to hear your evidence today. I have been advised you have been provided with a copy of the Committee's terms of reference and also a copy of the Legislative Assembly's Standing Orders 332, 333 and 334 that relate to the examination of witnesses. Is that correct?

Mr BARRETT: We have.

CHAIR: Did you receive a summons issued under my hand to attend before this Committee?

Mr BARRETT: No.

Mr COUNCIL: No.

Mr HUDSON: No.

Mr SNAPE: No.

CHAIR: The Committee have received a submission for you or your organization. Is it your desire that that submission is to form part of your formal evidence?

Mr COUNCIL: Yes.

CHAIR: I believe Mr Hudson is making an opening statement.

Mr HUDSON: If I may Madam Chairman. I am sitting here as vice president of the Australian Constructors Association, which represents about fourteen major construction contractors in Australia, but I am also, in my day job, managing director of Barclay Mowlem Construction and Mark Snape, who is sitting next to me, was part of a task force - I chair the Commercial and Contracts Task Force of the Australian Constructors Association - and we have put together a working group in order to prepare the submission on PPPs. So Mark Snape is part of the John Holland group and he represented that company on the Commercial and Contracts Task Force and Andrew Council is part of Bovis Lend Lease. Jim Barrett is the permanent secretary of the Council and was a very great help in preparing the document. I think firstly I need to thank you for considering our submission.

As major contractors, we participate in private sector partnerships often on three levels. We are, as our name would indicate, the constructors. We build the infrastructure and take great pride in the infrastructure that we have provided, but we also operate as service companies, often providing long term operations, maintenance and soft services to the New South Wales Government on facilities management of infrastructure which is built. The third level in which we participate is often as equity partners. These deals require an equity investment and contractors often get involved in providing equity in the early stages of the project, and that is obviously the area where there is the highest risk, in the commissioning phases and the early years and other times maintain an equity for a long period.

Sometimes the very nature of these deals in fact requires the seed equity to remain in for a

given period. So we have three levels of participation.

I think the message that we want to give overall is that we are highly desirous that private sector partnerships work. We have got a long tradition of working with the public sector in providing infrastructure, I guess right back to the time the First Fleet came, private sector has been very much involved in this. As we move round this city, as we move round this State, all of us can point to projects and put our name on projects that we have provided the very basis of the infrastructure.

I think that ultimately the contractors and the Government in fact have a shared goal, and that is to deliver a better infrastructure solution, to deliver better services to the community, clearly to maximise value for the Government and the people of New South Wales and at the same time to do so where contractors get a fair reward for the tasks they perform and for the risks that they take.

Through the PPP process we can certainly do that and the aim of the document that we put forward is to say: Hey, this market can actually be more efficient. It can be done more efficiently and in fact if it can be done more efficiently, then in fact you will get more participants in and consequently a more competitive process.

There are many procurement strategies which can be chosen and we are not here to try and promote one procurement strategy over the other but we certainly do have an aim to make whatever procurement process is chosen, to make that more efficient.

I think there are three key messages in our submission. The first one is that there should be an appropriate sharing of risk between the public sector and the private sector involvement. The second one is that these deals should be worked in a partnership and in a proper partnership whereby partners work together during development of the project, through the execution of the project and in fact through the long term maintenance of the project. So often the P in the triple P title, P for partnership has been missing. I think the third aim that we have is essentially making the procurement process more efficient to understand the drivers of each party such that people get on the same wave length early on, that the enquiry is efficient, the enquiry is shaped in the way that the Government requires the outcome to be delivered, such that people's use of time, energy and resource is appropriately placed.

Let us understand that in contracting it is the clients that set the rules of engagement, so therefore Government, as the master of this relationship, certainly has a very real responsibility to set the tone, to set the environment of what takes place.

So often there has been a risk transfer philosophy and therefore all the risks or the risks are shoved to the contractor whether or not the contractor has the capacity to manage those risks. By the very nature of that philosophy you create an adversarial environment which pops out in times of stress.

The PPP process that we are going through is relatively new to Australia and therefore we can certainly draw on experience that has taken place elsewhere but in the various governments moving down the PPP line, I think there are learnings to take place and I think we can all recognise that there can be significant improvement from where we have gone out.

The document we have put together hopefully gives you some practical recommendations as to how this process can be improved. The recommendations come from our experience and the considerable experience of our members who have participated in the PPP jobs that have gone before.

The document was prepared for the National PPP Forum, which was put together for very similar reasons as to why you are sitting and therefore it is actually pitched at the public sector policy makers, the very people that you are. It is, by its nature, fairly technical but we did try to make it readable. We recommend this document to you and we are here today really to answer your questions and hopefully to put some meat around the document that we actually prepared more than a year ago and still remains very relevant and current.

CHAIR: Notwithstanding your statement, you proved the Committee with the booklet Putting Guidance Into Action which outlines a series of principles you have identified as important for PPPs and a number of case studies supporting these. We will ask about some aspects of these. Firstly, could you actually expand further on ways in which you believe the shared risk can be managed better in a PPP?

Mr SNAPE: Have you got any particular shared risks that you were thinking about in that question?

Mr WHAN: You mentioned there was a risk transfer philosophy and it made it very adversarial, in your statement before. I guess we would like you to expand a bit on that because that is obviously an issue which I think you probably acknowledge Government has been driven over the last couple of years to transferring all the financial risks to reduce debt and tell us whether you think that is appropriate or how we should be going about it.

Mr SNAPE: I think there is a difference. I think what we see is there is a difference between controlling the occurrence of some risks and the management of the risks once they have occurred. We believe that frequently there is a misunderstanding with that particular philosophy. An example would be unknown contamination on site. People would say that we, the contractor, are best able to manage contamination but if it is not known, we cannot actually manage the finding of it, we cannot take the risk of finding contamination but once it is known we can determine the cost of what it would take to remove it and so that would be a risk we would not see as being appropriate being passed to the contractor.

Mr WHAN: The sort of risk of unforeseen.

Mr SNAPE: That is right, it is the risk of unforeseen elements. I mean, force majeure is acts of God or other examples where, by its very nature, we cannot control the occurrence of the risk but once the risk has occurred, we can then step in to manage the cost of it and tell you how much it would cost to repair.

Mr HUDSON: Can I take two examples which are in the book. One of the case studies we have got in there is the Alice to Darwin railroad, which I was very much involved in and on that one we put forward as a very appropriate structuring of the document from the Northern Territory government, they did it well. There were very real risks there associated with land acquisition, Aboriginal issues, heritage issues, but the government kept all that risk itself. It said, you provide us a rail, you take the risk on the railway, you take the risk of the economic viability of railway but things which you, as contractors, have no control over or which we, as government, can better control, we will retain.

Compare and contrast that with the Spencer Street station job and I am reporting to you here as an observer, as distinct from somebody who has got intimate knowledge - it is nothing to do with my company but as an observer on that and what has been reported - is that the risk of access and the risk of dealing with a whole stack of authorities who had nothing to do with the contract, was passed to the contractor, which was inappropriate because the people who were promoting the job, in that case it was a government agency, more appropriately should have retained the risk of obtaining access from the various operators of the station and allowed the contractor to do what he was there to do, which was to build the new building.

Every deal is different but it really is the concept of saying, Hey, if we are going to do these jobs properly, what are the risks that are appropriately taken by the contracting party, by the private sector and what are the risks that more appropriately can be handled by the government because of its power or because of its role as representative of the Crown.

Mr TORBAY: Just flowing on from that, I agree with your comments about partnershiping and perhaps some of the partnership aspects have been missing but I suppose the hard question here which you seem to have gone over is that the negotiation between the private and public sector raises issues of capacity of the people involved in doing these negotiations and it is okay to say

risks should not have been transferred here or there, but my question to you is the public sector and the private sector, seems to me to have a situation where the private sector is out there also trying to negotiate the best position for them and there seems to me, problems, that I can see, dating right back to many years with many of these negotiations with the public sector actually not knowing some of the territory that they are actually entering into, causing the problems to bulge out the other way, which in my view creates difficulty for the private sector and the public sector, the whole risk situation and the understanding or support for PPPs long term, and that has been constant. My question to you is, is it a fair negotiation? Does the public sector actually have the capacity to match it with the private sector in those negotiations, because from what I am seeing, there is simply the shortfall occurs there every time.

Mr HUDSON: Let us put that in context, which is also addressed in the document, and that is to say that before these deals are conceived and before they go out, it is very appropriate for the government public sector who are promoting it, to in fact do their homework and have the scope of the deal, what they are looking to achieve, properly thought through. So many of these deals that we have experienced - and this is part of the learning and part of the intent of the submission - have actually been put out possibly under pressure, maybe under political pressure, certainly under time pressure - where they have actually only been half conceived and therefore some of the risks which have emerged which you referred to have actually only come out as the deal has evolved, possibly in response to questions, issues that have been raised. So one of the big things is appropriate preparation.

You ask the question, does the public sector have the capacity? I have actually got to say yes. I deal with the public sector quite a lot. It is staffed by very competent people, very astute people, often driven to do a good deal for the Government, they are protecting the Government's interest and the people of New South Wales in the same way people here are looking to protect their company and they, of course, have access to a whole bevy of consultants who are very, very sharp. I mean, let us make no mistake, we have all sat on the other side of these deals. The balance of power, I would say, is with the Government, not with the contractor. The Government conceives the deal, it sets the rules for the deal and it actually has the power of award of the deal and there is competition.

Mr SNAPE: There is competition on the one side but no competition on the other.

Mr TORBAY: I am not disputing any of those things, what I am saying is evidence has shown that the public sector has not actually been the winner even though it has all those cards in its hand, on a very large number of these arrangements, so my point is accepting what you have said, is there enough experience in the public sector to deal with these issues given the outcomes that we have seen? I am not suggesting their motives are not pure, I am simply saying, how do you explain the outcomes?

Mr HUDSON: I think you are concentrating on some of the problems as distinct from some of the successes. Successes just go through.

Mr WHAN: They are not on the front page.

Mr HUDSON: They are not on the front page. Our book here has highlighted some successful ones.

Mr COUNCIL: Going back to where Mark was going in risk profiles and standardising of those positions across jurisdictions would towards--

Mr TORBAY: So standardisation.

Mr HUDSON: Which was also something we have advocated in this document.

Mr COUNCIL: That goes across the jurisdictions to assist the PPP process from a national perspective as well.

Ms KENEALLY: First I want to thank you, your submission is quite detailed in terms of practical steps that would assist in creating that partnership, so your comments about the public sector, your comments about bid bonds, standardised contracts. What I am wondering as far as what Richard was raising, some of the other submissions have argued that to assist in creating a better partnership between the public and private sector that we in New South Wales should look to set up something similar to the PartnershipsUK, a separate entity that acts on behalf of the public service in negotiating and creating these deals. I do not recall that your submission mentioned that recommendation specifically. Do you have any view on that?

Mr BARRETT: PartnershipsUK was actually set up in the late nineties in response to the second enquiry over there, directly in response to the issues that you raise and it was actually set up to address the fact that there was a perception that the deals were so slow to get through because the public sector did not have the technical capacity to do that.

Actually in earlier submissions in other places we argued for a similar sort of body here to facilitate the deals to flow, because the problem of getting deals through was almost like a lack of confidence in the ability of the public sector to make the deal on their behalf and the notion then of arming a separate authority with independent private sector expertise to facilitate that, I think has many strengths and I think it is also a transitional body we are talking about. I wonder actually whether we may have gone a bit past that because I think there is probably quite a bit of experience in the public sector now to handle it.

If it is an issue of giving the public sector confidence that there is that extra expertise that can help facilitate the development of these projects, from this side of the table it is going to accelerate the deal flow and I think that is good, we are going to get much crisper decision making, we are going to get it much earlier and from the public sector's point of view, they will be making decisions with a level of confidence that they have accessed the best technical and legal skills they have got. It is certainly something we would support.

Mr APLIN: In this section on efficient procurement you actually talk about the standardised contracts. Can you explain the benefit of that approach? You did recognise obviously the need for new approaches on some occasions but you did stress the need for a standardisation for more efficiency.

Mr BARRETT: Perhaps I will just make an opening statement. I am sure my colleagues will have a similar sort of comment. Standardised contracts have a benefit in that the conditions associated with the contract or risks associated with it become well known. They become the risks that are then publicly executed for all projects. Therefore, both sides of the bargaining equation are able to then price those risks, because we know what the risk is, we have dealt with it before, we know how to manage the risk, we know if it is insurable, we know how to deal with it.

If every document you come across has been drafted by a new set of lawyers and they have actually changed the risk profile, then from the service provider's point of view, you are then looking at a whole new risk profile, trying to understand the risk, is it a risk you can manage yourself, is it a risk that you can insure? Those sorts of issues have a negative impact on price because they are risks you do not know about.

If you standardise the risk profile for both sides, we both understand the risks and we actually have a history of being able to price those risks and how to manage them and I think actually bring some stability to it.

As an organization we have certainly argued for standardised contract forms, particularly for these types of projects. It would be nice. It does not even have to be a national one, even if you were working in New South Wales and knew that most projects in New South Wales were going to be procured under a certain type of document. There is a history of how those risks can be dealt with and managed. It actually stabilises the market. It certainly has, I think, a calming affect on prices because this notion that somehow we can pass the risk to the other side and therefore we can sleep better at night. If the contractor either has not got the capacity to manage that risk, that is it is taken

on board or has to price it by an insurance product that is not known in the market or whatever, all that has actually added is a premium to the job, so this notion of that being good business has actually got a sting in the tail. It might be a great thing from the public sector's point of view to say we have actually transferred that risk, but in doing so this issue of value has gone down the drain because you ultimately end up paying a lot more for it because it is a risk that the other side could not manage and has had to price it and you have actually paid for that.

Mr COUNCIL: A simple thing like the definition of force majeure in these contracts, we should not be entertaining discussions with lawyers about trying to find force majeure from contract to contract, it should be just standard.

Mr APLIN: Arising from that, you obviously operate nationally. What jurisdictions then are best at delivering that efficiency in standardisation?

Mr BARRETT: Well, the Victorian Government I think has taken the lead in it and in fact at this national PPP forum last year, one of the issues which was dealt with in the forum was this notion of standardised contracts. The contracts may not even be as balanced as both parties would like them but the fact that they are standardised I think actually brings some stability to the market. You are not going to be confronted with a new document every time that you go to market.

Mr TORBAY: Legal costs as well. We had evidence previously that some of the legal costs, we asked one senior lawyer about what he would consider a decent PPP and he said one that was over 100 million pounds so they could pay the legal bills. I think standardisation has got some serious benefits in reducing what are very significant costs in PPPs when it comes to just legal costs alone, they are huge.

Mr SNAPE: Certainly a risk profile and reduced transaction costs, because you have not got to re-negotiate the contract every time, and as Andrew says, you have not got to re-negotiate each deposition, because there is no doubt that we feel - and you feel on your side - we feel on our side that the risks creep through terms being defined insidiously if you like, to pass risks to private sector in a way that you do not even know that you have accepted them.

So you have got two sets of lawyers battling over the technical definition of force majeure in order to define the risk usually covered by government and carried by the private sector. Of course those risks cannot be priced. You simply cannot price the risk of blowing up your piece of equipment. You can cover the equipment cost but you cannot cover the time lost.

Mr WHAN: In your background material you talked about bid bonds and you are opposed to bid bonds. Can you just explain why?

Mr HUDSON: For a start, every contractor has finite pool of bid bonds, so they are valuable because in fact they define how much work you can do, so therefore replacement of a bond is something that is a fairly serious thing. That is point one. The second reason is that by the time people are even half way down the path of responding to these projects, they have actually spent an awful lot of money. If need be we could quote you some of the sums on closing of some of these jobs but even to get to preferred contractor stage, particularly as there are two levels, there is a construction deal going on and then there is an SPV deal going on. You can spend upwards of \$2 million to \$4 million. So the commitment for people to participate in these things is made on day 1, when it comes to the risk management committee, he says, are we going to go, are we not going to go, we have got to spend \$4 million on this, and quite frankly to ask for a bid bond from the Government really is adding insult to injury, certainly when, the other side of the deal is to pay for bid costs.

Mr SNAPE: What the fear is, is that we will withdraw from the process and you will have to start again and therefore you are trying to avoid that situation happening, but you simply will not deal with contractors that in fact pursue that method of participation over time, and as David says, a \$5 million bond is \$100 million worth of work we cannot do because you have used up your balance sheet capacity in putting out the bond and this \$2 million to \$4 million is actually quite generous, I mean costs in these can go into the tens of millions or larger.

Mr HUDSON: By the time we closed down in Darwin we had spent \$30 million, before we got financial close, and Mitchell to Franklin—

Mr SNAPE: \$35 million in bid costs.

Mr TURNER: Why?

Mr HUDSON: Non-standard contracts is one reason and lawyers.

Mr SNAPE: It is all the consultants that you have to employ. If you are taking patronage risk, you have got to pay for all the patronage studies, both our patronage study and the bank's patronage study, because they want independent advisers. You have got to pay for your legal fees, plus the bank's legal fees, because once again, they want their independent advisers.

There is all the design costs. You request a fully documented implementable design, so we have to pay all the designers. These are all professional people. We take it on risk but these people live from day to day on money that they get paid by us for employment so they cannot take it on risk. There are design costs, legal costs, patronage costs. We are currently bidding on the North/south bypass tunnel. We have got one hundred people sitting in an office in Brisbane managing patronage and design and they go for twelve months. So we have leased a whole floor of the building in the Brisbane city, put one hundred people in there with all the fit-out and telecommunication costs.

Mr HUDSON: Let us not under-estimate how complicated these things are. At financial close, when the financiers are putting in several hundred million, sometimes billions of dollars, all they have got at the point they put their dollar in is the documentation. So the documentation is the only asset and the documentation of the agreements between the financiers, between the operators, between the contractors, between the governments are very, very complicated and often you have over a hundred separate agreements between the various parties that make the deal.

Mr TURNER: You mentioned \$35 million a moment ago on one of the projects. Is there a government component in there of costs for dealing with government?

Mr HUDSON: Absolutely.

Mr TURNER: Is that a significant cost?

Mr HUDSON: Absolutely and one of the most important parts of the government cost is in fact the time taken and the general practice of not adhering to timetables. I put this also back to the bid bond and one of what I will call scurrilous practices around is for, once the deal is put forward and governments receive submissions from proponents, that they go out a second time and ask for what we describe as BAFO - better and further offers, best and final - so therefore there is another round of bidding, which means that the team which was put together for maybe three or four months, sometimes stays there for eighteen months.

Mr TURNER: You have got no awareness, I suppose professional you know this is going to occur but nothing in writing.

Mr HUDSON: No, professionally you do not know it is going to occur and professionally it should not occur but bear in mind where your investment is at that stage, people are locked in and therefore are certainly encouraged to respond.

Mr TURNER: Would your organization advocate then more certainty with government in relation to dealing with the products?

Mr HUDSON: Absolutely and that is also one of the things we put in the submission.

Can I just go back to the bid bond question, Mark quite rightly identified with the bid bond that from the Government point of view one of the motivations for a bid bond is to say, they are for rewarding two or three contractors a position and we do not want you to pull out. Rights and obligations have got two sides to them and a number of these things have gone on for a long time and some of the examples, the case studies we have put in the book of less than efficient procurement processes really refer to jobs or enquiries which have been out there a long time, possibly due to government uncertainty when it started or possibly due to risks and engagement with the community at large which has delayed the thing.

Contractor's worlds change as well over a long period and I think some of these PPPs where contractors have started and have actually ended up pulling out is really because they have got other deals or something has come along in the sometimes eighteen months or two years. I think a short, sharp process to get to preferred contractor has benefits for both sides.

CHAIR: Are there examples where you believe that genuine partnerships could not be affected through a PPP?

Mr BARRETT: There are other types of procurement models that use a relationship based approach, certainly alliances work as a model where the contractor and the client share risks and in fact there are projects going in the New South Wales government here under the alliance model. Alliances have a much greater investment in the parties up front and they are not a model that you would use every other day, but for projects where there are high risks, a lot of unknown elements, that there are very sharp time lines or there is something about the nature of the project, the client and the contractor can actually work together, perhaps with their consultants in a team, so there is a much greater emphasis on risk sharing through the alliance. It is a formal structure but it is a formal structure that actually puts everyone in the same team sharing the unknowns together, and it has been a very successful procurement strategy.

It is not appropriate for everything because you have to spend a lot more time developing the team and it is probably for particular types of projects but there are lots of ways that you can actually use relationship type contract models even in traditional contracting, where you can actually improve the relationship between the contracting parties. It does not always have to be an adversarial model but you can still protect the rights and the interests of the parties, but have a better relationship between the client and contractor.

Mr WHAN: As constructors, would it not be more in your interests and a lot simpler and cheaper for you to be pushing government to actually finance more projects themselves rather than actually going into privately financed projects, remove a lot of those risks that you have spoken about and make the whole process a bit simpler.

Mr HUDSON: I think for the procurement of some infrastructure that is a very wise statement. Certainly the PPP model provides challenges but for the right sort of project it also provides benefits to the private sector.

I think one of the benefits that has come out with regard to infrastructure, both social infrastructure and economic infrastructure, is the long term maintenance and long term facilities management that the private sector provides, that the government maybe is constrained with ongoing budgets. When there is a long term maintenance deal then the standard of that facilities management is actually written in right at the beginning and that is a plus, and the private sector is inspired and driven towards better ways of providing that service to the community at large.

I can give you an example from our parent company's experience in the UK where they have done a very large hospital, and they built the hospital with an extra large laundry, far bigger than what was needed for the hospital itself and a very large catering facility, far bigger than what was needed for the hospital itself, but were able to do the laundry for all of the Area Health Service in that one facility and therefore providing a better service and through the catering, provided all the school meals.

It is just one area where there was innovation, economic benefit to the community, a concentration of skills that you would not have got to had you just built the hospital.

Mr COUNCIL: It does allow you to innovate, when you are looking at the whole of life perspective, even if we are contractors, but we do involve ourselves in the design process and the brief solution, so it is important to us as well.

CHAIR: On that note, on behalf of the Committee I would like to thank you for giving your evidence and your submission, it was of great interest.

(The witnesses withdrew)

GARY MOORE, Director, Council of Social Service of New South Wales (NCOSS), 66 Albion Street, Surry Hills, New South Wales 2010, and

DEV MUKHERJEE, Senior Policy Officer, Council of Social Service of New South Wales (NCOSS), 66 Albion Street, Surry Hills, New South Wales 2010, affirmed and examined:

CHAIR: I am advised that you have been issued with a copy of the Committee's terms of reference and also a copy of the Legislative Assembly's Standing Orders 332, 333 and 334 that relate to the examination of witnesses, is that correct?

Mr MOORE: It is.

CHAIR: The Committee has received a submission from you or your organisation. Is it your desire that the submission form part of your formal evidence?

Mr MOORE: Yes, it is.

CHAIR: Would either of you like to make an opening statement?

Mr MOORE: I would just like to make a few comments. Firstly, I would like to congratulate the Committee for the release yesterday of its report into sustainability reporting in New South Wales and we, of course, hope that its recommendations will be pursued.

NCOSS's main concern with PPPs is the effect on disadvantaged people and communities, which we believe is not often considered in the PPP process. We believe that certain services are the core responsibility of government and not the private sector. In some instances there may well be a valid role for the private sector in partnering with government to increase or improve the infrastructure associated with the provision of these services. We think public infrastructure should be considered as both an economic asset and a social resource, for example, social housing as State communities, government skills and local resources.

Further, we would argue that proposals for private investment in public infrastructure should ensure that there is a social return for the investment, for example an increase in social housing stock, in that particular arena, we should demonstrate a financial benefit to the Government, we should ensure costs to users are fair and not significantly higher than if the infrastructure is owned by the Government and financed from user fares. Could I just say finally in relation to the recent public controversy about certain tollway based PPPs NCOSS would add its voice to calls for full disclosure on the public record in a timely manner of the PPP contract.

CHAIR: You outline a set of guiding principles to address social and economic benefits, in which you indicate that social housing should not be the responsibility of the private sector. Could you expand on your suggestions for ways in which the Government might partner with the private sector to provide social housing or other services?

Mr MUKHERJEE: I think the main concern around social housing in particular is through lack of investment by the public sector or the Government, both nationally and at a State level in social housing, which is a problem in metropolitan areas across Australia, but Sydney in particular. We do believe that there is a role for the private sector in perhaps finance, given the lack of public money to put into the social housing sector. It is probably from our perspective the second best solution. Our main concerns are the social effects that that has on social housing. There are particular concerns around Bonnyrigg, for example, the development that Bonnyrigg should have, which we have expressed in various forums but little attention has been paid. For example, we are concerned that people currently in public housing in the social housing in Bonnyrigg will be moved out of the area. There are no guarantees that they are actually going to be able to stay after the development is completed. There is uncertainty about the concentration of housing in the area and as a result how many properties will be available for social housing and whether that is actually sufficient to cover the existing people there. There is also the issue of getting the proportion right in

that development and getting the nature of housing right for that particular area, whether it is going to be more units or townhouse style developments. Currently there is quite a different style of properties out there. All of those things do affect communities in a serious way and we do not believe they are considered adequately by the Government.

Of course, the problem is that if you start to take those things into account when proposing a PPP then it becomes less attractive to the private sector, because if you are saying you need 50 per cent social housing in the area, you are not going to make as much money as if it was 30 per cent, things like that. The other thing that we are concerned about, particularly with social housing, is the bias that it might produce in the areas chosen for redevelopment. We believe that certain areas, particularly metropolitan areas, are going to be more likely to be chosen for redevelopment under a PPP arrangement than rural areas and it is not based on any sort of need. It is likely based on the attractiveness of a particular location.

It is not that we are opposed necessarily to private investment in public housing or social housing, but we are concerned that the ability of the private sector, I suppose, to negotiate its own way in these things is probably greater than the ability of advocates of social housing to argue for a more appropriate balance in terms of social housing mix and things like that. The partnership, we believe, particularly in social housing seems to be a little bit one-sided.

Mr MOORE: Can I just add to that very briefly. However, we would say in relation to affordable housing, a different grouping than social housing, that there is obviously and there must be a significant role for the private sector in terms of being able to leverage the necessary funds and strategies, particularly in places close to jobs and transport in Sydney, and that then of course throws up some very big and difficult questions about getting the balance right between public good and private profit in a PPP type arrangement, and I guess in many respects we have not seen, there is not evidence, at least in New South Wales, to date of that being successfully done. Certainly there is overseas evidence. Of course, when you start moving into that area you also have to look at issues about tax treatment from the Commonwealth level, et cetera, of investment.

It is certainly not a black and white picture from us, but I guess going back to our principal point, it is a bit like national competition policy, we are not exactly sure to what extent the public good and social need issues get their fair balance of consideration in the current sets of arrangements.

Mr WHAN: Ahead of economic rationalism?

Mr MOORE: Yes, and if we are going to be using PPPs, and housing is only one area of course--

CHAIR: So coming from a sustainable community?

Mr MOORE: Yes. We are going to have to get much better at processing what we currently have. That is our view.

Ms KENEALLY: If I could just perhaps summarise and see if I understood you correctly. In talking about use of public private partnerships for social housing, as some of the terms and conditions, if I can put it that way, you have mentioned allowing the community to remain intact, not dispersal of the community, getting an appropriate proportion of public to private housing stock and in that either increasing, or maintaining at the very least, the social housing stock that currently exists in that area. Are there other terms and conditions you might put on it or have I captured largely what you are driving at?

Mr MUKHERJEE: Those would be the main points. There are also some concerns about the design of the housing and ensuring it is appropriate for those communities. For example, the proposals for the Erskineville estate, which you would know about.

Ms KENEALLY: Yes.

Mr MUKHERJEE: There were concerns there that the nature of those properties would change considerably, from a lot of open space arrangements to much more high density housing, and those sorts of issues are important.

Ms KENEALLY: Can I follow on from this discussion. In your submission you expressed your concerns, and I think rightly so, about the effects of PPPs on disadvantaged people and communities. I can accept that user pays models do significantly disadvantage people who are poor. However, I am curious to know if NCOSS has a view as to whether or not non-user pays models, such as the provision of public schools or perhaps the provision of more social housing stock, could actually be a benefit to disadvantaged communities.

Mr MOORE: I take your comment in terms of potentially greater public provision within these particular--

Ms KENEALLY: For example, more efficiently or more quickly provided than perhaps the public service would do.

Mr MOORE: I think the question of timeliness is an important one and I understand that that is part of the argument outside of budget bottom lines, transfer of risk, et cetera, but once again it is a balancing question. If you end up with a piece of infrastructure which 35 per cent of income earners are going to pay significantly for through some years of charges because you have made the investment in a PPP in the short-term to get it there, you have got to ask the question, and on the current evidence, particularly with the so-called harder infrastructure side of things, very much the question: What are you doing and what do these do to living standards down the line?

I suppose the simple example of that is that for the last 13 months we have been trying to say to the New South Wales Government: Why don't we have a concession E tag across all the tollways? Why did they not do that in terms of the negotiation of the contracts, given that we do not have enough public transport to take enough cars off the roads, and so it is things like that. Sure, getting infrastructure on stream more quickly but the thought about the results for a significant proportion of the population. So I guess that is the best way I can answer.

Mr WHAN: First, a quick follow-up on that previous question about the schools. There are some privately constructed and maintained schools being undertaken and of course there is no user charge involved in that, other than your normal voluntary fees, but why would you see that sort of arrangement as a problem? Is there a flaw that you would see in that arrangement?

Mr MUKHERJEE: Yes is the short answer. The long answer is that we have got concerns about the nature of the contracts and making sure that certain terms are kept within those contracts to make sure that the standard is maintained. I know that is a problem in publicly run public schools but privately run public schools, if there is such a thing, it is much harder, for example, for the P and C to influence the cleanliness of the school and make complaints if it is not clearly written into the contracts. I suppose there are concerns about the quality of the contract.

Certainly, public schools are seen by their communities as assets that are used by the community. Schools are used seven days a week, from at least eight until six most days, week days certainly, and weekends. They are very important community assets. If they are privately owned, then there is potential that non-educational usage of schools might not be as easily available to the community. That might not be. Again, it depends on the contracts and the use of the controls.

Mr WHAN: Have you had a look at any of the contracts which have been entered into in schools? There are none in the area I represent, but my understanding is that basically the school is managing all access to the building and the private contractor has built the building and guarantees a level of maintenance and cleanliness.

Mr MUKHERJEE: There are examples of that in New South Wales. My concern I suppose is that in other areas outside New South Wales there are differences, and if you look at the UK examples, they have some quite serious problems now as well. So it depends on the ability of the

public sector to draft the contracts. That is one aspect. The other aspect is it is often said that the private sector can use schools more efficiently by developing child care centres on the grounds or pre-schools or whatever. I mean that is fine, but that does take some of the ability of the principal then to manage the school. We have also found that in terms of design issues, privately financed schools in the UK have actually become outdated fairly recently because they did not have sufficient kitchens. That is not so much a problem in New South Wales, but it does show that a school that was supposedly innovative and privately financed perhaps is not as flexible as it might be in the public sector.

Mr WHAN: Not as flexible because it is locked into a contract for what they will provide, is that what you are saying?

Mr MUKHERJEE: Yes. Those privately financed schools are now saying: Well, it is going to cost us an extra 20,000 pounds or more to put in a proper kitchen. So who pays for that?

CHAIR: Did you just say that the new schools in the UK do not have a proper kitchen?

Mr MUKHERJEE: A lot of them do not, no. They have the ability to reheat and freeze.

CHAIR: They have school meals cooked elsewhere and delivered in hot plates for the children?

Mr MUKHERJEE: Yes.

Mr APLIN: Just arising from that, you have expressed some concerns about schools and community housing. In your view are there any projects or services which should be excluded from PPPs and could you outline those? Are you prepared to do a broad brush on them?

Mr MOORE: I do not think at this point of time we would say that there should be a prohibition or define a prohibition. Can I say to you two things? One is that in justice areas, and I am thinking here of the private gaol at Junee, there is absolutely no evidence at all that the contracting out through a PPP arrangement to build and operate has delivered any benefits in terms certainly of rehabilitation or in terms of reduced recidivism rates at all in relation to having a PPP arrangement. I guess it is in part your view about what you think prisons are for and what you think the justice arrangements ought to be but I think that is somewhat a real concern. I mean it is an issue of course that goes generally to public policy. So I think there is a difficulty in those areas. We are all way aware of the bail out of the failed Port Macquarie experience several years ago and I think there are some real arguments in the health area, in both tertiary and primary level health care, that one would be very concerned about in terms of PPP arrangements, particularly the private hospital and private health insurance industry and the public system at the moment. I guess in principal the answer to your question is I do not think we have got to a hit list of things, if you like, that we would say no.

Can I also raise just in answer to this question, because it goes in part to what is occurring elsewhere, not so much about the hard infrastructure, but the financing by government of services, and I heard a previous witness talking about alliance models. At the Commonwealth level you would be aware of examples such as the job network, where you have a contract, almost a PPP arrangement, with five or six very large providers, and we are talking about several tens of millions of dollars on the current basis, and it probably raises the question for us that does have relevance to this inquiry, where if government is moving to contract out the service provision, not so much the infrastructure, but the long-term service provision and have long-term contracts locked up, the question about whether in particular the human services areas, the for profit sector should be encouraged or not to be part of that.

I think we are all aware of the significant dominance of bodies like ABC Learning Centres and children's services in Australia at the moment. We are all becoming aware of the interest in consortia led by Macquarie in the aged care area, about purchasing a range of facilities of the traditional charitable providers. So I think there is a question in part of what we are looking at here going to your question about what is appropriate or not in the service provision end, big government

contracts, locking things up for several years, about asking that question should the for profit sector be in essentially what is a PPP arrangement with government as a major service provider in many of our essential community services.

Ms KENEALLY: Take for example the immigration detention centres. It seems to me that the only way that that company has a way to make a profit is to cut the services it provides to the human beings that it is supposedly servicing. Is that part of your argument then?

Mr MOORE: Obviously the private sector is not going to go in unless there is a buck to be made, and so the question is about cherrypicking, and in human services areas that is what we are seeing and that is what increasingly we are going to see, and governments partially do that, not just in New South Wales but in other areas, because of the competitive tendering contract arrangements which are now the norm, but yes, cutting costs to get the fiscal bottom line up does involve greater deficiencies in services and it does have that sort of impact. When you have got particularly a monopoly arrangement through a major single PPP contract, where is the independent arbiter looking at the question of service standards?

CHAIR: But are not those criticisms the same for all contracting of service delivery?

Mr MOORE: Yes, they certainly can be, but I think part of the problem is that in terms of the profit motive in a range of human services area there is a fundamental question whether or not that adds to the difficulty and ultimately the social impact on clients and communities.

CHAIR: That would include the contracting industry that provides human services. They have only one area to compete on, and that is the labour, which is why one of the concerns that we have is about having award protection. Certainly, if you were a contract cleaner, mature aged, non-English speaking background, the only protection that you have is the award at the moment. To expand on that, it has appeared to me over many years that in tendering for contracts, when the commodity you provide is labour, it is actually an incentive to force down.

Mr WHAN: You talked about contracts such as the Port Macquarie Hospital one. It is good for it to be back in public hands, but just to be devil's advocate, could you not say that that was as a result of a badly managed contract rather than the philosophical approach of a PPP? Coming back to the question that was asked earlier on: Are there areas that you should not have PPPs in? Should you exclude those areas of social services or is it just that the contracts need to be managed properly and well?

Mr MOORE: As I said, I do not think we are in a position to say that you should thoroughly exclude, but I have got to say to you the evidence base about the poor contract development and management is so significant in this area, it is fine that this inquiry is occurring, but we have been talking about this for a decade, it is not as though it is yesterday, and you start to ask whether there is a capacity to do it right, whether in fact you can negotiate effective contractual arrangements that have the range of safeguards and protections built into them.

Mr WHAN: I want to come back to the social housing where you have talked about the private sector favouring certain geographic areas. Would a counter argument be that if the private sector picks off those areas, it may leave more actual government finance available to go out to those regional areas, and if you exclude that relationship at all, you may end up restricting overall the number of areas that you are able to develop or redevelop, acknowledging of course that I am sure every one of us here who spends a lot of time with people who need housing would also acknowledge that we would like more money to spend on public housing and that sort of area?

Mr MUKHERJEE: Well, you are coming up for low base, aren't you? I mean it is such a low base in terms of investment in public housing.

Mr WHAN: The Commonwealth/State housing agreement has a lot to do with that. There is a similar argument with the Cross City Tunnel. If that was a publicly financed project, that may have meant that there was less money to spend on a road in a country electorate for example.

Mr MUKHERJEE: How long is a piece of string? Public debt levels are very low in this country, particularly in New South Wales, and the previous Treasurer, or was it the Treasurer before, took a lot of credit for that. It comes back to the point in our submission that taxation is there for a purpose and part of that purpose is the development of social infrastructure. Where does the money come from? Governments can borrow, and that is a point that seems to have got lost somewhere along the line. We certainly believe that there should be a greater amount of borrowing for social infrastructure in New South Wales. I suppose it is a question of priorities of the government of the day to ensure that investment is developed fairly and equitably across a range of priority areas, including roads in rural electorates and cross city tunnels, if they are indeed needed, but I come back to the point - how long is a piece of string.

Mr WHAN: Pretty much what I wanted you to confirm is the view that in Australia we have moved away from borrowing and financing by government and that that is not necessarily a positive way to go.

Mr MUKHERJEE: No, it is not necessary. It is getting that balance right, to be quite frank. That is the important part.

CHAIR: Which is probably important also in the areas for public housing when looked at as part of the whole sustainable community project, and in the UK I was very interested to see some good examples of development of sustainable communities in terms of targeting an area and ensuring transport and all of the services.

Mr APLIN: Flowing from all this, you did recommend in your submission that PPPs should be used as a last resort of core government activities and you have obviously touched on some examples today. Would you care to outline what you believe those core government activities are? I know you are not prepared to say not negotiable, but what do you identify as the core government activities which should not be in any way associated with PPPs, and perhaps just give me some reasons why you feel they should not be associated?

Mr MOORE: In the community services area one would be concerned, for example, if we moved to a new system say of residential out of home care for young people with highly challenging behaviours. We have already had a very bad experience in the past few years where the taxpayers paid something like \$800,000 a year for the care of one person, one child, through the private sector. The department has been held to ransom in recent years about that. That is one particular area that you would never want to go into.

Disability services - and this is once again assuming the private sector sees there is a buck to be made in it - disability services in terms of group homes and/or higher level residential facilities, it would be of enormous concern, I think, if the private sector were to find a way into that particular area, once again in terms basically of the quality of the stock and the quality of the service.

In health, I think there are a range of things around the provision of community health facilities and primary health care, outside of GPs obviously, that I think we would have some significant concerns about. They are some of the areas. I do not think we would like to see private juvenile justice centres.

CHAIR: At the time of writing you had particular concerns about the availability of information relating to the Bonnyrigg renewal project. Has anything changed since?

Mr MOORE: Can I say the answer to that is yes and no. There has been certainly a degree of community consultation in recent times. There has also been, I think, perhaps a slowing of the tendering process and assessment. I think the jury is out about whether the safeguards that have been negotiated are going to work or not. None of us will know until we get to the next stage.

(The witnesses withdrew)

(Short adjournment)

DAVID JAMES SKIDMORE, Policy Information Officer, Combined Pensioner and Superannuation Association, Level 3, 25 Cooper Street, Surry Hills, and

MARIO (MORRIE) CHARLES MIFSUD, State President, Combined Pensioner and Superannuation Association, Level 3, 25 Cooper Street, Surry Hills, affirmed and examined:

CHAIR: Thank you for appearing before the Committee today. The Committee is pleased to hear your evidence. I am advised that you have been issued with a copy of the Committee's terms of reference and also a copy of the Legislative Assembly Standing Orders 332, 333 and 334 that relate to the examination of witnesses. Is that correct?

Mr SKIDMORE: That is correct.

Mr MIFSUD: That is correct.

CHAIR: The Committee has received a submission from you or your organization. Is it your desire that the submission forms a part of your formal evidence?

Mr MIFSUD: Yes Madam Chair.

CHAIR: Are you going to make an opening statement today?

Mr MIFSUD: Yes, Mr Skidmore, who did the original hard copy will be doing that and we will deal with questions as you raise them.

Mr SKIDMORE: Thank you honourable members. I just want to give you a short outline of some of the points from our submission. Of course you have read the submission itself. CPSA advocates on behalf of all pensioners and low income retirees amongst the various issues that the Association is asked to campaign on their behalf, include public transport, health services, infrastructure and housing. All those issues can be, in one way or the other, affected by the policy of PPPs and we would actually argue, adversely affected.

The University of New South Wales academic Christopher Shiel has argued that PPPs are simply another form of privatisation. At any rate, call them what you will, it does appear that privatisation or its variance can affect those on low incomes adversely because the services can be run on a for-profit basis. Private consortiums, of course, have to make a profitable return and so this will invariably impact on service users.

Another major criticism that we have of PPPs - which many people have indeed - that the negotiations take place behind closed doors and commit the New South Wales public to projects they have no say over and can indeed be a waste of taxpayers' money. The cross city tunnel, of course, is a notorious example and the contract was only made public after considerable lobbying from non-government politicians and the general public. The toll and the new feeder roads configuration, which was designed to force motorists to use the tunnel, has created public outrage and for pensioners and low income retirees, tolls on privatised roads are another expense that must come out of their meagre incomes.

It is not only the cost of privatised services that CPSA members and its broader constituency it serves is concerned about, it is the conditions under which the clauses are made. For example, the exclusion of public transport in certain areas where a freeway has been built and we have made the point in our submission how this can negatively impact upon low income public transport users.

It does also seem to be anti-competitive. Private consortiums are demanding exclusive use of their development and I put it that it is like a producer of a particular brand of cheese, not only demanding the supermarkets sell that brand, but exclude all other brands from the shelves. Putting it that way, you can see how blatantly unfair it is.

There is a place obviously for private companies. We have seen private enterprise works very well in retail manufacturing or information technology but when it comes to certain vital infrastructure and services, particularly those that serve the very lowest income people in our society, there is a problem in terms of the demands by private enterprise, and as I said, it impacts greatly upon those who really cannot afford to pay.

That is our general argument in regard to PPPs.

CHAIR: You have told the Committee that some core government functions such as social housing, should not be the responsibility of private sector. Do you have a similar view even if such housing was not provided on a cost recovery basis?

Mr SKIDMORE: Well, in terms of public housing, we very much think that the main role is for government, both State and Federal governments, via the mechanism of the Commonwealth State Housing Agreement, to provide enough funds to provide public housing for those who find it really difficult to get into the private rental market or to buy their own homes.

Mr MIFSUD: We feel also it is a matter of managing those resources that are there and I would say that we are coming off a very low base at the moment. The Commonwealth State Housing Agreement was something we have been critical of since that date in 1996, it has been steadily declining and it is a matter at this stage, looking at managing what we have got but also increasing the based towards a better allocation.

Now the question you pose about pay back of the resources, that is what I mean by management, where we are going to have to look at ways - we meaning the Government and the citizens elected - at how to allocate public housing but it is certainly not there in the numbers that it should be.

Mr WHAN: You made a point in your sub that debt levels are very low by world standards and that we should be borrowing more and presumably through that basically, spending more overall.

Mr MIFSUD: Absolutely Mr Whan. If I look at - if my memory serves me correctly he was a former auditor - and he made the statement quite clear that the State could handle all the infrastructure that we are getting into at the moment and handle it well. I look at it this way, we are getting out of one debt situation which is in our control, into another set of debt which is not in our control, it is in the control of buccaneering private enterprise and that is my only description of the situation. That does not seem feasible to me. I do agree with that former auditor, we should go back to the elected people of the citizens of this State to do what they should be doing, that is handling the funding of the infrastructure of the State.

Mr SKIDMORE: I would say debt financing, I mean the alternatives with PPPs is the Government has ended up tied by this very tortuous contract. In some cases it is when the enterprises fail it then has to go and buy out the consortium, so you are ending up with a financial outlay at any rate. It is much better to not have your hands tied and use debt financing.

Mr APLIN: Given the concerns you have expressed, in your view could governments actually manage PPPs to safeguard the interests of low income clients and members?

Mr SKIDMORE: I think it would be difficult, given the fact that private companies do have to maintain that bottom line and it does seem with PPPs, it is almost as if the Government is their safeguard, so they can afford to go belly up and pull out of the enterprise and the Government has to deliver the cash to them.

Yes, the main services that our members and broader constituents use tend to be public hospitals, public transport, all these State run services and so on.

Mr APLIN: If you turn it round a different way then, instead of concentrating on the

negative. Are there some positives that you feel could be approached by Government to satisfy those consumer needs but to involve the private sector?

Mr SKIDMORE: Well, say, if a private hospital wanted to set up somewhere, to me it would be the Government's role to assess its development application and all the other things that go into setting up a new enterprise like that. I guess in those terms it would be more the Government standing out of the way for this private consortium to go off and do its thing. I think there is a role of government there but you are saying that government could be more heavily involved than simply standing out of the way for private enterprises, is that right?

Mr MIFSUD: Madam Chair, if I may take up Mr Aplin's original question and the question, if I understand correctly was, can the Government control its interaction with private enterprise? Categorically I say to you no, it is an unfortunate truism in our world today that the private corporation is assuming far too much power for the good of the citizens of any country and therefore these corporations are usurping the role of elected government and therefore in that situation I see that governments are losing more and more control of the situation between themselves and these corporations. Therefore, categorically the answer to your question I say is no.

Mr APLIN: The question really was what safeguards could the Government actually bring into those contracts to make it possible to satisfy your consumer needs.

Mr MIFSUD: Well, it seems to me that what they should do is somehow make their contractual situation or provision of advice, etcetera, legal and otherwise, should be upgraded somewhere because something seems to be wrong there. However, that does not imply that that is any endorsement of PPPs or privatisation in any way from our organization.

Mr SKIDMORE: I would say in terms of safeguards with private operators of public transport and various private bus companies in the south and west. One safeguard I suppose that was introduced by Minister Costa was the expansion of the pensioner excursion ticket to make it equal for pensioners living in areas not served by STA buses but that, I guess you could say greater interference of Government into private enterprise, which is probably not necessarily what many of them would like.

Mr APLIN: I do not think we will go down that track because I am from the country.

Mr TORBAY: So it is no to public/private partnerships in your opinion because it is usurping the role of Government. I think you are asserting that very strongly.

Mr SKIDMORE: And they do not seem to have made any great economic sense to be quite honest.

Mr TORBAY: The point I want to put to you is and challenge you on, is that aren't you simply saying that the public sector have not been skilled enough for those negotiations and the private sector have been a lot sharper and smarter and looking after their bottom line and it has been unfair to the taxpayer, to the community and to your members, but it is more the capacity of the public sector to match it with the private sector in those negotiations, safeguards, measures that would in fact allow for private/public partnerships but very much a more even or balanced outcome that would be in the public interest. Cannot those measures be put in place to ensure that the public interest is protected, price differentiations and others that would deal with lower income people - why would we exclude the private sector full stop from bringing forward infrastructure projects if we could guarantee safety and the public interest?

Mr MIFSUD: A very fulsome question Mr Torbay and I will attempt to answer the points you make. First of all, I would use different language, I would insert buccaneering instead of sharp. I would agree with you most certainly there seems to be something wrong with the contract sections, if you call it that, from the Government side of things and again, please do not imply from that that we support PPPs or privatisation in any way. However, taking those basic points, you also say in your question that we put an absolute stop to private contracting. I would answer that by saying, if the

contractor is the State Government sub-contracting to a private firm but under the control of good contract work from the State Government that is all right, but handing an entire utility over to a private enterprise is a no, no. There is many an example of PPPs going down the drain and adding a very negative aspect to the system. Take London Water, within months 69,000 families in that city had their water cut off, because of the buccaneering exercise of private enterprise, money for service.

This equates in a variety of places and we quote in our submission PPPs as being private enterprise or the thin edge of the wedge, and we look at the deplorable situation with the banking in this country, when the real competitor in banking, that is the public sector, once that was removed they went off on a buccaneering exercise, where you had this deplorable exercise. They are the most reviled service deliverer in this country, that is the banks. You see the same with the insurance companies. Once the GIO was privatised, the real competitor was out of the way, let's go boys, prices up to the hilt, and remember the large number of seniors, small seniors activity groups that were driven out by public liability, and the demands by those insurance companies once they assumed a monopoly role. We have also seen small businesses driven out by that fact. The real competition in that industry was driven out. That is how we see the situation equated to PPPs, and let me point you to the two most abominable of those. Do you remember that thing called the airport rail link? What an abominable mess that was, and we, the taxpayer, had to bail out that buccaneer from that situation.

Mr TORBAY: We are still paying for that one.

Mr MIFSUD: We are still paying and we are very angry about that because that is one of the main issues of our members. Transport is very important to them, otherwise they are very lonely. The other one that I point to, and this is very important and it goes to the root of the people we represent, the debacle of Macquarie Hospital. Do you all remember that one?

Mr TORBAY: Port Macquarie.

Mr MIFSUD: Port Macquarie, I beg your pardon. This is what angers us and worries us and concerns us, with PPPs handling things which should be in our control, not some buccaneering corporation somewhere. I hope I have answered your question.

Mr TORBAY: I am satisfied.

Mr WHAN: Just to be devil's advocate a bit, if we are talking about social infrastructure like a school, which has no cost to its user, and we have seen some examples of schools being built in the States where a private company is building and maintaining the school. Where do you think the inequity is in providing something like that, if it is able to be brought on say five years ahead of when it otherwise would have been brought on? Surely that would be seen as an advantage to that community.

Mr MIFSUD: Thank you for raising schools, Mr Whan, because people seem to think pensioners live in a bubble, that they do not have grandchildren and they do not have children. They say to us: Why are you interested in education? Well, there are various ways we can justify our interest in education. One is that we do have children and grandchildren. There is nothing wrong with such a situation if our elected government is in control, and that cannot be said of PPPs. That is the only stipulation. We should be in control. What I mean by "we", the citizens and its elected people telling the corporations, not being told by the corporations, but telling the corporations these are the rules and I think this slide to deregulating everything - next thing we will have drug pushers telling us to deregulate their businesses and that is how much coinage we put on this phenomena of so-called deregulation. So, yes, the answer is to your question, we do believe some of that kind of contracting is quite correct, but under the control of our elected government or under our control at election time.

Mr SKIDMORE: I would answer the specific point by quoting from that paper about some of the myths concerning PPPs. Graham Larkin and Paul Fitzgerald referring to that said:

Although this PPP was announced with much fanfare, the Government acknowledge[s] that if all goes well the

project will produce only a four per cent saving over 30 years to taxpayers. The benefit according to the Government is that schools can be built in 2005 rather than 2010 with involvement from the private sector.

Again, that assumes funds cannot be raised in other ways through traditional public sector debt financing. That particular PPP you have raised may be the safest one, but, again, further down the track we do not necessarily have control over this particular company or the trouble it may get into, and as we have seen with other PPPs, the taxpayer has to bail them out when things do go belly up.

Ms KENEALLY: I want to ask something that is not actually touched on in your submission. As the superannuants' association, do you see any possible conflict between your submission and the interests of your members who might have their superannuation funds invested in some of these companies that are profiting from PPPs?

Mr MIFSUD: If I can, Ms Keneally, we are law abiding citizens--

Ms KENEALLY: I was not suggesting otherwise.

Mr MIFSUD: No, just by reference to what I am going to say, I am not retroactive to what you say except to answer your question, and if these people are in that situation we would expect them to abide by the laws of the country, those regulations which I earlier spoke about. The real control should be with the State Government. I am a shareholder, because I am a superannuant, but I expect to be controlled by those people who represent my peer group, the citizens out there. So the answer to that is: Yes, we realise there are people in that situation but we expect them to adhere to the laws of the State, and of course we put the point forward that under all circumstances these things should be under the control of an elected government, not a corporation.

Ms KENEALLY: If I understand you correctly, you are arguing that public private partnerships, and I understand you have argued vehemently against them, but if they exist, they should be done in a way that does not restrict government from governing, making decisions on the use of public infrastructure, but are you actually suggesting that these companies are acting unlawfully?

Mr MIFSUD: No, we are just saying that they skin the rabbit their way every time without regulation pulling them into line. What we are saying, they are not breaking any laws, they are looking for loopholes everywhere and they keep finding them. Unfortunately, what there should be is re-regulation all over again, start to re-regulate. Go back from this nonsense about deregulating everything and get back to getting control of what the corporations have taken away from us. We are not saying that they are necessarily criminal but they are very invasive in the way in which they look for loopholes and find loopholes to do the citizen over through government enterprises.

CHAIR: Are you saying then that you do not foresee any improvements that could be made to the negotiation process in terms of the PPP that would allay some of those fears that you have described? I mean you say a blanket no to PPPs?

Mr MIFSUD: I have got to qualify a blanket no by saying what I said to Mr Whan; appropriate contracts with private people, absolutely controlled by the main contractor, which should be the State.

Mr SKIDMORE: Having transparency.

Mr MIFSUD: Yes, transparency, et cetera. But the main effort should be the State. It should be the main contractor, controlling its subcontractors. As it is now, the subcontractor is not only controlling the contractor, but in so doing, doing the citizen in the face with their failures, and there are many failures, as we have seen.

Mr SKIDMORE: Can I answer a question Ms Keneally put earlier? In terms of your members, superannuants, pensioners and so on, of course a number of them would have shares in particular companies and would obviously like to see those shares go up as they are relying on them

as an income stream, but on the other hand, you have got to balance that with say the negative aspects of PPPs or privatisation. For example, if Telstra, which is not a New South Wales Government issue, but I think it is a good example, if Telstra is fully sold off, it may mean that their shares could go up, although it does not seem so at the moment, but further down the track. On the other hand, our members in country areas may find their services cut back severely because of full privatisation. So we have to assess these things and look at the bigger picture overall. Our membership are not homogenous but we have to have certain policies which are agreed to democratically at a conference each year.

CHAIR: What do you say then about, for instance, in the Illawarra, certainly in my electorate, Wollongong, where there are only private buses?

Mr SKIDMORE: We certainly agreed with one thing that was done by the former transport Minister, and the current transport Minister is carrying on some of this work, that those buses now start to have to deliver similar services to the STA, so hence the spread of the pensioner excursion ticket. Where there are existing private services, we would say okay, but we would prefer perhaps some STA. If we are not going to get STA services, how about these private services delivering the same sort of service to the consumers as government buses.

Mr MIFSUD: Chair, if I may, you have really put your finger on something that is very close to my heart. I resided in the City of Blacktown where I was an alderman for a number of years. We struggled and struggled there to get public transport and I had to put up with that, my family and I had to put up with private enterprise buses there, and only yesterday I was attending the Pharmaceutical Advice Council of Australia and I had to go to Bondi and I caught the public buses there, and I said: Oh, what a difference this is from the private buses, which I had to put up with for 17 years of my life. Why people complain about public buses has got me. Come out there to the Illawarra or western Sydney and see how the private company will leave you stranded and you will lose a day's pay when you have got a young family to keep. It is like comparing chalk and cheese. The public sector would be much better off than the private ones, and in the Illawarra.

Mr APLIN: Other groups have told the Committee that public private partnerships tend to a lower cost because competition in tendering leads to more efficiencies, and I know you touched on that. Following up also on Mr Whan's previous point about PPPs sometimes deliver projects in advance of when government might have been able to achieve them. What are your views on both the efficiencies and the advanced delivery of a project?

Mr MIFSUD: First of all, I would advert to the good evidence of some very prominent thinkers such as the previous auditor of this country, Mr Paul Kelly and his statement, and it should be taken into account because he is a prominent person in the finance field, that it would be much more efficient to do it through the public purse rather than a private purse. Could you just repeat your question?

Mr APLIN: The efficiencies of contracting where you have tender is the one point and the other was the advance deliver of a project which would not be possible for governments alone.

Mr MIFSUD: As I have stated to Mr Whan, there is no problem with appropriate contracting which cannot be provided by the government or whatever section or department is to provide such a facility. If the on-site hard labour that is to be provided is not available from a government source, there is no problem with a properly drawn up contract, provided - I reiterate - it is under the control of the citizens through its elected government.

We are not saying absolute no, although I repeat again, this is not an endorsement of PPPs it is simply sensible contracting under the absolute control of the people.

Mr SKIDMORE: Which would not be a partnership as such, it would be accepting certain conditions.

Mr MIFSUD: And regulations.

CHAIR: How would you say stakeholder views, including consumers, would be best taken into account when evaluating PPPs?

Mr SKIDMORE: Well, there has got to be more transparency. As you would be aware, people were so angry about the cross city tunnel and conditions that only came out afterwards, and it was not the first time. When the Carr government took up office in 1995, again it had to go back on a promise about the toll on the freeway in the north west because the previous government was locked into a contract.

If they are going to be part of Government policy, at the very least people have to know more about them. There has to be more public consultation and so on.

Mr TORBAY: Scrutiny.

CHAIR: On behalf of the Committee, thank you both very much for coming in and giving your evidence today.

(The witnesses withdrew)

GRAEME GELDART, Consultant, Australian Council for Infrastructure Development, Level 9, Pitt Street Sydney, and

DENNIS O'NEILL, Chief Executive Officer, Australian Council for Infrastructure Development, Level 9, Pitt Street Sydney, sworn and examined:

CHAIR: Thank you for appearing before the Committee today. The Committee is pleased to hear your evidence. I am advised that you have been issued with a copy of the Committee's terms of reference and also a copy of the Legislative Assembly Standing Orders 332, 333 and 334 that relate to the examination of witnesses. Is that correct?

Mr O'NEILL: That is correct.

Mr GELDART: That is correct.

CHAIR: The Committee has received a submission from you or your organization. Is it your desire that the submission forms a part of your formal evidence?

Mr O'NEILL: It is.

CHAIR: Will you be making an opening statement?

Mr O'NEILL: I will not be making an opening statement. The executive summary of our submission states our position which clearly.

CHAIR: You have also outlined a number of benefits for private sector can bring to PPP, in your view are these benefits not available through normal procurement processes with the Government contract?

Mr O'NEILL: In theory they may be, Madam Chair, but we are reliant very much on two pieces of evidence, one of which is formal and academic and one of which is anecdotal from our own members, that traditional procurement has a number of constraints and inefficiencies. The formal academic evidence was published in North America in 2003 in the journal of the American Planning Association in which, if my memory serves me correctly, approximately \$US90 billion worth of transport infrastructure projects were analysed as to whether they were delivered within the original estimated costs of the project and whether they were delivered on time. The conclusion of that study, which covered quite a range of countries, both developed and developing, was that some large proportion of those projects, in the order of 25, 28 per cent were consistently delivered over cost and over time.

That formal study backed up the anecdotal evidence that our own members had been giving us for some years, that in their experience, predominantly as major contractors in the Australian space, that they too saw a large proportion of Government contracts running over budget, lesser numbers I believe but this was only based on largely one company's own internal assessment, so I have not got an industry-wide assessment.

The conclusion we have drawn is that there are fundamental flaws with traditional procurement of major infrastructure projects. We are not talking about here the \$2 million, \$5 million, \$10 million types of acquisition of assets or services, we are talking \$50 million, \$100 million plus. Again, anecdotally the views put to us by our members are that their experience mirrors the experience that is reflected in that academic report - which I can make available to the Committee should you desire that.

There is a strong view held therefore by the private sector that the inherent benefits, the efficiencies to be gained from the PPP or the PFP model are in fact a bit of an antidote, if you like, for these imbedded inefficiencies of traditional procurement.

Can traditional procurement be improved, very possibly it can be but several of the constraints that have led to the conclusion that traditional procurement is less efficient are systemic constraints. They are due to the fact that the bureaucracy works a certain way. They are due to the fact that politicians make decisions a certain way and it is those constraints that are less easily resolved and washed out of that procurement process.

Things like getting scope changes, things like not being completely assured of what you want in the outputs of the project before you commence the project, having political interference in the timing of a project to suit electoral time lines, for example. These are sorts of factors that can constrain traditional procurement. Add to that what we call capital rationing, which is whereby the budget sector clearly only has so much capital to put into new projects each year and even with forward estimates, is constrained to looking ahead only several years. The private sector is not constrained by capital. It can optimise the provision of equity and debt into a project to suit the most efficient outcomes for that project, to suit the optimised engineering and construction of the project and you are seeing this in spades in the debate over just when should the Pacific Highway upgrade be completed. That is an excellent local example of what we are talking about here as between traditional procurement and looking at doing it some other way which is not only faster and more efficient, but which would save lives.

Mr WHAN: A couple of things that raises for me, the Pacific Highway as the example you used, it is not really a matter of efficiency in that case, as you say, there are two issues there, there is budget and fund availability and if Government was to borrow to bring forward that ambiguity, that would be exactly the same time frame, presumably as public/private partnership. That is a policy issue, which is to one side.

I guess from the point of view of saying that PPPs are less likely to be over run or run late and you have raised bureaucracy and political interference, flexibility and changes in contracts. Wouldn't the counter to that be that by locking yourself into something which did not have that flexibility you may not actually be responding properly to the sort of issues which might come up as you go along, to the community issues?

I have not seen a lot of examples of major public sector works, particularly in the roads area I suppose, in the last few years which have gone over budget and behind schedule because of inherent disadvantages in the public sector. Is there anything you can actually quote for us?

Mr O'NEILL: Yes, not in New South Wales specifically but huge over runs on the motor way south of Brisbane, huge, over \$100 million I think, in that order I believe. The Geelong by-pass south west of Melbourne, huge over runs, two road projects which were traditionally procured. We have a great example in side by side over the same time frame, looking at the Federation Square project in Melbourne, opposite Flinders Street station and comparing it with the Victorian County Court, which was done as a PPP, same constructor, similar time frames and yet one was delivered on time within the contracted arrangement under the PPP and is now looked at as one of the leading success models for that type of procurement in that sector. Whereas they basically designed Federation Square on the run and that, through scope changes, clearly led to blow outs both in cost and time.

Mr WHAN: That is a preparation issue, that is an issue about whether or not you have actually fully documented and worked out where it is you are going before you start the project, isn't it, rather than who delivers it.

Mr O'NEILL: Exactly, so that is an issue you have got to take back to Government and its processes. What we are saying from our side is that there is great doubt, lack of credibility, disbelief that governments can ever get it right in that area because of those systemic constraints that I mentioned earlier.

Mr APLIN: Mr O'Neill, following on from that, at several points in your submission you did indicate the need for a well trained and experienced public sector. Following on from those

comments then, is it your view that training and experience is currently lacking and how would you address that?

Mr O'NEILL: Well, in the area of PPPs, a model that we find very attractive but which is probably very difficult to implement in Australia given the constitutional arrangements in Australia, would be to reflect a body of expertise in an organization such as Partnerships UK, which has obtained its expertise by acquiring both private and public sector skills and then that body of expertise is available more or less as a flying squad to move out and on a fee for service basis assist particular projects in their implementation. They can go out and deal with local government or they can deal with central government procurement agencies to provide that concentrated input with a lot of expertise in and around the private financing space.

Now, in the Australian context, we are dealing with nine jurisdictions. Do you have nine such bodies in Australia? I think not, but if we could get sufficient traction politically and enough co-operation between the jurisdictions in Australia in favour of, for example, a national PPP market, then such a body might indeed be very beneficial.

Ms KENEALLY: I am just curious why the State Government could not have its own separate legal entities within government to service or to function the partnerships?

Mr O'NEILL: Because it is inefficient and costly to do it nine times over. Do we want to re-run the rail gauge issue of the 19th century in a 21st century context? Instead of having different rail gauges, we have got different lawyers and different accountants.

Ms KENEALLY: So by extension your argument is that the current process is completely inefficient, now there is no comparable body for PPPs in New South Wales, they have to deal presumably with the Government departments that put the deal forward?

Mr WHAN: A lot more than nine different bodies is what you are saying?

Ms KENEALLY: Yes, now you deal with the RTA, the DET, New South Wales Health, whoever happens to be the--

Mr O'NEILL: Victoria has resolved it rather more successfully by putting in place a central group around its Department of Treasury and Finance and there is growing effort in the New South Wales Department of Treasury to achieve much the same sort of outcome. That said, nine bodies is certainly better than 40 or 50 but not as good as one.

Mr TORBAY: Can I touch on an issue and perhaps challenge you in one area? The negotiations that have taken place on many PPPs are profile ones that have been shown in the view of many not to be in the public interest. Skills, capacities and negotiations between private and public sector raise lots of concerns, and the capacity of the public sector to negotiate with the private sector is an issue in my view. We saw evidence of that in the UK where, when skills were being generated to cope with the pointy end of the private sector, which was very well skilled and honed, and how to extract a good outcome for them, that where skills in the public sector were seen like that they were actually poached, even mid-way through negotiations on PPPs or PFIs, which was a concern.

My question to you is: Has not the private sector been just a bit too sharp and slick in their negotiations with the public sector, who are perhaps not ready for these sorts of negotiations and the trial and error processes have delivered (a) some very poor outcomes for the public and (b) a situation where the skill base in the public sector is actually struggling a lot to meet the very - I use the word slick negotiations and operations of the private sector?

Mr O'NEILL: But is this a blame game?

Mr TORBAY: No, but--

Mr O'NEILL: So I cannot understand quite where your question is coming from, because if

government--

Mr WHAN: How do you keep your expertise within government?

Mr O'NEILL: It is very simple. You pay for it. It just requires the will to say: What are the skills we need, what is the market price for these skills, what training and other incentive frameworks do we acquire within the context of public sector employment, be it on contract or be it direct, to get the right skills in place? There is very a simple answer. There is a market out there. Meet what the market is asking of you.

Mr TORBAY: In theory that is logical but what has happened in practice, particularly in the UK, is that the market just continues to do this in the terms of those skills because it is being pushed up by wanting to get those skills on your side of the particular pendulum, and the public sector on the evidence has been the one missing out on that. It is not blame; it is the reality of what has happened in terms of those outcomes, which have not been negotiated in the public interest. I think it is about the point you raised. I think there is a capacity issue in the public sector to be in a position to negotiate those outcomes, and that is bad for everyone because it puts a bad taste on PPPs. It has got to be a good outcome for the public as well as the private sector.

Mr O'NEILL: Let me correct your perceptions in a number of areas, because I do not believe your perceptions do reflect what is actually happening. Particularly from our perspective we draw a line from about 2001 to 2003 onwards and those dates retrospectively. That line is created by the publication of formal PPP guidelines, in Victoria in the first instance, and the Working with Government guidelines in New South Wales in the second instance. Technically, the expression PPP should be applied only to procurements after those dates. Prior to those dates there was an array of private financing, contractual arrangements which were all negotiated on a case by case basis and without the benefit of coherent whole of government guidelines. We do not use generally the expression PPP to describe those earlier projects and contracts. They come under various names. They are a precursor of PPPs but they come under various names of BOOS and BOOTS and similar.

The point that is very relevant to where I think you are coming from is that the skills that government has been able to put on the other side of the negotiating table since those guidelines have been published have indeed matched the skills from the private side. So I think we are actually talking about ancient history here. Everybody has moved on and there is little to be gained, in my view and in my organisation's view, in reflecting on projects that were done 13, 14, 15 years ago. Yes, there are some clear examples where the commercial outcomes may, with hindsight, be deemed to be skewed in favour of one side or the other. I can point also, by the way, to projects where the view now, even by for example Treasury and Finance in Victoria, is that too much risk was transferred to the private side on some small deals.

Mr TORBAY: Absolutely, I accept that.

Mr O'NEILL: So the issue of skewed outcomes is on both the public and the private side, but I am not hearing, nor have I read in any auditor general's report of criticisms of that type relating to projects that are of the more recent variety which we do call PPPs. So frankly, I think it would become a nice academic exercise for somebody to look at the 1990s, the pre PPP era, and try to examine on a case by case basis where the model was negotiated and structured well and those where a less opportune outcome resulted, but I am at a point and our organisation has been at a point where we do not see much benefit in looking at an airport rail link or a Port Macquarie hospital or a Latrobe regional hospital and agonising over what went wrong because the current range of projects is put together, structured, the business case is made, the public sector comparator is put in place and they are contracted on a very different basis.

Mr TORBAY: What about the Cross City Tunnel?

Mr O'NEILL: And the Cross City Tunnel, exactly the same.

Mr TORBAY: What do you mean exactly the same?

Mr O'NEILL: It is a good, consistently negotiated project and it is consistent with the way the RTA has run processes for West Link, M7 and Lane Cove, and they are in the top echelon of best practice.

Mr WHAN: Can I ask you about allocation of risk? You have mentioned appropriate risks to transfer to the private sector. Can you give us an outline of what you think are appropriate risks to transfer, including in what cases is the patronage a risk, when should that be transferred, and as well as the financial risk over natural disasters or whatever, striking soft rocks when you are tunneling and those sorts of things?

Mr O'NEILL: Both the cases that you are alluding to, in both of those projects I think it is entirely appropriate that the risks rest with the private side. They were bid on that basis, the risk has been accepted, the risk will be paid out accordingly if it has been crystallised.

Mr WHAN: Are there risks which you think are inappropriate for transfer to the private sector?

Mr O'NEILL: If I hark back to the smaller examples in my last answer and to a number of water projects in Victoria, I think the area where there are some inappropriate transfer of risk situations probably rests in externalities around a project, where you are expecting a private sector project owner and operator to pick up the pricing of risk that is really a community risk. For example, I think one that came up in a negotiation in another State recently was the request that the private bidder price the risk of a change of law. That is not a private risk to be picked up; that is a public risk. That should never have even been put on the table.

Mr WHAN: We had raised in evidence earlier this morning things like risks in the planning process, property acquisition, dealing with other Government departments for approvals and those sorts of things. Are those risks which should transferred?

Mr O'NEILL: Possibly some aspects but I do not think you can come up with a generic answer to your question because, frankly, there are not only sectoral differences, whether you are dealing with transport, water or social type projects, but I think you will find there are individual differences from project to project. I can quote the example of the Perth CBD court project, which is a complex project because it involves what we call loosely a brownfield development butted up against a greenfield development. They want a new building but they also want to revise the operational scope of an existing building and put the two together as one project. That would present local project related risks very different from saying: There is an empty block of land; please build us a new court house.

Mr WHAN: We heard evidence earlier this morning of a negative in risk transfer, quoted as being Spencer Street station, where one previous person appearing before the Committee suggested that that was an example where too much risk was transferred to the private sector for the project. Are you aware of that, do you have any comment on that?

Mr O'NEILL: I will repeat the answer I gave to an earlier question. There is a market out there, and while, yes, I have a personal view that in the case of that particular project, I think it was a very heroic assumption by one party, the contractor, that they could work for two hours a day to get the project done, but I am not a contractor, I am not an engineer. They had a lot of technology and the understanding of their business available to them. If they thought they could do it in two hours, who would I be to second guess them, who would the Government be to second guess them.

Mr APLIN: Just referring to your comments in the submission relating to trust and teamwork, what are the partnership characteristics of PPPs and how can they best be achieved?

Mr O'NEILL: I suspect that is really an area of evolution. I do not know that one can sit and, again on a generic basis, answer the question. I think the answers are going to be a little different depending on sectors, and again from project to project. I think the key elements of

partnership in certain types of projects - for example social infrastructure where you have got a private owner responsible for hard assets and for maintaining them and for perhaps upgrading them over the life of the project, but the soft services are being delivered by Government, so you have got teachers and schools or you have got doctors and nurses and hospitals - I think the key element of partnership there is going to be the interface between the private management of the hard assets and the management of the soft assets, so that you are getting good communication, you are on the same page in relation to the outputs that are required, so that the total outcome of the collective project meets the desires of the original conceivers of the project.

In relation to something very different, such as a water project or a toll road, where you have got private ownership and operatorship, you have got third party revenue stream, there will be different KPIs, different key performance indicators to be met according to the specifics of those projects, and the interface is probably going to be much more at a reporting level, or in the case of water availability level, you would be reporting on your availability of product, and in the case of the road it could well be - I do not know - community polling to ensure you have got a happy customer basis and reporting that back. There is a variety. Again, you are getting into technically specific areas about individual projects. The question is probably better put to witnesses who come from the operators.

Mr APLIN: A lot of that is related to outcomes, which was your opening remark.

Ms KENEALLY: Following on from both of those, I think a lot of the people we represent would say that it is an inappropriate thing for government to enter into a contract which effectively restricts government's ability to govern in the future, by for example constructing the contract whereby the private partner has exclusive use or exclusive right to the infrastructure and it precludes government from making changes or building competing infrastructure in the future to be flexible to respond to community's needs. Following on from risk allocation partnerships which we have just discussed, what is your view on those sorts of clauses within contracts?

Mr O'NEILL: Again, I think we are dealing with ancient history.

Ms KENEALLY: Are we?

Mr O'NEILL: Because if you look at the East Link project in Melbourne, it has full flexibility in relation to public transport links. It has full flexibility in relation to use of local roads. So there are models out there right now which deliver exactly the sort of outcome you have just eluded to. If there are recent projects that do not do that, then I think your question is a relevant one to be put to governments but I am saying to you from our side, the private sector, when asked to respond to a set out outcomes that do not have those constraints, has been able to do so.

Ms KENEALLY: From your view, private sector interest in PPPs is not going to wither away if government were to refuse to grant those sorts of contract clauses?

Mr O'NEILL: I suspect not because we have a recent example where it did not. It will come down to the public policy framework within which the specifics of the project are put to the market.

Ms KENEALLY: You suggest in your submission that the current evaluation processes examining the effectiveness of private sector investments in public infrastructure processes currently lack any real implementation experience, that is, I think you seem to be arguing that the public sector does lack the experience - and this sort of builds on what you were talking about earlier - to effectively understand the costs and to effectively evaluate the costs of a project. Is this something that will just take time and experience to build up in the public sector and also, should those effectiveness comparisons include the relative costs of infrastructure funds?

Mr O'NEILL: There were three different questions there.

Ms KENEALLY: There are and I apologize but I am aware that we have only got a limited

amount of time.

Mr O'NEILL: I might have to come back to you.

Ms KENEALLY: Do you want to focus on the last one, should the effectiveness comparisons also include the relative costs of infrastructure funds?

Mr O'NEILL: What do you mean by the relative costs of infrastructure funds, do you mean borrowing versus private investment?

Ms KENEALLY: Yes.

Mr O'NEILL: The relative costs of capital you are talking about?

Ms KENEALLY: Yes.

Mr O'NEILL: I think there is firstly a grave misunderstanding of the cost of capital. Not only out there generally in the public but also more specifically amongst policy makers and politicians. There is, in some respects, still a very simplistic view that because the so-called risk free rate of borrowings by Government, which is the long term bond rate, is some couple of per cent less than the average private rate that you or I might apply to a mortgage on our house, but surely the only way to get capital for governments is to go for borrowings.

If that were true, would not governments own and invest in everything? We would not have a private sector, would we? Isn't that the Soviet model writ large? If you are just going to go on a cost of capital basis—

Mr WHAN: There are other issues.

Mr O'NEILL: Can I finish on this point because it is a very important point. Governments have to factor in the cost of risk. What was the real cost of capital on Federation Square in Melbourne if the capital costs blew out by double? I cannot do the number mentally but it factors into a true cost of capital for Government. They may have borrowed the initial \$150 million at 5 per cent, but if it really cost them \$300 million at the end – and I am just picking numbers out of the air there – what is the true cost of capital and the Geelong by-pass that runs over by \$100 million. So, the cost of capital issue has to be looked at on a risk weighted basis.

Bidders for these projects do that. They price all these other risks and therefore while there is undoubtedly a role for governments to borrow and to invest, we would argue that that has to happen or should happen for those projects for which there is no direct economic return. There are a lot of externalities. It could be major arterial roads into regional New South Wales, country roads, those sorts of things, certain types of social infrastructure and the like, you borrow and you invest, but where you can get a third party revenue stream which could be fairly priced and equitably distributed, there is no reason why you should not do private financing where the risks have been properly priced.

Mr TORBAY: On page 14 of your submission you basically suggest that PPP policy is not being adhered to or the guidelines not being observed by Government. I would just be interested in your experience on that and perhaps you could quote the examples that you are speaking about?

Mr O'NEILL: Yes, admittedly somewhat anecdotal but we have had examples of where different agencies of government – not just in this State but elsewhere – interpret guidelines differently. In other words, these guidelines are guidelines and you present a cost and an interpreted challenge to the private sector in responding to bids when you find that Agency X interprets the guidelines a little differently from Agency Y when procuring a particular service.

I think we are still in that evolutionary phase within States and between States in developing a PPP market in Australia to try and standardize these guidelines between jurisdictions and to standardize their implementation within jurisdictions.

We have had examples very recently, I think it is still working through at the moment but there are concerns in New South Wales with the way the PSC was constructed on the Long Bay forensic project for example. That is one current local example I can give you.

The fact that the Defence headquarters project for Bungendore has gone into a second phase of bidding because Defence changed its scope for the project after the first bids were received. There is an example of best practice PPP guidelines not being observed.

CHAIR: Thank you on behalf of the Committee, much appreciated.

(The witnesses withdrew)

LYNETTE FRASER, Research Officer, United Services Union, Level 7, 321 Pitt Street Sydney, and

BEN KRUSE, Manager, Legal and Industrial, United Services Union, Level 7, 321 Pitt Street Sydney, sworn and examined:

CHAIR: Thank you for appearing before the Committee today. The Committee is pleased to hear your evidence. I am advised that you have been issued with a copy of the Committee's terms of reference and also a copy of the Legislative Assembly Standing Orders 332, 333 and 334 that relate to the examination of witnesses. Is that correct?

Mr KRUSE: Yes.

CHAIR: The Committee has received a submission from you or your organization. Is it your desire that the submission forms a part of your formal evidence?

Ms FRASER: It is, Madam Chair.

CHAIR: Your submission expresses concern about the genuineness of partnerships in the PPP. How, in your view, could genuine partnership be achieved through these sorts of arrangements?

Ms FRASER: The submission from the union really highlights the fact that we are concerned that public/private partnerships end up being very costly and risky for the community and that communities end up paying a premium and that in fact there is a loss of flexibility for Government to be able to achieve social objectives and indeed, training, up-skilling and employment needs which have particular impact on regional and rural communities. In fact, the submission talks about how we are actually not in favour of public/private partnerships at all. However, Mr Kruse will give some details in terms of some more specific guidelines, recommendations and documentations in local government area in terms of practice of private/public partnerships.

I just wanted to allude to, if I may, an experience in Bega Valley where four years ago the council was interested and had in fact indicated its intention to privatize water and sewerage through a private/public partnership and that the union was very concerned about the impact that this may have on the workers and had meetings with the workers about this. As it transpired, there were forty workers who had the potential of losing their jobs as a result of this move and they discussed it with their families and as local government was the main source of employment in that area and those families felt that they would probably have to move out of the region, a decision like that by council can have tremendous economic and social ramifications for an entire community and because of that concern the union actually ended up lodging a dispute with the council and Commissioner O'Neill assisted in helping to come to some agreement with the council and a heads of agreement document was signed.

That led to specifications' requirements to maintain job security and to ensure that workers would not be disadvantaged in terms of wages and conditions and also that both the public entity, as well as the private entity can work to ensure that those wages conditions and job security would be safeguarded.

Mr WHAN: Can I actually follow up on that Bega Valley experience because I know a fair bit about that one. There was, as you say, a process which was gone through to try to make sure the employees' conditions were maintained, their employment was maintained but Bega Valley decided to go into that partnership because it meant that they could spread the Government dollar a lot further in actually sewerage towns which were not otherwise going to be seweraged. Does the union have a view as to whether that was the appropriate way to go? For local government it is often very difficult for them to fund that sort of capital infrastructure and if they are able to put in place agreements which protect their workers' rights, why should not they pursue that sort of avenue?

Mr KRUSE: If I might have an opportunity to address that issue, our concerns are that the heads of agreement of Bega, whilst it was put together as an emergency response to a significant

industrial problem at Bega, and represented a good effort on our behalf in the context of an industrial dispute in a new area of development, PPPs being a new thing in local government, the heads of agreement really does not represent an appropriate outcome, in that the levels of employment protection in some areas remain somewhat wishy washy and do not necessarily protect new staff coming in and could possibly open up the possibility for a diminution of employment conditions over a period of time.

Mr WHAN: Depending on what award protection they had.

Mr KRUSE: Depending upon what award protection they have. We remain concerned about the lack of regulation on this issue of the PPPs and if I could touch on a couple of areas of concern. The amendments to the Local Government Act were rushed through Parliament on the back of the Oasis crisis and there was no consultation with our organisation during that process. After the amendments were passed guidelines for PPPs were developed and have been extensively implemented by the Department of Local Government. Again, there was no consultation with the union about the development or implementation of those guidelines, and I think as part of our submission we have attached a copy of correspondence that we forwarded to the department in that regard.

Some of the concerns we have are that the legislation sets up a framework whereby PPPs are divided up into larger projects. Those over \$50 million or that constitute over 25 per cent of the council's annual resources are high risk. Other PPPs that fall beneath that have a much a lesser standard of review. What happens with the PPPs is that the larger ones and the high risk ones are required to go before a committee which has been set up, which essentially consists of Treasury, Premier's Department, Department of Local Government and I think Cabinet Office representation, but there is not any community representation on that committee. I do not think the Local Government and Shires Association is represented on it, nor is there an industrial representation. But for the minor projects - and if you look at minor, it could be anything under \$50 million, and that leaves a hell of a lot of projects that are treated as being minor - it is left up to this rather loose review process that is conducted by the council itself in association with the department. I think they try to achieve a lot but they are incredibly under-resourced. The Department of Local Government is virtually non-existent now. They are operating out of a shed in Nowra I think. You have got a highly under resourced department trying to be the last line of defence against wrong decisions being made that can have the capacity to lock councils in for a generation or two.

We have met with the department very recently, we met with the department yesterday, and we have received an indication that the guidelines that have been developed will be reviewed to take into account some industrial relations concerns that we have. Just to point out some of the issues, the department's guidelines talk about a need for there to be a public interest evaluation. That is at pages 17 to 19 of the guidelines, but when you look at that there is nothing that requires a council to assess impacts on employment in part of the public interest evaluation. There is a requirement for the council to consult with things that are identified as "stakeholder groups", whatever they are, but there is certainly no reference to unions or employees as such. Indeed, nowhere in the guidelines is there any reference to a need for union consultation, and in the setting up of the council steering committee, which is meant to oversee the development of the PPP, there is certainly no union representation on the steering committee.

As I said, we have recently received some undertakings from the department that these matters will be addressed but we are concerned that if you look at it in comparison with the types of guidelines that have been developed for things such as competitive tendering, the departments's guidelines for competitive tendering for projects which might run say between three and five years, maximum seven, have very detailed studies of the impact upon employment, with statements that competitive tendering can have adverse impacts on employment, referring to overseas studies about the impact on rural and regional Australia. It talks in detail about the related adverse social effects from the contracting out of services and makes it quite clear that it is mandatory that staff and local government and unions need to be involved at early stages of the process and every stage of the process thereafter. It is made clear that competitive tendering cannot be associated with the diminution of rates of pay and conditions of employment. Nowhere in any of the Government's

guidelines on PPPs in local government is that made clear and of course in the legislation in the definition of what the public interest evaluation is the role of wages and so on does not take much place. I think personally that a nice way of looking at it is to suggest it is not intentional. I do not think it is.

Personally I think what has happened, the history of it is that in the context of there being some financial crises associated with the Oasis development at Liverpool council, the focus is very much upon risks to the community and council in terms of the council's resources, their finances, and the Government has moved to exert Treasury control on these things, which is perhaps a good idea. It makes sure that really big projects that can have the capacity to lock the council, and therefore effectively the Government in the longer term, have financial constraints and probity issues placed on them, but I think the employment issues have been lost, and of course the impact upon employment with these projects, because they have the capacity to run for so long, are much greater than the sorts of impacts that you might see with CCT.

So some of the things we think need to be specifically addressed in guidelines and legislation are requirements to ensure that conditions do not diminish in terms of rates of pay and industry standards and conditions, occupational health and safety requirements, which are part of national competition policy requirements and should certainly be recognised in PPP standards, training and development, EEO. If local government operates under a statutory regime that requires equal employment opportunity, any PPP moving into the area would have to have requirements of that nature. Skills based career structures would have to be required and appropriate employee consultative committees, there being requirement for union representation for the resolution of grievances and disputes.

CHAIR: When you say may have to be part of the PPP, rather than the award instrument--

Mr KRUSE: Perhaps I will make myself clear on that in a moment. All of this has to be interpreted through the prism of the work choices changes that the Federal Government is introducing. The Federal Government is moving into an arrangement where industrial instruments, awards and enterprise agreements, may, particularly in the private sector, no longer be able to regulate matters such as the involvement of trade unions in dispute resolution, access to skills based career paths, access to paid maternity leave, a whole range of issues, and in that context it is going to be incumbent upon State governments and State departments to fill that gap in the regulatory environment.

Mr APLIN: If we have the power to do it.

Mr KRUSE: I think I have made myself clear. At the conclusion of our session, I would like to table some of these relevant documents. Perhaps it is convenient to do it now. We would like to table a folder of information which includes the following documents: the heads of agreement with Bega Valley Council and the USU, correspondence being a letter from the Director General of the Department of Local Government concerning public private partnership and guidelines, Department of Local Government documents including guidelines and procedures and processes to be followed by local government in public private partnerships, competitive tendering guidelines and the code of practice for tendering in the construction industry. There is also included the legislation, an extract of local government amendments concerning PPPs, and another document which the Committee may find useful is a memorandum of understanding between Leichhardt council and the Labour Council concerning the procurement of goods and services in the private sector which is commonly used in local government now and ensures that private tendering is not associated with the diminution of wages and conditions. We have also included some policy documents from Unison, being one of the major international public sector unions that talks about the experiences of PPPs overseas.

Mr TORBAY: I am happy to move that those documents be tabled, Madam Chair.

(Documents tabled)

Mr APLIN: That was a very broad ranging answer and you have obviously touched on

some of the issues we were intending to ask. I would like to just refer you to your submission, and while you focus there on private sector failures on pages 2 and 3, is there not also a concern that failure could occur if projects were conventionally managed? How would you then envisage that risk should be managed? In other words, if they were controlled totally by government are you saying that there is no risk?

Mr KRUSE: I am not saying there is no risk, but I suppose within the public sector, particularly looking at local government, you have an electoral cycle which will ensure that all public management projects will occur in the context of the political cycle.

Mr APLIN: Rather than focus on the outcomes in that, I think we are looking for something more positive because you were critical of the one side. How would you then suggest that it would be managed within the government side, letting alone this cycle, because that is really a distraction?

Mr KRUSE: I think in the local government sector there has been a huge number of reforms since the 1993 legislation, and one of the positive outcomes associated with the Greiner legislation was the focus on accountability and the development of council management plans associated with projects which did not exist previously, and I think if you look at local government today you will see increasing productivity and accountability across the board. So I do not particularly see that as an issue. Whilst the department is under- resourced, as I said, you have the ability for the Department of Local Government to investigate councils where management plans go awry and where there is improper use of resources. I actually have much greater concerns about the capacity for corrupt practices to encroach upon councils where they enter into contracting and bargaining strategies that muddy the waters between what the public sector is doing and what the private sector is doing, and with PPPs that Chinese wall is almost impossible to identify sometimes, as we have seen with the recent Cross City Tunnel project, where transparency just disappears.

Mr APLIN: One of the difficulties I suppose is that many councils are actually setting up their own independent organizations and competing with private works. They are, in some ways, setting themselves up as quasi-private operators.

Mr KRUSE: I think that is very rare, I do not think that is a major factor. There might be a small number of those arrangements in existence but I do not think local government is a major competitive operator in construction works and so on. The vast majority of city councils are involved in maintenance projects.

CHAIR: Do you think some of your concerns could be allayed if there was improved transparency in terms of PPP contracts and processes and how could this be best instituted?

KRUSE: Transparency is important. There has been, obviously, efforts by the Government to improve that and that was the point of the legislative amendments to the Local Government Act, but ultimately we are of the opinion that the risks associated with entering into contracts for twenty, thirty, forty, fifty years with the private sector, those risks just outweigh the benefits that can be achieved through entry into a PPP and because of the sheer impact on employment, we do not support them.

CHAIR: On behalf of the Committee, thank you both very much for coming in and giving your evidence today.

(The witnesses withdrew)

(Luncheon adjournment)

ROBERT JOHN SENDT, Auditor-General, Audit Office of New South Wales, 1 Margaret Street, Sydney, affirmed and examined:

ANTHONY THOMAS WHITFIELD, Deputy Auditor-General, Audit Office of New South Wales, 1 Margaret Street, Sydney, sworn and examined:

CHAIR: Thank you for appearing before the Committee today. The Committee is pleased to hear your evidence. I am advised that you have been issued with a copy of the Committee's terms of reference and also a copy of the Legislative Assembly Standing Orders 332, 333 and 334 that relate to the examination of witnesses. Is that correct?

Mr SENDT: That is correct.

CHAIR: Would you like to address the Committee?

Mr SENDT: Just very briefly Madam Chair, neither I nor the Audit Office has any ideological views on PPPs or PFPs. We recognise that the private sector can bring certain advantages to the development of major infrastructure projects. Clearly the question that needs to be addressed, not only in this inquiry but more generally, is which aspects of major infrastructure projects are best delivered by the private sector and which are best delivered by the public sector. We believe each proposal should be assessed on its merits. All proposals or all projects are different and need to be treated in that way.

CHAIR: Are there any lessons learned from the Audit Office study of projects or agencies using PPPs that would help inform the Inquiry?

Mr SENDT: I recently, in the last few days, released a report which included some comments on the contract summaries that are released under the Government guidelines for privately funded projects. That comment included a number of recommendations in relation to the contract summaries. Those recommendations are available to the Committee of course, but briefly they argued for increased disclosure, clarification of the requirements of the guidelines and perhaps in respect of key elements of the guidelines, that they should be given legislative backing to ensure compliance with them.

Apart from that, we have reviewed, over the course of the last decade or more, a number of PFP projects, from various aspects. We have a number of conclusions that have come from each of those. They deal with issues such as disclosure, value for money – we would be happy to answer any questions we could on any particular findings from those reports or take them on notice.

Mr WHAN: Earlier today we had evidence from AUSCID who were making some fairly broad comments I suppose suggesting that it was inevitable that public sector infrastructure projects were going to suffer cost over-runs from changes during mid-stream. They were not able to offer any specific New South Wales examples. In your experience in the audits that you have conducted for public sector agencies managing infrastructure projects and delivering them themselves, ie not in PPPs, do so well or are cost over-runs common?

Mr SENDT: I think cost over-runs are common, I would not say it is universal but certainly there are a number of examples in the roads area that we have quoted in recent reports to Parliament, including one released only a few days ago, various other projects such as the Liverpool to Parramatta transitway. There are many examples in other forms of government contracts or government projects, not just infrastructure, such as the IT area where there have been major over-runs and more importantly, the benefits have not been achieved. The cost over-run cost component is not something that I would say is done universally well in the public sector.

If I may add, that does seem to be an aspect where the private sector may bring advantages to PFP projects in terms of an apparent ability to deliver on or closer to budget and on or close to schedule.

Mr WHAN: Would you say that the public sector is more likely to be affected by variations as the project goes through and there are two sides to that, is the ability of the public sector to deal with variations an advantage or a disadvantage over private contracts which are set and fixed?

Mr SENDT: One of the disadvantages with having a contractual arrangement is that if issues do arise where you want to change some aspect of the project, the Government probably has a disadvantage in having to negotiate with a contractor who already has the rights to construct the particular project. The Government may in fact – I have no evidence to back this up – but I think there is perhaps a risk that the private sector can extract a premium for any variations because of its contractual arrangements with the Government.

Having said that, of course, when a government agency takes responsibility for a project, there may be a greater tendency for stakeholders to demand greater variations than might otherwise be the case. That may contribute, to some extent, to cost over-runs.

Mr APLIN: In your view are the current guidelines for New South Wales government agencies adequate and how might they be strengthened?

Mr SENDT: Certainly one aspect where we believe they are deficient is that they are not mandatory. They are called guidelines. The language in them suggests a government expectation that they will be complied with but equally, some agencies have said to us, they are only guidelines, we do not have to comply with those aspects. That is the main reason why in my report two days ago I suggested the key aspects of the guidelines should be given legislative backing.

Mr APLIN: We have heard there are different interpretations therefore of those guidelines and that would be reinforced by your findings.

Mr SENDT: Yes. I also wrote to the then Premier in April this year suggesting that there could be some greater standardisation of the contents and layout and format of the contract summaries. While the RTA may have developed a fairly standard approach, other organizations may only deal with one of these arrangements every decade or so and they tend to develop a contract summary from the ground up. If there was some better structure, some standardised structure to these, it would make readers of the contract summaries, members of Parliament and others, better able to interpret what was included in the summaries.

CHAIR: It certainly seems today that standardisation of contracts is a common flow through the evidence that we have received.

Ms: In the submissions there have been suggestions about the role of the Auditor-General in contract oversight, reviewing value for money of PPPs, do you have any thoughts about how your office might play a stronger role or if your office should play a different role in assisting government entities in evaluating the value for money of PPPs?

Mr SENDT: We can certainly undertake a performance audit of any project ex post, whether it is a project that has been undertaken under a PFP arrangement or a project simply delivered directly by the public sector. I would not like my comments construed in any way implying that there is not the need for an equal oversight of value for money where the public sector delivers.

While we have the mandate to review value for money, as part of our performance audit role, our ability to do that is limited by the limited funding we do get from the Government. We are only able to carry out perhaps twelve to fifteen performance audits a year and when you look across the entire spectrum of health, education, public transport, roads, community services, etcetera, our ability to take on additional works without other parts of the government activities suffering is fairly limited.

Mr TORBAY: I would just be interested in your view on capacity issues between the private and public sector. Much has been made about some of the negotiations. I would just be interested in the skills issues between the two and whether or not the public sector and the community

have sufficient reason to have good faith that the public interest can be served because the skills are there to be able to match it with the private sector in those negotiations?

Mr SENDT: I think that is an issue that was also considered by a previous Public Accounts Committee in its review and I think I testified at the time then that I had concerns that many agencies get involved in these major projects once in a decade, or even less frequently, and they do not have the in-house skills. Organizations such as the RTA – there are probably not many others in that category – but the RTA because it has a regular role in these types of projects, seems to have developed some level of in-house expertise that it is perhaps better able to match with the private sector.

For other agencies I think there is a real skills gap. There is a difficulty in contracting in advice from the private sector because quite often all of those who might give advice are tied up with one of the consortia who are bidding.

Mr TORBAY: Potential conflict of interest.

Mr SENDT: And certainly the public sector is not able to match the salaries for the highly paid advisers and staff of merchant banks and the big name legal firms, etcetera. I think there is always going to be a real risk that the public sector suffers sitting around the negotiating table.

Mr TORBAY: The poaching expertise is an issue as well from public to private?

Mr SENDT: It could be. I am not aware of any particular instances but certainly I believe that the salaries on offer in the private sector are substantially in excess of the public sector. It may be that the best people do not view the public sector as a likely employer of choice initially because they see the remuneration on offer elsewhere.

Ms KENEALLY: Following on from that, some of the submissions we have had have suggested that in New South Wales we should develop some sort of lead agency or stand alone separate legal entity to manage public/private partnerships on behalf of Government. The example given is Partnerships UK. I am not sure if you are able to comment on whether or not such a model might be an effective way to go in New South Wales, particularly for those agencies that might only do a PPP once a decade.

Mr SENDT: I think there would be some advantages to that. Again, I think that was something the previous PAC inquiry did canvass. I think there were some split views at the time of the various witnesses who appeared before the inquiry as to whether that should be in Department of Public Works and Services, as it was then, whether it should be in Treasury or whether it should be perhaps in the Premier's Department or at least in those portfolios, but I think certainly for those entities that do not have a significant number of these contracts, and therefore the ability to build up their own skill levels, a specialist body such as that may well have advantages. Whether it needs to be independent of government and exactly what that means I am not sure, but I think that is a separate issue.

CHAIR: In relation to knowledge sharing, there is meant to be a post implementation review of the Northside Storage Tunnel Project. Has that happened yet?

Mr SENDT: Do you mean by the Audit Office?

CHAIR: Yes.

Mr SENDT: No, it has not happened as yet.

Mr WHAN: We had representatives from the Australian Council for Infrastructure Development giving evidence earlier on and a suggestion was made by them that PPPs have improved a lot in the last couple of years in New South Wales and Victoria and that we now were not making the mistakes that were made with things like the airport rail link and the Port Macquarie hospital and

they seemed to think that it was, I guess, a new era sort of thing in PPPs was how they put it. Would you agree that the processes that are in place now are avoiding those sort of mistakes or do we need to be working further?

Mr SENDT: I think there have certainly been improvements made. I think the risk sharing aspects of contracts have improved and I guess, looking over a decade or more, the most obvious area again is in public transport, because that is where most of the contracts in New South Wales have occurred and I think there are elements where they have improved, and in terms of risk sharing of patronage for example, I think the Cross City Tunnel is a much better example than the airport rail link in terms of the allocation of risk between the public and private sectors for patronage. Equally, there may be other elements where there have not been improvements made.

Mr APLIN: If I could follow that up, the risk sharing side, could I get some comment on how risk should best be shared in a PPP?

Mr SENDT: I guess very simply the party that is best able to manage the risks should be assigned the risks. I am just trying to think how to build on that, whether to use particular examples. Some risks will always remain with government. Obviously, in the case of the Cross City Tunnel, political risks or risks from the community in terms of road closures, those sort of risks will always remain with government largely. Other risks, such as the failure of a private sector operator, I think will always ultimately rebound to some extent on the government if the service involved is seen as a core essential service. So while the contractual arrangements might allocate that risk to the private sector, such as patronage risks, if ultimately the impact of those risks results in the private sector partner falling over, then the risk of having to take over the project and continue its operations invariably comes back to the government.

Ms KENEALLY: I just want to know what you think are the key issues relating to public disclosure by agencies in relation to PPP documentation, and if you might start if you can with whether or not the PSC, the public service contractor, should be made public as part of the bidding process?

Mr SENDT: I tend to think the results should be made available afterwards. Perhaps I will ask Mr Whitfield if he has any comment on whether it should be made available during the bidding process.

Ms KENEALLY: Or to bidders, maybe we will say it that way, to bidders or maybe the public.

Mr WHITFIELD: I can see an argument that it should be made available to the bidders. I would think that there would be a risk in letting it out to the public prior to concluding the deal, but once the deal has been struck I believe then the public is entitled to be aware of all the elements that went into the bid and how that decision was made, so in other words the risk sharing, the details of the contractual arrangements, if there is revenue sharing within the contractual arrangements, whether there is an upfront payment and what that upfront payment was for, whether it was to compensate the government for expenditure that was necessary to allow the project to occur or whether it was in fact a premium to obtain a contract.

Ms KENEALLY: And that is about the PPP's availability to bidders. Currently we understand that is not the case and many submissions have argued that it should be and you do not see any problem with that?

Mr WHITFIELD: No, because if that is the basis that you are judging the tender on. It is the same way with the tender process. Where you have certain criteria you are judging the tender on, the participants need to be aware of the weightings of how you are judging that tender. I do not see that there is any difference with the PPPs.

Mr SENDT: One difficulty that may arise is that increasingly I think these projects may be defined in terms of outcomes rather than being defined as: Here is the engineering solution to a

problem, please bid as to how you would handle that. So you may find there - in the case of the Cross City Tunnel, one of the proponents came back with a significantly different solution. Now, in that case you would really need a new public sector comparator to be constructed on that. So the public sector comparator is not necessarily a static model.

Mr WHAN: Just on the issue of asking people to bid on the basis of outcomes, I was interested in further comment on that, whether or not that is the appropriate way to go, as many submissions suggest, or whether you should be specifying what you want done. Presumably, the private sector would be saying give us some more room to be innovative if you are just asking for an outcome; and, secondly, have you got any thoughts on the more recent major projects as to whether the outcomes that are being put in upfront in these processes are actually taking into account all the social impacts and related impacts from the project or are they mainly financial?

Mr SENDT: I am not sure I can really answer the second part of the question in any meaningful way. We have not reviewed any major PFP projects that recently, but perhaps if I could comment on a couple of projects that we have reviewed it will perhaps illustrate the point. About two years ago I think it was we reviewed the Millenium train contract arrangements and we compared that with the contract arrangements that had been put in place for the Tangara, which we had also reviewed a decade or more earlier.

In the case of the Millenium train, while we found there had been some improvement from the Tangara, the State Rail Authority had still specified very much the detailed design that they wanted, rather than specifying outcomes such as reliability, speed, power consumption, et cetera, and as a result of that there was an enormous number of - I forget the technical term used in the contract, but a number of variations from the contract that had to be accommodated and in many cases these were such minor issues, but, nevertheless, it gave rise to a contractual potential dispute that had to be resolved, and these were matters as trivial as the shade of blue that was used in a particular sign in carriages. I remember there was one instance where, and I cannot remember whether this was the Millenium or the Tangara, but there was a requirement to have a spare light bulb in the driver's compartment for a particular dial, but technology has passed on, it is all LEDs now, it is not incandescent globes, but that was a contract variation that had to be negotiated and one of hundreds, the vast majority of which had no impact on outcomes, safety, et cetera, but because of that excessive design prescription that was built into the contract, it created significant difficulties in terms of finalising contracts and agreeing on payments, et cetera.

My view is it is better to move more to an outcomes based approach. There may be some specific non-negotiable design criteria but I think a move to an outcomes approach is preferable.

Mr WHAN: My impression is that the RTA seems to have that outcomes sort of focus, is that right or not?

Mr SENDT: I think they are probably moving towards that. Again, of course, it can create difficulties. Had the Cross City Tunnel design been purely fixed by the RTA right from the beginning, the issue of subsequent additional road closures or variations to road closures, when the proponent came back with a significantly different design with significantly differently located eastern entrance and exit, those risks may not have eventuated.

Mr TORBAY: Just talking about risk, I remember in the last inquiry quite a number of these issues came up, but there seemed to be, according to all the evidence from the early PPPs, that there was a culture within the public sector to just transfer risk and sleep better at night, all risk if possible. Do you think we are actually getting better at understanding the concept of risk and what actually stays with government regardless of what the documents say? In my view failure is also something that lands very firmly back on the government's doorstep, regardless of what the contractual obligations are. So the whole risk concept is: Are we in the public sector understanding that better and dealing with it in terms of where the risk really ends up?

Mr SENDT: I think generally the public sector is starting to understand risk better. Again, the PAC inquiry and I think our own report on risk management have shown improvements. I agree

there is a fundamental risk that cannot be shifted to the private sector, and I alluded to that earlier, that is the risk of the Government having to step in and take over delivery of what is seen as an essential public service if the private sector party does fail.

CHAIR: Can you advise on current performance audits relating to schools and the Cross City Tunnel and how they are going?

Mr SENDT: The Cross City Tunnel audit only started probably two weeks ago, so it is very early days. The schools audit has not yet started. That will start in the very early part of the new year.

Mr WHAN: What is your timetable for when you think they might complete?

Mr SENDT: We are hoping around mid calendar 2006 for both of them. The tunnel one will obviously be more complex than the schools one, so it will take a bit longer, but we are hoping they will both come out around June/July 2006.

Mr APLIN: You referred to the difficulty in retaining different experience in the public sector and the multiplicity of agencies. In your view is there a way of approaching that to develop a pool of expertise which could operate across various agencies and protect the public interest?

Mr SENDT: There could be. Some agencies may be big enough and have enough of these contractual arrangements on an ongoing basis to have their own pool of expertise. The RTA is possibly the only one in that category at the moment, but for other organisations I think a central body of expertise could be a solution.

CHAIR: In your opinion is the current accounting treatment of PPPs in the public sector adequate?

Mr WHITFIELD: At the moment there is a new international standard coming out on accounting for PPPs. Once that is out, there will be better guidance for the accounting for PPPs. At the moment there is nothing specific for PPPs, so they tend to use the least accounting standard as the surrogate for it.

Ms KENEALLY: One of the witness we had earlier today argued that the public sector often does not understand the cost of capital. Do you have any comment on that?

Mr SENDT: I think probably the State owned corporations would. Cost of capital is a concept that has not really been introduced in the New South Wales budget system, whereas some other jurisdictions have imposed cost of capital on budget funded agencies, so there is more of an understanding. I think it is a valid criticism of the public sector, but once you get past the hurdle of attracting Treasury financing or Treasury funding, the capital is then regarded as a free good.

(The witnesses withdrew)

(The Committee adjourned at 1.45pm)

CHAIR: I thank the Committee managers and their staff and the Hansard staff for their hard work today. I would like that recorded.