

Joint Select Committee on the Cross City Tunnel

Second Report

The Cross City Tunnel and Public Private Partnerships

Tabled according to Legislative Council Standing Order 231

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How to contact the committee

Members of the Joint Select Committee on the Cross City Tunnel can be contacted through the Committee Secretariat. Written correspondence and enquiries should be directed to:

The Director

Joint Select Committee on the Cross City Tunnel

Legislative Council

Parliament House, Macquarie Street

Sydney New South Wales 2000

Internet www.parliament.nsw.gov.au

Email crosscitytunnel@parliament.nsw.gov.au

Telephone 02 9230 3554

Facsimile 02 9230 2981

Terms of Reference

1. That a Joint Select Committee be appointed to inquire into and report on:
 - (a) the role of Government agencies in relation to the negotiation of the contract with the Cross City Tunnel Consortium,
 - (b) the extent to which the substance of the Cross City Tunnel contract was determined through community consultation processes,
 - (c) the methodology used by the Roads and Traffic Authority for tendering and contract negotiation in connection with the Cross City Tunnel,
 - (d) the public release of contractual and associated documents connected with public private partnerships for large road projects,
 - (e) the communication and accountability mechanisms between the RTA and Government, including the Premier, other Ministers or their staff and the former Premier or former Ministers or their staff,
 - (f) the role of Government agencies in entering into major public private partnership agreements, including public consultation processes and terms and conditions included in such agreements,
 - (g) the role of Government agencies in relation to the negotiation of the contract with the Lane Cove Tunnel Consortium,
 - (h) the extent to which the substance of the Lane Cove Tunnel contract was determined through community consultation processes,
 - (i) the methodology used by the Roads and Traffic Authority for tendering and contract negotiations in connection with the Lane Cove Tunnel, and
 - (j) any other related matters.
2. That the committee report:
 - (a) in relation to paragraphs 1 (a) to (e) by the first sitting day in February 2006,
 - (b) in relation to paragraph 1 (f) by 31 May 2006, and
 - (c) in relation to paragraph 1 (g) to (i) by the first sitting day in September 2006.

These terms of reference were referred to the Committee by resolution of the Legislative Council on 15 November 2005, Minutes 128, Item 14, page 1720 and Legislative Assembly 16 November 2005, Votes and Proceedings No 158, Item 28, page 1765.

The reporting date for the second report of the Joint Select Committee on the Cross City Tunnel was extended to Wednesday 31 May 2006 by resolution of the Legislative Council on 1 March 2006, Minutes 136, item 3, page 1848, and Legislative Assembly on 8 March 2006, Votes and Proceedings No 168, item 15, page 1896.

Terms of reference 1 (g) to (i) and the associated reporting date were referred to the Committee by resolution of the Legislative Council on 4 April 2006, Minutes 144, Item 3, page 1934 and Legislative Assembly 6 April 2006, Votes and Proceedings No 175, Item 15, page 1981.

Committee Membership

Revd the Hon Fred Nile MLC	Christian Democratic Party	<i>Chairman</i>
The Hon Amanda Fazio MLC	Australian Labor Party	
The Hon Greg Pearce MLC	Liberal Party	
Ms Lee Rhiannon MLC	The Greens	
Mr Matt Brown MP (to 22 February 2006 and from 2 March 2006)	Member for Kiama Australian Labor Party	
Mr Andrew Constance MP	Member for Bega Liberal Party	
Mr Paul McLeay MP	Member for Heathcote Australian Labor Party	
Mr Michael Daley MP (from 22 February 2006 to 2 March 2006)	Member for Maroubra Australian Labor Party	
Mr John Turner MP	Member for Myall Lakes The Nationals	

Table of Contents

	Chairman's Foreword	ix
	Executive Summary	xi
	Summary of Recommendations	xvii
	Glossary	xix
	Abbreviations	xx
Chapter 1	Introduction	1
	Establishment of the Committee and the Inquiry	1
	Extension of the Inquiry Terms of Reference and reporting dates	1
	Operation of the Committee	3
	Conduct of the Inquiry	3
	Appearance of Ministers	3
	Other relevant inquiries and reports	4
	Report structure	6
	Background information	6
Chapter 2	The Cross City Tunnel project	13
	Background	13
	The Cross City Tunnel project	13
	Stage One - Cross City Tunnel	13
	Stage Two – Surface works	14
	Developments since the Committee's First Report	14
	Replacement of Cross City Motorway Chief Executive and Minister for Roads	14
	Meetings between NSW Government and CrossCity Motorway	14
	Road changes	15
	Reduction of the toll	17
	Toll prices advertised	18
	Effect of changes	18
	Other matters	20
	Calculation of toll escalation	20
	Air quality	20
	Impact on public transport	22
	Country users of the tunnel	22

	Community consultation	23
	Conclusions	25
Chapter 3	Public Private Partnerships in New South Wales	29
	Public Private Partnerships and Privately Financed Projects	29
	The role of Treasury	31
	<i>NSW Government Procurement Policy</i>	31
	<i>Working With Government: Guidelines for Privately Financed Projects</i>	32
	The role of the Department of Commerce	35
	The role of the Department of Planning	35
	PPPs and the Roads and Traffic Authority	37
	PPPs and local government	38
	PPPs and the Department of Education and Training	41
	PPPs and Sydney Water	44
	PPPs and RailCorp	45
	PPPs and the Department of Corrective Services	47
	PPPs and the Department of Health	48
	Public Private Partnerships in other jurisdictions	49
	Australia	50
	International	51
	Conclusion	53
Chapter 4	Frameworks for Private Public Partnerships	55
	Financing public infrastructure	55
	Public Debt	55
	Private Finance or public expenditure and debt	56
	Alternative financing options	58
	The Public Sector Comparator	63
	Risk calculation and transfer of risk	67
	Disclosure of contractual documents	68
	Accountability concerns	70
	Approaches to Public Private Partnerships - similarities and differences between Victoria and New South Wales	71

	Public Private Partnerships and strategic planning	75
	Concluding comments	79
Appendix 1	Submissions	81
Appendix 2	Witnesses	85
Appendix 3	Joint Select Committee on the Cross City Tunnel – First Report – Recommendations	91
Appendix 4	Victorian Public Interest Test	93
Appendix 5	NSW Public Interest Evaluation	99
Appendix 6	Minutes	103
Appendix 7	Dissenting statement	120

Chairman's Foreword

The Cross City Tunnel has now been operating for more than eight months, since it opened for traffic on 28 August 2005. This Committee's First Report, tabled in February of this year, captured the dissatisfaction of the community over the Cross City Tunnel and made 17 recommendations to immediately address the disruption on the surface streets of central Sydney, and to ensure that future infrastructure projects delivered by Public Private Partnership arrangements are not similarly compromised.

This Second Report examines the role of NSW government agencies in Public Private Partnerships more generally, and expands upon the recommendations made in the First Report. The report also looks at Cross City Tunnel developments since the Committee's First Report, which have gone some way to addressing the concerns we identified. A number of further recommendations responding to these developments have been made.

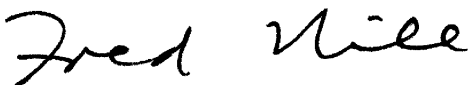
Public Private Partnerships fill a small but significant niche in the provision of public infrastructure in New South Wales, with between 10 and 15% of the State's capital program delivered through such arrangements. It is crucial that the Government addresses the public mistrust of private involvement in the provision of public infrastructure and services. To that end, the focus of the recommendations in this report has been on improving the transparency of PPP arrangements.

We have recommended that documents such as the Public Sector Comparator and the base case financial model be publicly available and are putting the onus on the Government to make these complex contractual relationships and the rationale for entering them accessible and understood by the community they are intended to serve.

This Committee's work is continuing, with the expansion of our terms of reference to include the Lane Cove Tunnel project, currently under construction. The Committee will report on its findings in relation to the Lane Cove Tunnel in September 2006.

I would like to thank the members of the Committee for their continuing efforts during this second part of the Inquiry. I would also like to thank the Committee secretariat – Laura Milkins, Natasha O'Connor, Annie Marshall, Stephen Frappell, Victoria Pymm, Simon Johnston, and Stewart Smith of the Parliamentary Library Research Service - for their hard work. I take this opportunity to thank the former Committee Director, Rachel Simpson, for her work on this and previous Committee inquiries.

I commend this report to the Government.



Revd Fred Nile MLC
Chairman

Executive Summary

The Joint Select Committee on the Cross City Tunnel (the Committee) tabled its First Report on 28 February 2006. The focus of that report was on the Cross City Tunnel project and associated street works, and the methodology used by the Roads and Traffic Authority (RTA) in the tendering and contract negotiation processes. The Committee made 17 recommendations in its First Report, some of which were specific to the Cross City Tunnel and others which applied more generally to the processes, procedures and guidelines that provide the framework for the establishment of Public Private Partnerships (PPP).

This Second Report provides an update on developments in relation to the Cross City Tunnel project since the tabling of the First Report. It also provides information on the role of government agencies in entering into major PPPs in New South Wales, a review of PPP frameworks in other jurisdictions and a more detailed examination of some specific elements of the existing framework for the establishment of PPPs in New South Wales.

Background to the Cross City Tunnel project

The Cross City Tunnel is a privately financed, constructed, owned and operated tollway, which will pass into public ownership after 18 December 2035. The project encompasses two tunnels running east to west and west to east under central Sydney, and associated street works, including the narrowing of William Street and a range of other measures intended to alter traffic flows through central Sydney.

The primary objectives of the CCT project were to remove a significant proportion of east-west traffic from Central Sydney streets, improve the environment of Central Sydney streets and adjoining public spaces, improve the reliability of public transport within Central Sydney and improve travel times for vehicles travelling east-west across Central Sydney.

Recommendations of First Report

The Committee's 17 recommendations in its First Report ranged from those that specifically addressed the Cross City Tunnel project, such as reductions in the toll and reversing road changes, to those that addressed future PPPs, including major toll road infrastructure projects. A number of these recommendations have already been addressed or are in the process of being addressed by the relevant government agencies, which reflects that the importance of this issue has been recognised by the Government. The Recommendations are listed at Appendix 3.

Developments since First Report

The CrossCity Motorway Pty Ltd (CCM), operators of the Cross City Tunnel, replaced their Chief Executive Mr Peter Sansom with Mr Graham Mulligan on 9 February 2006. Following a cabinet reshuffle on 17 March 2006, the Hon Eric Roozendaal replaced the Hon Joseph Tripodi as the Minister for Roads.

Meetings between the new CCM Chief Executive and the new Minister for Roads in March led to an announcement by the Premier the Hon Morris Iemma and the Minister for Roads the Hon Eric Roozendaal on 5 March 2006 that CCM were to halve the toll on the tunnel for cars to \$1.78 one way and 84¢ for the Sir John Young Crescent exit (for vehicles headed from east to northern harbour crossings) for a period of at least three months.

The Premier and Minister for Roads also announced a number of road change reversals associated with the project, following the recommendations of the Committee's First Report. Road changes are categorised as A, B, C or D, and reversals include numerous category C and D road changes. Negotiations will continue between the RTA and CCM in relation to the category B road changes. While the category D changes include the reversal of bus lanes in the CBD, the Committee notes that these important public transport improvement measures may be reinstated if sufficient traffic is removed from the city streets by greater use of the tunnel, an appropriate response.

While the reduction in the toll by CCM is a sensible gesture, the Committee believes that, if the toll is returned to its former level of \$3.56 for cars at the end of the reduced toll period, there may be a backlash by motorists against using the tunnel. The Committee recommends that the Government encourage the tunnel operators to lower the toll level to \$2.90 once the current reduced toll period concludes.

The NSW Government has six months from the tabling of the First Report on 28 February 2006 to provide a comprehensive response. The Committee acknowledges that actions taken to date are part of ongoing efforts to address the recommendations of the First Report.

Effect of changes since the First Report

The Committee heard evidence that the increase in traffic using the tunnel following the halving of the toll was in the order of 18%. This increase, which translates to a daily average traffic volume of 33,500 vehicles from 6 March 2006 to 30 March 2006, is a long way from the original estimates of 90,000 vehicles daily by the end of 2006. The slow rate of increase in traffic, despite the halving of the toll, indicates that the original estimates were optimistic.

The Committee notes that the direct financial impact is being borne by the private operators of the tunnel as a result of the transfer of patronage risk from the public sector to the private operator that the Cross City Tunnel PPP established. However, there has also been an impact on the broad objectives of the project. The community continued to pay the price of congested road surfaces during the construction of road changes and associated inconvenience, as well as the monetary price of the toll for tunnel users.

Public Private Partnerships in New South Wales

PPPs are one of a number of procurement options that the NSW Government and its agencies have at their disposal in order to produce an asset or deliver a service, involving complex, long-term arrangements between the public and private sector for the provision of significant assets or services and involving risk sharing between the partners. Privately Financed Projects (PFPs) are a subset of PPPs involving the creation of an asset through private sector financing and ownership for a certain period.

PPPs have averaged around 11% of the overall NSW capital works budget since 1993-1994, and this percentage is expected to remain between 10% and 15% in future. Examples of current or proposed PPPs include the Department of Education and Training's New Schools Project, which has delivered nine schools built, owned, financed and maintained by the private sector under a first contract worth \$137 million, and a further ten new schools to be delivered under a second contract worth \$178 million entered into in December 2005. RailCorp is currently involved in a PPP process to replace 500 non air-conditioned carriages on the Sydney CityRail network, with an anticipated capital cost of \$1.5 billion and a total cost over a 30 year period including maintenance of approximately \$4 billion.

A wide range of government agencies are involved in the delivery of PPPs. As well as those agencies that are currently delivering PPP projects, including RailCorp, the RTA, and the Department of Education and Training, there are other agencies that play a more central role.

NSW Treasury is responsible for the *NSW Government Procurement Policy*, which provides guidance for departments seeking to procure assets or services, and the *Working with Government: Guidelines for Privately Financed Projects*, which provides guidance for departments procuring assets through a PFP. NSW Treasury is also responsible for establishing the State Infrastructure Strategy (SIS) to identify and prioritise potential government infrastructure requirements.

The Department of Commerce provides assistance to those NSW Government agencies undertaking PPPs that do not have the necessary specialist management skills.

The Department of Planning has no direct role in negotiating or implementing PPP projects but has statutory and administrative responsibility for strategic land use planning, environmental impact assessment and development approvals. The Department's *City of Cities – A Plan for Sydney's Future* (the Metropolitan Strategy) sets the strategic framework to facilitate and manage growth and investment in Sydney for the next 25 to 30 years.

The widespread nature of PPPs provided by government agencies, and potentially by local governments, underscores the importance of an authoritative and effective framework to support agencies through the PPP process. The Committee believes that public interest in and mistrust of the involvement of the private sector in the provision of public infrastructure and services means that the need for transparency and accountability in the process is paramount.

Public Private Partnerships in other jurisdictions

Public Private Partnerships are used in other Australian jurisdictions, including at a Commonwealth level, and within international jurisdictions. The two Australian jurisdictions with the greatest proportion of private provision of capital for public infrastructure are Victoria and New South Wales.

The National PPP Forum is held annually and provides a forum for all Australian jurisdictions to harmonise policies and processes and to share information. A recent example of the work of the National PPP Forum is the development of standard contract clauses across jurisdictions reflecting standard commercial principles. Total PPP projects in Australia have an estimated value of \$20 billion, including more than \$4 billion in the national economy, and over \$6 billion under consideration.

The United Kingdom has extensive experience of PPPs, which are there referred to as Privately Financed Initiatives (PFIs). The current capital value of PFI projects signed is over £46 billion, with completed projects across a broad range of sectors including transport projects, schools projects and health facilities.

In both Victoria and the United Kingdom, PPPs comprise between 10% and 15% of total investment in public services, with this level described by the Victorian Treasury commissioned *Review of Partnerships Victoria Provided Infrastructure* (the Fitzgerald Review) as appropriate to the 'niche' role played by PPPs.

Financing public infrastructure

Throughout this Inquiry, the Committee has heard a great deal of evidence about the various methods of financing public infrastructure. The evidence heard has addressed two distinct issues. The first is

whether governments should use public debt to fund infrastructure and to what extent. The other issue is whether governments should make use of private finance to fund public infrastructure.

The Committee recognises the appropriateness of Governments making policy decisions about levels of public expenditure and public borrowing. The Committee also accepts that Privately Financed Projects and Public Private Partnerships are a significant and appropriate, albeit often contentious and high profile, method of providing public infrastructure. However, the Committee reinforces comments made in the First Report that while it is appropriate that Government make policy decisions about levels of expenditure and public debt, one of the consequences of not using public debt is the potential impact on the future flexibility of government in relation to the State's infrastructure.

PPP policy is an evolutionary area, with lessons learnt from previous projects applied to future projects to improve the value for money delivered to the community. To that end, the Committee encourages the NSW Government to ensure that the NSW Treasury continues to develop world best practice for the implementation of PPPs.

The Committee believes that NSW Treasury, as the agency responsible for the development and implementation of PPP policy, should conduct a regular review of world best practice and compare it with the NSW situation, including examples of failed or problematic PPP projects. Such a review should be made publicly available and should have a direct influence on any future revisions to guidance documentation for PPPs.

The Public Sector Comparator and transfer of risk

Given the large number of variables and assumptions implicit in the Comparator, and the public suspicion of PPPs, the Committee believes it is important that the operation of the Comparator is more rigorously explained to the public. The Committee's First Report contained a recommendation that the Comparator be explained in more detail as part of the contract summary currently required to be prepared under the *Working with Government Guidelines*.

The Committee has previously discussed the issue of risk allocation in relation to the Cross City Tunnel project. The transfer of risk, in this case patronage and therefore revenue risk, was clearly not illusory, as the major equity investor in the project, CKI, has just devalued their holding by A\$102 million. This is a clear demonstration of the fact that the financial risk has been removed from the public sector and placed with the private sector.

Public disclosure of documents

The Committee's First Report recommended that a summary of the Comparator comparison be included in the contract summary, with this summary overseen and signed off by the Auditor General, as for the contract summary. In this Second Report, the Committee has recommended that these documents be made publicly available, with the Government taking proactive steps to ensure the public is aware that the documents are publicly available. Summaries of the contract and the Public Sector Comparator, as well as the full versions of those documents and the base case financial model, if publicly available, would go a long way toward addressing public concerns about PPPs.

Approaches to Public Private Partnerships – NSW and Victoria

The Committee notes that there is regular and high level collaboration between agencies in these two jurisdictions in particular, beyond the involvement of all Australian jurisdictions in the National PPP

Forum. The sharing of information and experience between jurisdictions is important and the Committee commends the NSW and Victorian Treasuries, in particular, on their efforts in this area. The standardisation of approaches by Australian jurisdictions to PPPs is sensible and appropriate, given the relatively small nature of the market for PPPs and the international nature of competitors within that market.

Strategic planning

The evidence heard by the Committee from officials of the NSW Treasury and the Department of Planning clearly establishes that strategic planning is occurring in New South Wales for the future infrastructure needs of Sydney and the State. The Committee has been assured by these government agencies that the nature of the funding of the projects is of secondary importance to their priority within the strategic framework. The existence of the Infrastructure Implementation Group within the Premier's Department is evidence of the importance that is being placed on the coordination and strategic planning of infrastructure in the State.

Concluding comments

Public Private Partnerships are a small but significant element in the NSW Government's range of financing options for providing public infrastructure. Certain PPPs, of which the Cross City Tunnel is a prime example, have attracted a great deal of public attention and mistrust.

The Committee believes that there is a place for PPPs in the provision of public infrastructure in New South Wales, but only if they genuinely offer value for money over the alternative methods of provision, and the community are satisfied that the processes followed by government agencies are appropriate and have been followed.

In NSW, the framework within which PPPs are decided and delivered has evolved over time and has benefited from the many opportunities there have been to learn from the mistakes of earlier PPPs both in this state and in other jurisdictions. The work of the Victorian and NSW Treasuries in developing policies and guidelines to govern PPPs, in particular, demonstrates that governments do have the capacity to deliver PPPs satisfactorily.

The Committee has identified some areas where the processes could be improved and acknowledges that the key players in this area are also constantly improving the processes based on experience with past and present projects. In this Second Report the Committee has focused on recommendations that will improve the transparency and accountability of the processes undertaken by government agencies in engaging in PPPs and on the importance of ensuring PPPs that are delivered are part of the strategic planning framework for the State.

The Committee's Inquiry is ongoing, with an extension of the terms of reference to include the Lane Cove Tunnel project, another major road infrastructure Public Private Partnership currently under construction. The Committee is due to report on the Lane Cove Tunnel project in September 2006.

Summary of Recommendations

- | | |
|---|-----------|
| Recommendation 1 | 18 |
| That the Government encourage the operators of the Cross City Tunnel to lower the level of the toll to \$2.90 at the conclusion of the current reduced toll period. | |
| Recommendation 2 | 18 |
| That the RTA ensure that all toll roads, whether publicly or privately operated, advertise the cost of use at entry points. | |
| Recommendation 3 | 22 |
| That the Government ensure that motorists are advised to take appropriate precautions against possible adverse air quality in tunnels, with such advice displayed on entry to road tunnels or by any other means. | |
| Recommendation 4 | 22 |
| That the Roads and Traffic Authority investigate ways to improve the operation of bus lanes in the Central Business District. | |
| Recommendation 5 | 23 |
| That the Roads and Traffic Authority investigate methods of improving the dissemination of information regarding changes to metropolitan Sydney road infrastructure to potential country users. | |
| Recommendation 6 | 27 |
| That for future private toll road infrastructure projects, information on vehicle numbers be made publicly available on a regular basis. | |
| Recommendation 7 | 63 |
| That NSW Treasury, and relevant government agencies or parliamentary committees, conduct regular reviews of world best practice in the area of PPP policy, including examples of failed or problematic PPP projects, with the reviews to be made publicly available. Where possible, the reviews should be timed so that they can influence future revisions of PPP policy and guidance documentation. | |
| Recommendation 8 | 70 |
| That the documents to be publicly released for any Public Private Partnership or Privately Financed Project include: | |
| <ul style="list-style-type: none"> • the full contract and any material variations • a contract summary (verified for accuracy by the Auditor General) • details of the public interest evaluation conducted prior to the decision to enter into the PPP or PFP • a summary of the Public Sector Comparator and the comparison between it and the successful project (verified for accuracy by the Auditor General) • the base case financial model • The Public Sector Comparator. | |

That, notwithstanding the above paragraph, an independent body, such as the Auditor General, be authorised to assess the question of whether elements of any of the above documents be considered commercial in confidence, on the request of the parties to the contract.

That the NSW Government take proactive steps to ensure that the public are made aware that these documents are publicly available.

Recommendation 9

74

That the NSW Treasury continue to collaborate with other Australian jurisdictions and pursue a standardisation of approaches in relation to Public Private Partnerships.

Glossary

the Committee	The Joint Select Committee on the Cross City Tunnel.
First Report	The Joint Select Committee on the Cross City Tunnel's First Report on the Cross City Tunnel.
Second Report	The Joint Select Committee on the Cross City Tunnel's Second Report on the Cross City Tunnel and Public Private Partnerships
Material Adverse Effect	An MAE (Material Adverse Effect) occurs if there is a change to any of the local road traffic arrangements listed in the Cross City Tunnel Project Deed clauses 18.2-18.4 and the change adversely impacts on CCM's ability to carry out the project, repay the project debt or pay the projected return to equity investors.
Project Deed	The Cross City Tunnel Project Deed is the principal contract between the RTA and CCM for the construction and operation of the Cross City Tunnel project.
Cross City Tunnel project	The Cross City Tunnel (CCT) project includes the Tunnel itself and the surrounding surface works such as the changes to William Street.
Public Private Partnership	A Public Private Partnership (PPP) is an arrangement for the provision of assets or services, often in combination and usually for a substantial or complex 'package', in which both private sector supplier and public sector client share the significant risks in provision and/or operation. ¹
Privately Financed Project	Privately Financed Projects (PFP) are a subset of PPPs, and involve provision by investors of equity capital and debt capital to fund what might otherwise be wholly publicly funded projects financed from NSW Government borrowings and/or budget revenue. ²
Public Sector Comparator	The Public Sector Comparator (PSC) is a model of the costs (and in some cases revenues) associated with a proposal under a government financed method of delivery. ³

¹ Definition sourced from Infrastructure Implementation Group, *Review of Future Provision of Motorways in NSW (IIG Review)*, December 2005

² Definition sourced from IIG Review, December 2005

³ Definition sourced from NSW Government, *Working with Government: Guidelines for Privately Financed Projects*, November 2005

Abbreviations

BCC – Budget Committee of Cabinet

CCM – CrossCity Motorway Pty Ltd

CCT – Cross City Tunnel

EIS – Environmental Impact Statement

EP&A Act – Environmental Planning and Assessment Act 1979

ICAC – Independent Commission Against Corruption

IIG – Infrastructure Implementation Group

IPCC – Infrastructure and Planning Committee of Cabinet

NRMA – National Roads and Motorists Association Ltd

PAC – Public Accounts Committee

PFPP – Privately Financed Project

PFI – Privately Financed Initiative

PPP – Public Private Partnership

PSC – Public Sector Comparator

RTA – NSW Roads and Traffic Authority

Chapter 1 Introduction

Establishment of the Committee and the Inquiry

- 1.1 On 15 November 2005, the Hon John Della Bosca MLC moved a motion in the Legislative Council to appoint a joint select committee to inquire into the Cross City Tunnel (CCT).
- 1.2 Chapter 1 of the First Report of the Committee details the process by which the Committee was established by resolutions of both Houses.⁴

Extension of the Inquiry Terms of Reference and reporting dates

- 1.3 On 1 March 2006, the Revd the Hon Fred Nile put forward a motion that the reporting date for the Second Report of the Joint Select Committee on the Cross City Tunnel be extended to Wednesday 31 May 2006. The motion was passed and a message was forwarded to the Legislative Assembly for consideration.⁵
- 1.4 On 8 March 2006, the Legislative Assembly considered and passed the motion of the Legislative Council in relation to the extended reporting date of the Second Report of the Joint Select Committee on the Cross City Tunnel,⁶ and reported this back to the Legislative Council with the message being received on 9 March 2006.⁷
- 1.5 On 4 April 2006, the Hon Michael Gallacher put forward a motion to amend the Inquiry's terms of reference to include after paragraph 1 (f) new terms of reference 1 (g) – 1 (i) relating to aspects of the Lane Cove Tunnel and creating a third reporting date of the first sitting day in September 2006. The motion was passed and a message was sent to the Legislative Assembly in the following terms:
1. That the terms of reference for the Joint Select Committee on the Cross City Tunnel be amended by inserting after paragraph 1 (f):
 - (g) the role of Government agencies in relation to the negotiation of the contract with the Lane Cove Tunnel Consortium,
 - (h) the extent to which the substance of the Lane Cove Tunnel contract was determined through community consultation processes,
 - (i) the methodology used by the Roads and Traffic Authority for tendering and contract negotiation in connection with the Lane Cove Tunnel.

⁴ NSW Parliament, Joint Select Committee on the Cross City Tunnel, First Report, *Cross City Tunnel*, February 2006, pp1-3

⁵ Legislative Council, New South Wales, *Minutes and Proceedings, No 136*, 2nd Session of the 52nd Parliament, item 3

⁶ Legislative Assembly, New South Wales, *Votes and Proceedings, No 168*, 1st Session of the 53rd Parliament, item 15

⁷ Legislative Council, New South Wales, *Minutes and Proceedings, No 140*, 2nd Session of the 52nd Parliament, item 2

2. That the committee report on paragraphs 1 (g) to (i) by the first sitting day in September 2006.⁸

1.6 On 6 April 2006, the Legislative Assembly considered the new terms of reference. The motion was passed and reported to the Legislative Council on the same day.⁹

1.7 The current Terms of Reference for the Joint Select Committee on the Cross City Tunnel are therefore:

1. That a Joint Select Committee be appointed to inquire into and report on:

- (a) the role of Government agencies in relation to the negotiation of the contract with the Cross City Tunnel Consortium,
- (b) the extent to which the substance of the Cross City Tunnel contract was determined through community consultation processes,
- (c) the methodology used by the Roads and Traffic Authority for tendering and contract negotiation in connection with the Cross City Tunnel,
- (d) the public release of contractual and associated documents connected with public private partnerships for large road projects,
- (e) the communication and accountability mechanisms between the RTA and Government, including the Premier, other Ministers or their staff and the former Premier or former Ministers or their staff,
- (f) the role of Government agencies in entering into major public private partnership agreements, including public consultation processes and terms and conditions included in such agreements,
- (g) the role of Government agencies in relation to the negotiation of the contract with the Lane Cove Tunnel Consortium,
- (h) the extent to which the substance of the Lane Cove Tunnel contract was determined through community consultation processes,
- (i) the methodology used by the Roads and Traffic Authority for tendering and contract negotiations in connection with the Lane Cove Tunnel, and
- (j) any other related matters.

2. That the committee report:

- (a) in relation to paragraphs 1 (a) to (e) by the first sitting day in February 2006,
- (b) in relation to paragraph 1 (f) by 31 May 2006, and
- (c) in relation to paragraph 1 (g) to (i) by the first sitting day in September 2006.

1.8 The reporting date (the first sitting day in September 2006) for the Lane Cove Tunnel Inquiry is currently 5 September 2006.

⁸ Legislative Council New South Wales, *Minutes and Proceedings, No 144*, 2nd Session of the 52nd Parliament, item 3

⁹ Legislative Assembly, New South Wales, *Votes and Proceedings, No 175*, 1st Session of the 53rd Parliament, item 15

Operation of the Committee

- 1.9 As the motion to establish the Committee originated in the Upper House, the Joint Select Committee on the Cross City Tunnel is the first Legislative Council administered joint select committee since 1981, when the Joint Select Committee Inquiry into the Western Division of New South Wales was formed. At its first meeting the Clerk of the Parliaments informed the Committee that, according to practice, the operation of the Committee is governed by the Standing Orders of the Legislative Council.

Conduct of the Inquiry

Call for submissions

- 1.10 As discussed in the First Report, the Committee advertised widely in major Sydney metropolitan newspapers and in local newspapers. Specific stakeholders were also invited to make submissions, including the NSW Roads and Traffic Authority (RTA), NSW Treasury, Department of Planning, CrossCity Motorway Pty Ltd (CCM), project consultants, community groups and non-government organisations. The closing date for submissions was 18 January 2006 in relation to terms of reference 1 (a) – 1 (f).
- 1.11 By the time of its First Report the Committee had received 69 submissions. At the time of writing, the Committee had received a further 6 submissions, bringing the total to 75. A full list of submissions is available at Appendix 1. The Committee has advertised for further submissions in relation to the extended terms of reference regarding the Lane Cove Tunnel project, and these will be discussed in the Committee's Third Report.

Public hearings

- 1.12 In preparing its Second Report, the Committee conducted three days of hearings, with a total of 29 witnesses from 17 organisations. A full list of witnesses is available in Appendix 2.
- 1.13 Minutes of the proceedings of the Committee since the tabling of the First Report are included at Appendix 6.
- 1.14 Tabled documents, answers to questions on notice and submissions are available at www.parliament.nsw.gov.au/crosscitytunnel.

Appearance of Ministers

- 1.15 The Committee repeatedly invited the Premier and a number of current Ministers to appear before the Committee during the first stage of the Inquiry. The Hon Morris Iemma, Premier; the Hon Carl Scully, Minister for Police, and Minister for Utilities (formerly Minister for Roads and Minister for Transport); the Hon Frank Sartor, Minister for Planning; and the Hon Joseph Tripodi, Minister for Roads, all informed the Committee they would not be available to appear.¹⁰

¹⁰ Correspondence available at www.parliament.nsw.gov.au/crosscitytunnel

1.16 The Committee resolved to invite current Ministers to appear before the Committee during the second stage of the Inquiry. The Hon Carl Scully, Minister for Police (formerly Minister for Roads and Minister for Transport); the Hon Frank Sartor, Minister for Planning; and the Hon Eric Roozendaal, Minister for Roads, informed the Committee they would not be available to appear.¹¹ Under the provisions of s4 of the *Parliamentary Evidence Act 1901*, Members of Parliament cannot be summoned to give evidence before a parliamentary committee.

Other relevant inquiries and reports

1.17 The Committee in its First Report noted that there have been, and are, several bodies investigating issues relating to the Cross City Tunnel. These include the Infrastructure Implementation Group (IIG), the NSW Audit Office, the Legislative Assembly Public Accounts Committee (PAC) and the Independent Commission Against Corruption (ICAC).

Infrastructure Implementation Group Review of Future Provision of Motorways in NSW

1.18 The Committee notes that in December 2005 the newly formed NSW Premier's Department Infrastructure Implementation Group released the *Review of Future Provision of Motorways in NSW (IIG Review)*. The Government agreed to adopt the recommendations of the IIG Review. The Joint Select Committee on the Cross City Tunnel's First Report included and considered relevant key issues and recommendations raised in the IIG Review.

NSW Audit Office Performance Audit

1.19 The *Auditor-General's Report to Parliament 2005, Volume 4*, commented on the issue of contract summaries. The report identified a number of concerns, including the lack of standardisation in the structure of contract summaries across different agencies, the non-mandatory nature of the guidelines governing the preparation of contract summaries, and the lack of a requirement for the Audit Office to table in Parliament the findings of its review of agencies' contract summaries. The *Report* also announced that the Audit Office would be conducting a performance audit on aspects of the Cross City Tunnel project and was likely to examine three specific aspects:

- the upfront payment of approximately \$96 million made by the successful consortium to the RTA
- the RTA's decision making processes in relation to road closures
- the circumstances surrounding amendments to the Project Deed in December 2004.¹²

1.20 The Auditor General's office had not concluded its performance audit at the time of the Committee's Second Report being adopted.

¹¹ Correspondence from the Hon Carl Scully, Minister for Police, to the Chairman, 29 March 2006; from the Hon Frank Sartor, Minister for Planning, 22 March 2006; and from the Hon Eric Roozendaal, Minister for Roads, 22 March 2006

¹² NSW Auditor General, *Auditor General's Report to Parliament 2005, Volume 4*, p5

Public Accounts Committee Inquiry

- 1.21** An Inquiry into Public Private Partnerships is being conducted by the Legislative Assembly's Public Accounts Committee. This inquiry is investigating:
- a) New South Wales, Australian and international legislative and policy frameworks and practices regarding private sector investment in public infrastructure
 - b) government models for evaluating and monitoring private investment in public infrastructure
 - c) the framework for risk allocation between the public and private sectors and its application, especially how well risk is assessed, allocated and managed
 - d) the extent of opportunities to share knowledge across and between agencies
 - e) the extent to which agencies are managing intellectual property issues.
- 1.22** The Public Accounts Committee Inquiry is ongoing. Further information on the Public Accounts Committee's Inquiry can be found on the NSW Parliament website – www.parliament.nsw.gov.au. The Committee thanks the Public Accounts Committee for their cooperation with the Cross City Tunnel Inquiry.

Independent Commission Against Corruption Investigation

- 1.23** Following release of papers tabled in the Legislative Council in response to a call for papers under standing order 52, newspapers reported that staff of the Shadow Minister for Roads and Leader of the Nationals, Mr Andrew Stoner MP, discovered correspondence from the then Minister for Roads, Mr Carl Scully MP, to the then Minister for Planning, Mr Craig Knowles MP, alleging that Cabinet minutes setting out the cost of relocating the tunnel's ventilation stack in Darling Harbour had been leaked to the Cross City Motorway Consortium, potentially impacting on the Government's negotiating position. The matter led to wide-ranging accusations and was ultimately referred to the Independent Commission Against Corruption (ICAC) by Mr Stoner on 4 November 2005.¹³
- 1.24** The ICAC reported in April 2006, finding that information relating to the relocation costs of the Cross City Motorway ventilation stack contained in a confidential Cabinet Minute was revealed by a consultant engaged by Sydney Harbour Foreshore Authority (SHFA) to a project manager employed by Baulderstone Hornibrook, one of the partners in the construction joint venture.¹⁴
- 1.25** The ICAC found that no person engaged in corrupt conduct. Full details of the ICAC report can be found on the ICAC website: www.icac.nsw.gov.au.

Complaint referred to NSW Law Society

- 1.26** Ms Lee Rhiannon MLC referred a complaint to the Office of the Legal Services Commissioner in January 2006 relating to an alleged conflict of interest by legal firm Clayton

¹³ *Legislative Council Procedural Highlights*, No 20, July to December 2005, p10

¹⁴ Independent Commission Against Corruption, *Report on investigation into the alleged leaking of a draft Cabinet minute*, April 2006, p6

Utz. Clayton Utz provide legal advice to the RTA in relation to the Cross City Tunnel. The complaint has been referred to the Law Society.¹⁵

- 1.27 The Law Society has advised Ms Rhiannon, that they will not be proceeding with this complaint.

Report structure

- 1.28 This Second Report focuses on the role of government agencies in entering into Public Private Partnerships, 1 (f) of the Committee's terms of reference.
- 1.29 The report includes conclusions and recommendations in relation to the role of government agencies in entering into Public Private Partnerships (PPPs), although further recommendations will be made in the Third Report in relation to the Lane Cove Tunnel (terms of reference 1 (g) to 1 (i)), the reporting date for which is 5 September 2006.
- 1.30 **Chapter 2** provides an overview of the history and background to the Cross City Tunnel and a review of developments since the Committee's First Report.
- 1.31 **Chapter 3** reviews existing and proposed PPPs in New South Wales and internationally, and the role of government agencies in relation to those PPPs. The framework within NSW that regulates PPPs is described. The frameworks of other jurisdictions are also examined, particularly those of the United Kingdom and Victoria.
- 1.32 **Chapter 4** examines specific elements of the framework within NSW that regulates PPPs. The interaction of strategic planning and PPPs is also examined, and a comparison of similarities and differences between Victoria and New South Wales PPP frameworks is made.

Background information

- 1.33 The following documents are relevant to the Committee's Second Report. Some were referred to in the Committee's First Report.

Working with Government: Guidelines for Privately Financed Projects¹⁶

- 1.34 The *Working with Government: Guidelines for Privately Financed Projects (Working with Government Guidelines)* were issued in November 2001. They state the Government's policy and procedures for entering into privately financed projects (a form of public private partnership, or PPP). PPPs and privately financed projects are discussed further in Chapter 3.

¹⁵ 'Law firm attacked on tunnel,' *The Australian*, 16 January 2006, p3

¹⁶ Available at www.treasury.nsw.gov.au/wwg/pdf/wwguidelines.pdf

Premier's Memorandum, No 2000-11, Disclosure of Information on Government Contracts with the Private Sector¹⁷

- 1.35 This memorandum sets out public disclosure requirements of agencies that enter into contracts with the private sector.

Review of Partnerships Victoria Provided Infrastructure (the Fitzgerald Review)¹⁸

- 1.36 The *Fitzgerald Review* was an independent report commissioned by the Victorian Department of Treasury and Finance conducted by Mr Peter Fitzgerald. It reviewed eight current Victorian PPP projects and was released in January 2004.

Review of Future Provision of Motorways in NSW (IIG Review)¹⁹

- 1.37 The *IIG Review* was commissioned by the NSW Government in October 2005, and was released in December 2005. The recommendations of the *IIG Review* have been adopted by the NSW Government and are referred to by the Committee in its First Report.

NSW Auditor General's Performance Audit of the New Schools Privately Financed Project (the New Schools Report)²⁰

- 1.38 The *New Schools Report* was released in March 2006 and reviews the two NSW Department of Education and Training PPP for the financing, construction and maintenance of new schools.

HM Treasury PFI: Strengthening long-term partnerships²¹

- 1.39 This United Kingdom review of Privately Financed Initiatives was released in March 2006, and provides HM Treasury conclusions about the operation and success of PFIs.

Partnerships UK Report on Operational PFI Projects²²

- 1.40 This Partnerships UK prepared report, released in March 2006, is a comprehensive review of the performance of PFI projects during their operational phase. The report covers a wide range of operational issues impacting on all projects from all sectors.

Other key documents

- 1.41 The Committee's First Report on the Cross City Tunnel includes descriptions of the following key documents relating specifically to the CCT:

- Cross City Tunnel – Improving the Heart of the City (*October 1998*)

¹⁷ Available at www.premiers.nsw.gov.au/TrainingAndResources/Publications/MemosAndCirculars/Memos/2000/M2000-11.htm

¹⁸ Available at www.partnerships.vic.gov.au

¹⁹ Available at www.premiers.nsw.gov.au/TrainingAndResources/Publications/publicationslist.htm

²⁰ Available at www.audit.nsw.gov.au

²¹ Available at www.hm-treasury.gov.uk/documents/public_private_partnerships/ppp_index.cfm

²² Available at www.partnershipsuk.org.uk

- Action for Transport 2010
- NSW Roads and Traffic Authority - Pre-Signing Report
- NSW Roads and Traffic Authority - Finalisation Report
- Director General's Requirements for the Cross City Tunnel Project
- Cross City Tunnel – Environmental Assessment
- Cross City Tunnel Environmental Impact Statement (EIS)
- Cross City Tunnel Representations Report
- Cross City Tunnel Preferred Activity Report
- Proposed Cross City Tunnel Kings Cross to Darling Harbour: Director General's Report
- Cross City Tunnel Planning Approval Conditions
- Cross City Tunnel Supplementary Environmental Impact Statement (SEIS)
- Cross City Tunnel Supplementary Representations Report
- Cross City Tunnel Supplementary Preferred Activity Report
- Cross City Tunnel Proposed Modifications to Approved Project: Director General's Report
- Cross City Tunnel Modification Conditions of Approval
- Cross City Tunnel Project Deed (Project Deed)
- Cross City Tunnel Summary of Contracts
- Cross City Tunnel First Amendment Deed (First Amendment Deed)
- Cross City Tunnel First Amendment Deed Summary

1.42 Further information on these documents is available in the Committee's First Report.

Chronology of key events relating to the Cross City Tunnel

- 1.43** The following chronology, a version of which appeared in the Committee's First Report, is drawn from a number of sources including key documents, media reports and evidence from hearings. It is intended to provide a brief overview of important stages in the history of the Cross City Tunnel project.

Date	Event
1990	The State Government and City of Sydney Council propose a tunnel under Park Street leading to an underground car park and bus interchange.
1995	City of Sydney Council propose a tunnel from the Western Distributor under Market Street and Hyde Park connecting to William Street near Boomerang Street.
22 Oct 1998	Premier (Mr Carr) and Minister for Roads (Mr Scully) release an exhibition for comment on the initial concept (the 'short tunnel') in a 16 page report titled <i>The Cross City Tunnel: Improving the Heart of the City</i> . \$2.00 toll is flagged.
April 1999	The City of Sydney Council releases the <i>Cross City Tunnel Alternative Scheme</i> . This was a longer tunnel than proposed in the 1998 <i>Improving the Heart of the City</i> , running to the eastern end of the Kings Cross Tunnel, including narrowing William Street.
22 July 1999	Director General of Planning issues requirements for the preparation of the initial EIS by letter to the RTA.
24 Sept to 11 Dec 1999	The RTA publishes the modified proposal in the brochure <i>Cross City Tunnel, Environment Assessment</i> .
Nov 1999	The <i>Action for Transport 2010</i> plan released and includes the project in section titled, 'Making space for cyclists and walkers'.
2 Aug 2000	The RTA releases the <i>Cross City Tunnel Environmental Impact Statement</i> for public comment.
15 Sept 2000	The RTA invites <i>Registrations of Interest</i> from the private sector parties 'for the financing, design, construction, operation and maintenance of the Cross City Tunnel project' (<i>Cross City Tunnel: Summary of Contracts</i> , June 2003, p 10).
6 Oct 2000	Closing date for submissions to the EIS.
23 Oct 2000	Closing date for registrations of interest to construct and operate the tunnel.
Feb 2001	Minister for Roads (Mr Scully) announces that 3 consortia have been short listed to prepare detailed proposals: CrossCity Motorways (CCM), E-TUBE and Sydney City Tunnel Company.
14 May 2001	The RTA submits the <i>Preferred Activity Report</i> to the Department of Urban Affairs and Planning (DUAP) with a <i>Cross City Tunnel Representations Report</i> .
19 May to 18 June 2001	<i>Preferred Activity Report</i> , containing more than 20 modifications to the proposal as presented in the EIS, publicly exhibited.
16 Aug 2001	RTA presents an <i>Addendum to the Representations Report</i> to the DUAP.

Sept 2001	The <i>Proposed Cross City Tunnel: Director General's Report</i> , as required under s115C of the <i>Environmental Planning and Assessment Act</i> is submitted to the Minister for Urban Affairs and Planning.
3 Oct 2001	Planning approval, including 240 conditions, is granted by the Minister of Urban Affairs and Planning (Dr Refshauge).
Oct 2001	Detailed proposals for implementation of the project lodged by the three consortia and reviewed by assessment panel.
Feb 2002	Budget Committee of Cabinet approves CCM to be selected as preferred proponent and for the CCM 'long 80 tunnel' option to be selected as the preferred proposal.
27 Feb 2002	Minister for Roads (Mr Scully) announces CCM is the preferred proponent. The tender submission from CCM incorporated changes to the Approved Activity that the Minister for Roads considered would provide more benefits and reduce construction related impacts to the community. As a result of the proposed changes a number of additional environmental impacts would occur. A supplementary EIS is prepared.
14 Mar 2002	Letter from the Treasurer (Mr Egan) to the Minister for Roads (Mr Scully) stating 'A key objective of the project has been its development at no net cost to Government' and 'It is not certain as this time that the project can achieve a 'no net cost' to Government' outcome. If the project cannot proceed without a Government contribution, any such contribution would need to be funded out of the RTA's existing forward capital program'.
30 Jul to 31 Aug 2002	<i>Supplementary Environmental Impact Statement</i> goes on public display. Displayed at 19 locations and the RTA website, with a toll free number for public comment. 25,000 copies of the brochure were distributed.
4 Nov 2002	<i>Supplementary Cross City Tunnel Representations Report</i> was submitted by the RTA to DUAP drafted in response to the Supplementary EIS, as a result of additional studies and community feedback. Further alterations to the project proposed.
25 Nov 2002	<i>Supplementary Cross City Tunnel Representations Report</i> released to the public. The right hand turn out of Cowper Wharf Road was reinstated. The report was displayed at 19 locations and the RTA website, with a toll free information line. 5,000 copies of the brochure were distributed.
Dec 2002	<i>Cross City Tunnel: Proposed Modifications of Approved Project – Director General's Report</i> was completed.
12 Dec 2002	Planning approval granted by the Minister for Planning (Dr Refshauge). Approved route twice the length of the 1998 initial concept. Projected approval subject to 292 Conditions of Approval.
16 Dec 2002	Approval given by the Treasurer (Mr Egan) to sign project deed, under <i>Public Authorities (Financial Arrangements) Act 1987</i> .
18 Dec 2002	Contract between CCM consortium and RTA is signed, to finance, construct, operate and maintain the CCT. Differential tolling, \$2.50 per car and \$5.00 for heavy vehicles
28 Jan 2003	Major work starts on the \$680 million Cross City Tunnel.

3 Mar 2003	RTA meets the Auditor General to explain that if the terms of the CCT had been made public during the negotiations of the Lane Cove Tunnel Project Deed, those negotiations would have been compromised (Lane Cove Tunnel Project was signed on 4 December 2003).
24 June 2003	The first order for the production of state papers by the Legislative Council relating to the Cross City Tunnel. Focuses on documents relating to contract negotiations for the financing, construction, operation and maintenance of the Cross City Tunnel. Sir Laurence Street, independent Legal Arbitrator, upholds the validity of the claim of privilege on the majority of documents and only a small selection of privileged documents were made public. A substantial volume of documents were released into the public domain without a claim for privilege being made.
June 2003	Contract summary provided to the Auditor-General.
Sept 2003	Documents relating to the Cross City Tunnel tabled in the Legislative Council. Documents that were considered privileged by the RTA sent to an Independent Arbitrator to determine the validity of this claim which was upheld. A substantial volume of documents were released into the public domain without a claim for privilege being made.
3 Dec 2003	Letter from the Minister for Roads (Mr Scully) to the Minister for Infrastructure, Planning and Natural Resources (Mr Knowles) regarding the relocation of the ventilation stack for the Cross City Tunnel expressing 'disappointment and concern at the fact that extracts from the draft Cabinet Minute on this issue have been sighted by members of the Cross City Motorway Consortium, with the consequence that the Government's ability to secure an outcome which best protects the interest of the NSW taxpayers may have been compromised'. This letter was forwarded to ICAC by Mr Andrew Stoner MP on 3 November 2005.
29 Feb 2004	'Cross City Tunnel – Summary of Contract' tabled in Parliament.
21 Dec 2004	Treasurer (Mr Egan) approves the RTA to enter into the Cross City Tunnel Project First Amendment Deed with CCM under s20 of the <i>Public Authorities (Financial Arrangements) Act 1987</i> . This deed included provision that 'in consideration for the CCM's agreement to fund and carry out certain [changes if required by the RTA], CCM may increase the Base Toll to be collected from motorists on the terms set out in the First Amendment Deed'.
23 Dec 2004	The First Amendment Deed entered into by RTA and CCM enabling \$35 million of additional works to be paid for through a higher base toll (increased by \$0.15).
3 Aug 2005	Hon Joseph Tripodi replaces the Hon Carl Scully as Minister for Roads.
28 Aug 2005	Cross City Tunnel opened.
13 Oct 2005	Papers considered privileged in June 2003 to be reassessed by Sir Laurence Street in view of the public interest in matters concerning the Cross City Tunnel. This was the first time the House had resolved that privileged documents be reassessed by an arbitrator. The documents were tabled in the House in 20 October 2005.
18 Oct 2005	Call for papers relating to the Cross City Tunnel produced since the original call for papers in June 2003. Documents tabled in the House on 18 October 2005.
Nov 2005	Summary of <i>Cross City Tunnel Project Deed</i> made public.

4 Nov 2005	Dispute of the validity of the claim of privilege on documents received on 1 November 2005 from the Minister for Roads, the Cabinet Office and NSW Treasury received by the Clerk of the Legislative Council. According to standing order, the documents were released to Sir Laurence Street for assessment. Determined that material be made public. Documents tabled on 16 November 2005.
December 2005	Cheung Kong Infrastructure, the major equity investor in the Cross City Tunnel project, writes down the carrying value of their investment in the Cross City Tunnel by A\$102 million, 'in view of lower [than] projected toll revenue'.
9 Feb 2006	Announcement made that Mr Peter Sansom is to be replaced as Chief Executive of CrossCity Motorway by former Brisbane and Wellington ports chief Mr Graham Mulligan.
17 Feb 2006	Hon Eric Roozendaal replaces the Hon Joseph Tripodi as Minister for Roads.
28 Feb 2006	Joint Select Committee on the Cross City Tunnel tables its First Report.
5 Mar 2006	Tunnel toll halved to \$1.78 for cars and \$3.56 for heavy vehicles for a period of at least three months. Premier (Mr Iemma) and Minister for Roads (Mr Roozendaal) announce that 12 category C and D road changes will be reversed and that negotiations with CCM will continue in relation to other road changes.
April 2006	The ICAC reported on allegations of corruption in reference to the possible leaking a Cabinet minutes. The ICAC made no findings that any person engaged in corrupt conduct.
April 2006	William Street surface works completed.
19 Dec 2035	Cross City Tunnel due to be returned to public ownership.

Chapter 2 The Cross City Tunnel project

This chapter provides background information on the Cross City Tunnel project and reviews its current status. The actions taken by the operators of the Cross City Motorway Pty Ltd (CCM), the NSW Government, the Roads and Traffic Association (RTA) and other government agencies in the interval following the publication of this Committee's First Report are outlined. The Committee made 17 recommendations in its First Report. A number of them were applicable to the ongoing work of government agencies in relation to Public Private Partnerships (PPPs), and a number were specific to the Cross City Tunnel project, particularly the level of the toll and the surface road changes associated with the project. The NSW Government will provide a comprehensive response to the Committee's First Report six months from the date of tabling on 28 February 2006.

Background

- 2.1 The First Report of the Joint Select Committee on the Cross City Tunnel provides extensive detail on the nature of the Cross City Tunnel project. Accordingly, this Second Report will provide only brief background information in relation to the project and report on developments since February 2006. The Committee's First Report can be accessed from the Committee's website – www.parliament.nsw.gov.au/crosscitytunnel, or by contacting the Committee secretariat.
- 2.2 The recommendations made by the Committee in its First Report can be found at Appendix 3. The Committee notes that there was an immediate response to many of the recommendations, specifically those relating to the Cross City Tunnel project, and further action is anticipated. The prompt response indicates that the importance of the issues to the community, highlighted by the Committee in its First Report, has been recognised by the NSW Government, its agencies and the private operator.

The Cross City Tunnel project

- 2.3 The Cross City Tunnel project consists of two stages: the Cross City Tunnel, which opened to traffic on 28 August 2005; and associated surface works, which were completed in April 2006.

Stage One - Cross City Tunnel

- 2.4 The Cross City Tunnel is a privately financed, constructed, owned and operated tollway, which will pass into public ownership after 18 December 2035. Two main east and west 2.1 km tunnels run between the eastern side of Darling Harbour and Kings Cross, linking the Western Distributor to New South Head Road. The eastbound tunnel also connects with the southbound Eastern Distributor. A connection to the Domain Tunnel allows traffic from the eastern suburbs to directly access the harbour crossings.

Stage Two – Surface works

2.5 The majority of the Stage Two surface works commenced following the opening of the Cross City Tunnel. The Stage Two works are associated with achieving the urban amenity objectives of the project and include:

improvements to surface roads, including new bus and bicycle lanes, intersection improvements, ‘traffic calming’ measures, wider footpaths and other improvements to pedestrian facilities, to take advantage of the opportunities afforded by reduced traffic congestion.²³

2.6 Changes to William Street are the most obvious component of the Stage Two works. The William Street upgrade involves the narrowing of William Street and inclusion of bicycle lanes, street trees, improved footpaths, transit lanes, inset parking bays, street furniture and smart poles. A full description of the surface road changes associated with the project is contained in the Committee’s First Report.

Developments since the Committee’s First Report

Replacement of Cross City Motorway Chief Executive and Minister for Roads

2.7 On 9 February 2006, CrossCity Motorway Pty Ltd (CCM) announced that Mr Graham Mulligan would replace Mr Peter Sansom as Chief Executive Officer (CEO).

2.8 Following a Cabinet reshuffle, the Hon Eric Roozendaal replaced the Hon Joseph Tripodi as Minister for Roads on 17 February 2006.

Meetings between NSW Government and CrossCity Motorway

2.9 Mr Mulligan met with the Minister for Roads, the Hon Eric Roozendaal, twice in February 2006 and again on 3 March 2006. On 3 March 2006, CCM informed the Minister that it intended to ‘reduce the toll by 50 per cent to \$1.78 east-west and 84¢ along the Sir John Young Crescent exit for at least three months’.²⁴

2.10 On 5 March 2006, the Premier, the Hon Morris Iemma and the Minister for Roads, the Hon Eric Roozendaal, announced the reversal of 12 category C and D road changes and the halving of the toll by CCM for a period of 3 months.²⁵

²³ RTA, *Cross City Tunnel: Summary of contracts*, June 2003, p1

²⁴ Mr Graham Mulligan, Chief Executive Officer, CrossCity Motorway Pty Ltd, Evidence, 31 March 2006, p34

²⁵ ‘Tunnel toll cave-in’, *Daily Telegraph*, 6 March 2006

Road changes

2.11 Proposed surface road changes as a result of the Cross City Tunnel project were categorised as A, B, C or D in the Project Deed.²⁶

2.12 The categories were defined as follows:

- Category A: Permanent works that CCM must design and construct under the Project Deed, which if removed, may expose the RTA to a provide Material Adverse Effect (MAE) Relief to CCM under clauses 18.2 to 18.4 of the Project Deed
- Category B: Permanent works that CCM must design and construct under the Project Deed, which if removed, will not expose RTA to a liability to provide MAE Relief to CCM under clauses 18.2 to 18.4 of the Project Deed
- Category C: Temporary traffic arrangements during construction
- Category D: Traffic arrangements that RTA proposes to implement that relate to the CCT but are not contemplated in the Project Deed or Planning Approval.²⁷

2.13 The document suggested that only category A road changes would expose the RTA to provide Material Adverse Effect (MAE) relief to CCM under clauses 18.2-18.4 of the Project Deed, however it was clear from the evidence of former Chief Executive Mr Peter Sansom that CCM intended to conduct good faith negotiations if any of the road changes were altered:

If the Government were to put forward a proposal then CrossCity Motorway would need to obtain legal and technical advice in relation to the impacts. CrossCity Motorway obviously would enter into negotiations in good faith, as we have done right through the project and as required under the contract. If those negotiations did not reach a suitable outcome then CrossCity Motorway would pursue its rights under the contract and seek compensation.²⁸

2.14 To clarify the issue of which categories of road change exposed the RTA to financial liability, Mr Hannon, Acting Chief Executive of the RTA said:

for the category A roads there was a direct link to the MAE event. For the category B roads, and Cs and Ds, there was a potential issue but each of those should be considered on their merits as you looked at them.²⁹

2.15 On the 4 March 2006, Mr Mulligan met with RTA officials to discuss reversal of the category C and D road changes. Mr Mulligan told the Committee that CCM:

agreed on 12 road changes in these categories and indicated we would continue to examine the category B road changes.³⁰

²⁶ Roads and Traffic Authority, *Cross City Tunnel Project Deed*, provided in response to the Legislative Council order for papers regarding the Cross City Tunnel

²⁷ Email from John Shirbin, Clayton Utz, to Les Wielinga and Graham Read, RTA, 8 October 2005, pp2-6 and Annexure A

²⁸ Mr Peter Sansom, former Chief Executive, CrossCity Motorway Pty Ltd, Evidence, 3 February 2006, p64

²⁹ Mr Mike Hannon, Acting Chief Executive, NSW RTA, Evidence, 31March 2006, p17

2.16 Mr Hannon explained that the RTA's aim during the negotiations was to see what could be done at effectively no cost to government:

What we did at that meeting with the consortium was to come back with a position that said the Cs and the Ds could be reversed, with the exceptions that Mr Wielinga spoke about, at no cost to government. That is what has happened.³¹

2.17 Mr Les Wielinga, Director of Motorways for the NSW RTA told the Committee that the road changes reversed or to be reversed included all C category changes with the exception of a turning bay for emergency vehicles in Shakespeare Place, which was retained as it was found to be useful and did not interfere with traffic flow.³²

2.18 Other road changes reversed or not implemented were category D changes, 'generally isolated bus lane areas within the city'.³³ Mr Wielinga added:

That does not rule out putting them out in the future or not putting them out in the future. The options are open.³⁴

2.19 One category D road change that was not reversed was the closure of Bourke Street, despite the Committee's specific recommendation that it be re-opened while the review of the trial closure (concluded on 28 February 2006) was conducted.

2.20 Mr Wielinga told the Committee that construction work in relation to road changes was 'substantially advanced already'³⁵, and that as the process for deciding on the Bourke Street status was part of one of the planning conditions of approval 'the ultimate outcomes at Bourke Street will be determined by that consultation process under condition 288'.³⁶

2.21 Mr Hannon told the Committee that the RTA is now waiting on a submission from CCM in relation to category B road changes and is preparing information on potential financial compensation:

The legal advice is that there is potential exposure on the B roads, so we need to find out exactly what roads they will suggest and then we will take advice.³⁷

2.22 Mr Hannon confirmed that the RTA had entered into negotiations with CCM following the recommendation of this Committee in its First Report to 'immediately reverse all Category B, C and D road changes'³⁸:

³⁰ Mr Graham Mulligan, Chief Executive Officer, CrossCity Motorway Pty Ltd, Evidence, 31 March 2006, p34

³¹ Mr Hannon, Evidence, 31 March 2006, p22

³² Mr Les Wielinga, Director, Motorways, NSW RTA, Evidence, 31 March 2006, p11

³³ Mr Wielinga, Evidence, 31 March 2006, p11

³⁴ Mr Wielinga, Evidence, 31 March 2006, p18

³⁵ Mr Wielinga, Evidence, 31 March 2006, p12

³⁶ Mr Wielinga, Evidence, 31 March 2006, p11

³⁷ Mr Hannon, Evidence, 31 March 2006, p17

The Committee actually recommended in the first report that we should reverse, I think, the Bs Cs and Ds. So, we were looking at the Committee report, discussed the Ds with them, and then decide what could be closed and what could not be closed.³⁹

- 2.23** The immediate and ongoing attention which the RTA has focussed on the Committee's recommendations relating to road changes is an appropriate and gratifying response to the seriousness of the issue.

Reduction of the toll

- 2.24** The halving of the toll from 5 March 2006 was described by Mr Mulligan to the Committee as being for a period of 'at least 3 months', for the stated purpose of encouraging motorists to see 'the substantial benefits of using the Cross-City tunnel'.⁴⁰

- 2.25** Mr Mulligan was equivocal about the future level of the toll, after the current toll reduction period, telling the Committee only that:

The long-term level of toll is a commercial decision for the company and we have made no decision on going forward at this point in time.⁴¹

- 2.26** In his evidence to the Committee, Mr Hannon confirmed that the RTA and NSW Government had no control over the current level of the toll:

The Government has set the maximum toll. It is up to the consortia to decide whether they charge the maximum toll or a reduced toll. They have decided for three months at least to have the toll set at half the maximum toll. At one stage, as you know, they had the toll set at zero. My assessment is that they are obviously trying to entice people into the tunnel and encourage them to use it, experience the tunnel and obviously grow the numbers of people who use the tunnel.⁴²

- 2.27** Mr Alan Evans, President of the National Road and Motorists Association, while supportive of the reduction in the toll, observed that the sustainability of the lowered toll was a concern:

if they put that toll back up in three months time, that will have an adverse reaction. So if it is not financially feasible to maintain it at that level, they may have been better off not reducing it so much but bringing it to a certain level.⁴³

- 2.28** The Committee notes that while the halving of the toll for an extended period was a sensible and appropriate gesture on behalf of the operators of the Cross City Tunnel, there is a risk of

³⁸ NSW Parliament, *Cross City Tunnel First Report*, Joint Select Committee on the Cross City Tunnel, February 2006, Recommendation 14

³⁹ Mr Hannon, Evidence, 31 March 2006, p21

⁴⁰ Mr Mulligan, Evidence, 31 March 2006, p33

⁴¹ Mr Mulligan, Evidence, 31 March 2006, p36

⁴² Mr Hannon, Evidence, 31 March 2006, p16

⁴³ Mr Alan Evans, President of the National Road and Motorists Association, Evidence, 3 April 2006, p7

a backlash from motorists against using the tunnel if the toll is returned to its maximum level and not permanently lowered.

Recommendation 1

That the Government encourage the operators of the Cross City Tunnel to lower the level of the toll to \$2.90 at the conclusion of the current reduced toll period.

Toll prices advertised

- 2.29** In its First Report, the Committee noted the absence of information advertising the cost of using the Cross City Tunnel at its entrances. Mr Mulligan informed the Committee that CCM had noted the Committee's commentary in relation to advertising the toll price on entry.⁴⁴
- 2.30** The toll prices are currently advertised on the Variable Message Signs on entry to and in the Cross City Tunnel, redressing a serious omission.
- 2.31** The Committee believes that it is important that the cost of using a tolled road be advertised on entry and not just on a website, particularly as the toll can increase every quarter under the terms of the Project Deed. With full electronic tolling the awareness of the cost is otherwise deferred to a monthly statement.

Recommendation 2

That the RTA ensure that all toll roads, whether publicly or privately operated, advertise the cost of use at entry points.

Effect of changes

- 2.32** Mr Mulligan, in his evidence to the Committee, reported an increase in traffic figures following the halving of the toll:

[T]raffic patronage has increased by 18.6 per cent. The total traffic since the toll was reduced from 6 March until midnight last night, 30 March, is 838,440 vehicles. The total traffic for the corresponding 25-day period prior to the toll reduction was 706,877. This represents an increase of 131,563 vehicles or 18.6 per cent. While encouraging, CrossCity Motorway is and has always taken a long-term view of this project.⁴⁵

⁴⁴ Mr Mulligan, Evidence, 31 March 2006, p35

⁴⁵ Mr Mulligan, Evidence, 31 March 2006, p34

- 2.33** The figures cited by Mr Mulligan represent an average of 33,500 vehicles per day, since 6 March 2006.⁴⁶ The Committee notes that while these figures are clearly an improvement on the figures of early February this year (of between 26-31,000 vehicles per day, according to former CCM Chief Executive Mr Peter Sansom⁴⁷), the slow rate of increase is further evidence to suggest that the figures relied on in the base case financial model were overly optimistic.
- 2.34** Mr Hannon confirmed that the figures provided to the RTA by CCM reflected an increase of 17.8% from the period three weeks before the toll was reduced to the period three weeks after the toll was reduced.⁴⁸ The percentages are slightly different because the periods used by CCM and RTA to calculate them were of different durations.
- 2.35** Mr Alan Evans, President of the NRMA, attributed the slow increase in use of the tunnel to community resentment:
- We have been surprised at the depth of resentment amongst motorists. As I said, we have not seen it. It is almost like, "Even though we may get some benefit from using it, we are not going to, because we think we are either being forced into it because of the road closures or we think the toll is too high."⁴⁹
- 2.36** While the Cross City Tunnel has only been operating for approximately nine months, the lengthy duration and slow rate of increase of the ramp-up period (compared to other toll roads such as the Eastern Distributor and the M7 West Orbital) suggests that the traffic patronage figures relied upon by CCM in the base case financial model may never be reached, with consequences for investors in the project.
- 2.37** The transfer of the patronage risk to CCM by the Government means that any shortfall in revenue is a 'commercial matter' for the company, as Mr Mulligan frequently stated during his appearance before the Committee.
- 2.38** The Committee notes that Cheung Kong Infrastructure, the major equity investor in the Cross City Tunnel project, recently wrote down the carrying value of their investment in the Cross City Tunnel by A\$102 million, 'in view of lower [than] projected toll revenue'.⁵⁰
- 2.39** The Committee re-iterates the comments made in the First Report that while the transfer of patronage risk has resulted in no direct financial cost to the NSW Government, the community is continuing to pay the price of congested surface roads during construction of road changes and associated inconvenience, as well as the monetary price of the toll.

⁴⁶ Mr Mulligan, Evidence, 31 March 2006, p40

⁴⁷ Mr Peter Sansom, former Chief Executive, CrossCity Motorway, Evidence, 3 February 2006, p65

⁴⁸ Mr Hannon, Evidence, 31 March 2006, p16

⁴⁹ Mr Evans, Evidence, 3 April 2006, p7

⁵⁰ Cheung Kong Infrastructure *2005 Annual Report*, December 2005, p23. Available at <http://www.cki.com.hk/english/investor/annualReport/index.htm> (accessed 28 April 2006)

Other matters

Calculation of toll escalation

- 2.40** The Committee's First Report states that some Committee members raised issues about the calculation of the Cross City Tunnel toll rate of escalation, but does not explain those issues as the information required was not available at that time.⁵¹
- 2.41** Under the terms of the Project Deed, the base toll (\$2.65 for the January-March 1999 quarter) can be increased quarterly in line with the greater of the Consumer Price Index (CPI) or a fixed percentage (4% to December 2011 and 3% from January 2012 to December 2017).⁵²
- 2.42** Due to the quarterly fluctuations in the CPI, there have been occasions where the quarterly CPI rate was higher than the fixed percentage rate of 4% for a particular quarter, despite the annual CPI rate being less than 4% (approximately 2.5% for 2004 and 2005). In those quarters where the CPI rate was lower than the fixed percentage rate of 4%, the 4% rate was applied.
- 2.43** Mr Hannon, Chief Executive of the NSW RTA, confirmed that there have been three quarters in which the quarterly CPI rate was higher than the equivalent quarterly rate for the fixed percentage rate of 4%.⁵³
- 2.44** After December 2017 the escalation to be applied to the toll is the greater of the relevant CPI and the minimum rate (0%).⁵⁴ If the CPI is negative during any quarter, the minimum rate is applied and the toll will remain at the same level until the CPI rate is positive.
- 2.45** The manner in which the CPI rate is calculated and applied is consistent with projects of this type. The Committee notes, however, that the application of the toll escalation formula has meant that the concession negotiated in the Project Deed is effectively greater than the 4% suggests. If the CPI rate was treated as an annual figure then the toll charged at 31 December 2005 would have been \$3.45, not \$3.56.

Air quality

- 2.46** In response to questions from Committee members about whether health warning signs should be erected outside the Cross City Tunnel and other tunnels, Mr Les Wielinga, Director of Motorways for the NSW RTA, said that the RTA complied with conditions of approval relating to air quality that came from the World Health Organisation:

In addition, the RTA put out a brochure, our communications area, about safety in tunnels, and included in this brochure is a paragraph about advising people to put up their windows if they have got asthma or other things.⁵⁵

⁵¹ Joint Select Committee on the Cross City Tunnel, *First Report*, February 2006, p88

⁵² RTA, *Cross City Tunnel: Summary of First Amending Deed*, November 2005, Section 2.2.2

⁵³ Correspondence from Mr Hannon, Acting Chief Executive, NSW RTA to the Chairman, received 26 April 2006.

⁵⁴ Correspondence from Mr Hannon, Acting Chief Executive, NSW RTA to the Chairman, received 26 April 2006.

2.47 In response to similar questions from Committee members about whether health warning signs should be placed outside the Cross City Tunnel, Mr Mulligan said:

We have a very high standard of air quality control in our tunnel.⁵⁶

2.48 Mr Mulligan went on to outline some of the air quality measures incorporated as part of the Cross City Tunnel, noting that there were 33 conditions relating to air quality in the project's planning approval:

- The ventilation system includes an extra tunnel, the 'bypass event tunnel', designed to meet carbon monoxide goals imposed on the tunnel by the conditions of planning approval.
- The ventilation system is designed to avoid, 'to the greatest extent practical', tunnel emissions from the portals.
- The ventilation stack has been designed for retro-fitting of air filtration, if the NSW Government were to require it.
- Real time air quality data presented on the CCT web site.⁵⁷

2.49 Mr Evans, President of the NRMA, commented that it should be 'fairly simple' to advise motorists of the potential risk for sufferers of respiratory disease before entering tunnels generally:

At least if you have the information you can make a choice, rather than going into the tunnel and suddenly finding that the level of pollution is such that it affects your respiration and you have a reaction.⁵⁸

Conclusion

2.50 The Committee notes that there have been several recent inquiries into the issue of air quality in Sydney's major road tunnels, particularly into the M5 East tunnel. The terms of reference for this Inquiry do not extend to a detailed examination of air quality issues in all tunnels, private and public, across NSW.

2.51 The Committee believes that it is appropriate to advise motorists, particularly those with respiratory conditions, to take appropriate precautions when using the tunnel. This advice should be visible prior to entering the Cross City Tunnel, and other road tunnels including the M5 East.

⁵⁵ Mr Wielinga, Evidence, 31 March 2006, p14

⁵⁶ Mr Mulligan, Evidence, 31 March 2006, p43

⁵⁷ Mr Mulligan, Evidence, 31 March 2006, p43

⁵⁸ Mr Evans, Evidence, 3 April 2006, p6

Recommendation 3

That the Government ensure that motorists are advised to take appropriate precautions against possible adverse air quality in tunnels, with such advice displayed on entry to road tunnels or by any other means.

Impact on public transport

- 2.52** Mr Evans, in his evidence to the Committee, said that one of the effects of the changes to the surface streets was an increase in journey times on the surface for people using private vehicles and for those people using public transport. Mr Evans added that the NRMA were continuing to analyse the impact of the surface road changes on journey time and were likely to publish the results.⁵⁹
- 2.53** The Committee notes that the reversal of category D road changes includes bus lanes in the CBD. The bus lanes proposed as part of the Cross City Tunnel project were intended to take advantage of the reduction in traffic in the CBD as a consequence of traffic using the Tunnel. Bus lanes should not be introduced until such time as sufficient traffic is removed from the city streets, particularly as traffic using the Tunnel remains lower than expected.
- 2.54** The Committee believes that the RTA, in retaining the option to re-instate bus lanes at a future point, is acting appropriately given that the Cross City Tunnel project's objectives will be served by improving public transport effectiveness in the CBD, thus improving ease of access and reliability of transport within Central Sydney.⁶⁰
- 2.55** The Committee also received a submission from Mr Matt Mushalik, a civil engineer and town and regional planner, who argued that the process of designing and approving the Cross City Tunnel was flawed as warnings about peak oil were ignored. He asserted that in coming years motorists will not be able to afford high petrol prices and high tolls.⁶¹

Recommendation 4

That the Roads and Traffic Authority investigate ways to improve the operation of bus lanes in the Central Business District.

Country users of the tunnel

- 2.56** Ms Wendy Machin, a board director of the National Roads and Motorists Association (NRMA), commented on a number of problems specific to country people using the tunnel:

⁵⁹ Mr Evans, Evidence, 3 April 2006, p5

⁶⁰ RTA, *The Cross City Tunnel Environmental Impact Statement, Volume 1* August 2000, p3.14

⁶¹ Submission 8, Mr Matt Mushalik

- Difficulty of accessing information on how to get an electronic tag, and conflicting information relating to administration fees provided on the phone as compared to on the website
- Additional cost of having to make an STD phone call, as opposed to a cheaper 1300 number (available for the M7 Westlink tollroad)
- Poor signage in and around the tunnel. 'People find themselves on the routes into the tunnel and locked into using it before they realise where they are.'
- Confusion as a result of the changes to the surface roads.⁶²

2.57 Ms Machin made a number of suggestions to improve the situation for country users of the Cross City Tunnel:

- a 1300 number instead of the existing number, which results in an STD charge for country users
- better publicity in the print media and in other areas where people would access information, such as RTA offices and service stations
- simple maps to help country users with tunnel signage.⁶³

2.58 Ms Machin suggested that the existing network of NRMA offices might also be used to provide information to country users. Mr Evans added that the NRMA had offered the use of the NRMA country service centre network to tollway operators to aid country users intending to use the tunnel to access information, and get credit for casual use of the tunnel.⁶⁴

Recommendation 5

That the Roads and Traffic Authority investigate methods of improving the dissemination of information regarding changes to metropolitan Sydney road infrastructure to potential country users.

Community consultation

2.59 Mr Alan Evans, President of the NRMA, told the committee of his concerns about community consultation and the way the NRMA had initially been excluded from the process:

In fact, we sought to be involved in discussions, but we were informed by both the cross-city tunnel operators and the RTA that we were not representative of the community and therefore would not be included in the consultation process.⁶⁵

⁶² Ms Machin, Evidence, 3 April 2006, p2

⁶³ Ms Machin, Evidence, 3 April 2006, p5

⁶⁴ Mr Evans, Evidence, 3 April 2006, p6

⁶⁵ Mr Evans, Evidence, 3 April 2006, p2

- 2.60** Mr Evans compared the interaction of the NRMA with the M7 Westlink operator to the interaction of the NRMA with the Cross City Tunnel operators:

There were regular consultations with the parties constructing and operating the M7 and the RTA, which resulted in a much smoother introduction and a fee or charging regime that was much more equitable and fairer to both regular and casual users. If one contrasts the two, it is a classic example of how to do it and how not to do it. We saw the same thing with the community consultation process. We observed the community consultation undertaken with regard to the cross-city tunnel and the M7. Again, one was an exemplary process and the other was not.⁶⁶

- 2.61** Mr Les Wielinga, Director of Motorways at the RTA, told the Committee that the processes in relation to the M7 Westlink project, including the community consultation process, were ‘essentially the same as that used on other projects’,⁶⁷ including the Cross City Tunnel project.

- 2.62** Mr Paul Willoughby, former Director of Communications for the NSW Roads and Traffic Authority, commented that with regard to the Lane Cove Tunnel and Cross City Tunnel projects:

there have been a very, very large number of opportunities for members of the community to comment and participate and a very, very large amount of material provided in the public domain to assist that.⁶⁸

- 2.63** Mr Willoughby went on to accept that there were still people unhappy with the degree of consultation, and said that the RTA was responding to that criticism:

when it comes to doing another one, there will be every effort made to ensure that, to the greatest extent possible, people with a legitimate involvement and interest in projects such as these are given that opportunity.⁶⁹

- 2.64** Mr Willoughby discussed the steps the RTA had already taken in improving community information and consultation:

It was fundamentally the reason I established in my directorate a branch called infrastructure communications and community involvement. It was partly why I employed from the private sector a very senior and respected person to head that up and she has been, over the past couple of years in building that branch, very active in doing whatever can be done to improve and expand those opportunities for community involvement.⁷⁰

- 2.65** According to Mr Willoughby, the Cross City Tunnel project was not reflective of the RTA’s consultation processes and success in delivering motorway projects:

⁶⁶ Mr Evans, Evidence, 3 April 2006, p4

⁶⁷ Mr Wielinga, Evidence, 31 March 2006, p24

⁶⁸ Mr Paul Willoughby, former Director of Communications NSW RTA, Evidence, 12 April 2006, p3

⁶⁹ Mr Willoughby, Evidence, 12 April 2006, p3

⁷⁰ Mr Willoughby, Evidence, 12 April 2006, p4

The Cross-city Tunnel is an important case study, and learning exercise for the RTA in relation to how to work with communities, but it is not in a broad sense reflective of what is a very strong track record of commitment to, and success with, community involvement in these sorts of projects.⁷¹

- 2.66** One of the criticisms levelled at the CrossCity Tunnel refers to the lack of community information and marketing about the Tunnel, including its possible advantages and detailing ways of accessing it. Mr Hannon, in reflecting on the recommendations of the IIG *Review*, commented that:

Lessons can be learnt in terms of the cross-city tunnel project as to the marketing strategy that is put in place and making the marketing requirements part of the contract so that there is a known relationship that will exist between government and the consortia in the opening of projects.⁷²

Conclusions

- 2.67** The Committee has already made extensive comments about the inadequacy of consultation in relation to the Cross City Tunnel project, and has made recommendations to address those concerns.
- 2.68** The evidence received as part of this second inquiry only reinforces the importance of the Committee's recommendations being seriously considered and acted upon by the NSW Government.
- 2.69** The Committee hopes that the seriousness with which their recommendations relating to road changes has been addressed will be applied by the NSW Government to the recommendations about community consultation.
- 2.70** The Committee notes that the increase in patronage of the Cross City Tunnel following these changes has not been particularly high, at approximately 18 per cent. The new CEO of CCM, Mr Graham Mulligan, is citing a 'two to three year' ramp up period, to reach their stated traffic figures of 'up to 90,000', originally predicted to occur by 2006⁷³:

Like all toll roads around the world and like the Eastern Distributor in Sydney, the cross-city tunnel is going through at a ramp-up phase. CrossCity Motorway believes this will take about two to three years.⁷⁴

- 2.71** While the Committee recognises that a relatively short time has elapsed since the Cross City Tunnel opened, and that there will continue to be an increase in users of the tunnel, it is likely that the traffic estimates were optimistic. This will have a financial impact on the tunnel operators and it will also have an impact on the objectives of the project, with less cars than

⁷¹ Mr Willoughby, Evidence, 12 April 2006, p9

⁷² Mr Hannon, Evidence, 31 March 2006, p12

⁷³ Submission 38, CrossCity Motorway Pty Ltd, p2

⁷⁴ Mr Graham Mulligan, Chief Executive Officer, CrossCity Motorway Pty Ltd, Evidence, 31 March 2006, p34-35

expected being removed from surface streets and consequently less opportunity to benefit from public transport improvements.

2.72 Mr Mulligan, in declining to answer questions about financial matters related to the project, told the Committee that:

the operational cash flows and profitability, and capital engineering of this project are matters for its shareholders.⁷⁵

2.73 Mr Mulligan often used a variation of this response to questions from the Committee, saying that the issues in question, such as the financial situation of CCM, ‘were commercial matters for our company’⁷⁶.

2.74 On the one hand these responses illustrate one of the positives of a Public Private Partnership – the transfer of financial risk to the private sector. The tunnel has been constructed and is operating, and the NSW Government is not exposed to any direct financial cost as a result of under-utilisation.

2.75 However, the Committee re-iterates its conclusions from the First Report, that the transfer of risk is also a transfer of flexibility. The Government can only ‘negotiate in good faith’ with the consortium to bring about changes to the surface roads in order to maximise the effectiveness of the tunnel in reducing congestion in central Sydney.

2.76 A further illustration of the restrictions on flexibility that result from a PPP – together with the more obvious examples of road changes and set toll rates – is the relatively innocent example of the difficulty of getting access to current traffic figures for the Cross City Tunnel.

2.77 Mr Wielinga told the Committee that the RTA was unable to publish daily tunnel patronage figures on their website because it was ‘a matter for CCM to release the figures’:

They regard those figures as commercial in confidence, and I think the previous chief executive of CCM said that from time to time they would put figures out when asked.⁷⁷

2.78 The Committee believes that the tunnel patronage figures should be available to the public, and particularly to the RTA. It is hard to see the applicability of a ‘commercial in confidence’ justification for keeping the figures secret when the Cross City Tunnel is just one part of the wider public road network.

2.79 Accordingly, the Committee believes that future contracts for road infrastructure projects should specify that these figures are required to be made available to the RTA for the purposes of monitoring traffic flows across the road network, and for public release if required.

⁷⁵ Mr Mulligan, Evidence, 31 March 2006, p45

⁷⁶ Mr Mulligan, Evidence, 31 March 2006, p45

⁷⁷ Mr Wielinga, Evidence, 31 March 2006, p17

Recommendation 6

That for future private toll road infrastructure projects, information on vehicle numbers be made publicly available on a regular basis.

- 2.80** The Committee notes that the NSW Government will provide a response to the Committee's First Report in August 2006, and acknowledges that the actions taken to date are part of ongoing efforts to address the recommendations of this Committee.

Chapter 3 Public Private Partnerships in New South Wales

The previous chapter provided an update on developments since the Committee tabled its First Report, which primarily addressed terms of reference 1 (a) to 1 (e) relating to the Cross City Tunnel project. The Committee's term of reference 1 (f) requires it to inquire into and report on the role of government agencies in entering into major public private partnership agreements. This chapter defines Public Private Partnerships (PPPs) in the New South Wales context, and describes the current framework governing PPPs in the State. The chapter also reviews recent, current and proposed PPPs entered into between NSW Government agencies and the private sector. A brief overview of PPPs in Australia and internationally is also provided for context. Chapter 4 examines specific aspects of the PPP framework in greater detail.

Public Private Partnerships and Privately Financed Projects

- 3.1** The Public Private Partnership (PPP) concept, as the Committee's first report noted, is broad and the definition is often unclear. Different countries, even different states within Australia, use the term in slightly different ways.
- 3.2** Taken at its broadest definition, a PPP is any contracted relationship between the public and private sectors to produce an asset or deliver a service.
- 3.3** However, a PPP is more appropriately distinguished from such straightforward contractual agreements. The projects listed on the National PPP Forum's PPP Pipeline website clearly suggest that PPPs are complex, long term arrangements between the private and public sector for the provision of significant assets or services, and involve risk sharing between the partners.⁷⁸
- 3.4** The Premier's Department Infrastructure Implementation Group's *Review of Future Provision of Motorways in NSW* (the IIG Review) defined a PPP as:
- an arrangement for the provision of assets or services, often in combination and usually for a substantial or complex 'package', in which both private sector supplier and public sector client share the significant risks in provision and/or operation.⁷⁹
- 3.5** There are a number of procurement options that fall under the umbrella of the PPP definition. Privately Financed Projects (PFP) are a specific form of PPPs involving the creation of an asset through private sector financing and ownership for a certain period. The Government often contributes land, capital works, risk sharing, revenue or purchase of the agreed service. PFPs are generally complex and involve high capital costs, lengthy contract

⁷⁸ National PPP Forum website, available at www.pppforum.gov.au (accessed 28 April 2006)

⁷⁹ Infrastructure Implementation Group, *Review of Future Provision of Motorways in NSW*, December 2005, p14

periods that create long term obligations and a sharing of the risk between the private and public sectors.⁸⁰

3.6 The IIG *Review* defined privately financed projects as a subset of PPPs:

Privately financed projects (PFPs) involve provision by investors of equity capital and debt capital to fund what might otherwise be wholly publicly funded projects financed from NSW Government borrowings and/or budget revenue.⁸¹

3.7 For the purposes of this report, the Committee will use the definitions provided in the IIG *Review*. Projects such as the Cross City Tunnel project and the Lane Cove Tunnel project can therefore accurately be referred to as either PPPs or PFPs.

3.8 The Committee notes evidence from Mr John Pierce, Secretary of the NSW Treasury, that since 1993-1994, PFPs have averaged around 11% (with a range of 10 – 15%) of the overall NSW capital works program. This evidence was reiterated by Mr Alan Marsh, Deputy Director General of the Office of Public Works and Services with the Department of Commerce:

PPP's are a fairly wide-embracing term, and I would like to distinguish between our conventional type of procurement and PFPs, which are privately funded projects. It is a narrower range. As some of the previous people giving evidence here indicated, about 15 per cent of all the work – 10 per cent to 15 per cent – is done through what we call PFPs. The other 85 per cent to 90 per cent is the more conventional side.⁸²

3.9 Mr Brian Baker, Group General Manager of Project Management with the Department of Commerce, subsequently elaborated on situations where the Department might use PFPs. For example, he cited the scenario whereby a PFP would offer greater value for money over the life of an agreement – say 25-30 years – compared to that which the public sector could deliver. Mr Marsh cited the example of Stadium Australia at Homebush as an example of a project for which all the design work and costs were met by the private sector.⁸³

3.10 Another PPP option increasingly being used in NSW, notably by Sydney Water, is a so-called 'alliance project'. As implied, alliance projects involve greater sharing of the risk of a project than is usual with a PPP between the public and private sector. Under a 'pure' alliance contracting model, risk is not 'passed down' in the traditional and legal sense from the public to the private sector, but is shared equitably by the project participants who are collectively responsible and have ownership of risk associated with the delivery of a project.⁸⁴

⁸⁰ NSW Government, *Working with Government – Guidelines for Privately Financed Projects*, p iv, <http://www.treasury.nsw.gov.au/wwg/pdf/wwgguidelines.pdf> (accessed 27 April 2006)

⁸¹ Infrastructure Implementation Group, *Review of Future Provision of Motorways in NSW*, December 2005, p14

⁸² Mr Alan Marsh, Deputy Director General, Office of Public Works and Services, Department of Commerce, Evidence, 12 April 2006, p12

⁸³ Mr Brian Baker, Group General Manager, Project Management, Department of Commerce, and Mr Marsh, Evidence, 12 April 2006, pp12-13

⁸⁴ The Association of Consulting Engineers Australia, 'Alliance Contracting', Discussion Paper, <http://www.acea.com.au/policy/documents/AllianceContractingDiscussion.doc> (accessed 27 April 2006)

- 3.11** Other forms of collaboration that involve private sector participation in government developments include Build Own Operate Transfer (BOOT) projects, and Build Own Operate (BOO) projects.
- 3.12** The Committee notes that there are a large number of PPPs, PFPs and alliance projects currently being undertaken or operating in NSW. Road infrastructure PPPs are the highest profile projects, with the Cross City Tunnel, the M7 Western Sydney Orbital and the soon-to-be opened Lane Cove Tunnel prominent examples. However, a number of NSW government departments and agencies, as well as local councils, are also involved in PPPs.
- 3.13** Two agencies central to the operation of PPPs in NSW are the NSW Treasury and the Department of Commerce. The Treasury is responsible for NSW Government procurement policy and for setting the guidelines for agencies engaging in PPPs. In turn, the Department of Commerce manages many PPP projects on behalf of government agencies that do not have the in-house expertise to do it themselves.
- 3.14** This chapter initially provides a review of the role performed by Treasury and the Department of Commerce. Subsequently, it looks at some of the PPP arrangements that have been entered into or are being considered by NSW Government agencies and local councils. It is not intended to be an exhaustive review and analysis of all PPPs, but rather to provide an indication of the range and scope of PPPs in NSW.

The role of Treasury

- 3.15** The Cabinet Standing Committee on Infrastructure and Planning is responsible for setting the strategic direction for urban and regional development and associated infrastructure priorities in NSW. This arrangement ensures that individual projects and investment decisions are consistent with the general direction in which the NSW Government wants to head in relation to its capital works program.⁸⁵

NSW Government Procurement Policy

- 3.16** The NSW Treasury is responsible for government procurement under the *NSW Government Procurement Policy* (the *Procurement Policy*), released in July 2004. Prior to June 2003 the responsibility for setting procurement policy lay with the Department of Commerce. The fundamental objective of the *Procurement Policy* is to ensure that government procurement activities achieve best value for money in supporting the delivery of government services. Key principles underpinning the policy are:
- value for money, being the benefits achieved compared to whole-of-life costs
 - efficiency and effectiveness
 - probity and equity

⁸⁵ Mr Pierce, Secretary, NSW Treasury, Evidence, 3 April 2006, p45. See also Office of Financial Management, NSW Treasury, 'Construction Procurement', <http://www.treasury.nsw.gov.au/procurement/construction.htm>, (accessed 26 April 2006)

- effective competition.⁸⁶

3.17 NSW Treasury is responsible for establishing a State Infrastructure Strategy (SIS) to identify and prioritise potential government infrastructure requirements 'consistent with expectations about demand, government service delivery priorities and funding constraints.'⁸⁷

3.18 The Secretary of NSW Treasury, Mr Pierce, explained in evidence to the Committee that the SIS is used to guide agencies as they make decisions about what projects to 'put up' for an investment decision.⁸⁸ Mr Pierce re-iterated the comments he made in evidence to the Committee during the first stage of the Inquiry:

The budget funding must be approved before a decision can be taken on whether to procure the infrastructure using private finance. That is the separation of the investment decision from the procurement decision.⁸⁹

3.19 Mr Pierce explained that because the process of determining whether a particular project should be undertaken as a PFP is expensive and resource intensive, the Treasury:

tend to look at those lists of projects and make a qualitative assessment and say "Which of these are likely to give us great value for money through delivery of the PFP?" When it passes that test then you start the whole machinery of your steering committees and PSC construction.⁹⁰

3.20 Under the *Procurement Policy*, individual NSW Government agencies may undertake both the planning and delivery of infrastructure, if they are appropriately accredited by Treasury. Attachment 4 to the *Procurement Policy* provides an agency accreditation scheme by which agencies may be accredited for different procurement stages. The agency accreditation scheme is based on the premise that an agency should procure capital works assets using systems and resources commensurate with its capabilities. For example, an agency is required to obtain external support if the level of risk is high in relation to its assessed capabilities.⁹¹

Working With Government: Guidelines for Privately Financed Projects

3.21 If the Government decides to finance a project privately, then the procuring agency must observe the following Treasury guidelines: *Working with Government – Policy for Privately Financed Projects* and *Working with Government – Guidelines for Privately Financed Projects*. These guidelines set out the processes and procedures to be followed in selecting, assessing and implementing PPPs and PFPs. The stated aim of the guidelines is not to maximise the risk transferred to the private sector, but to optimise the allocation of risks to the public and private sectors

⁸⁶ NSW Treasury, NSW Government Procurement Policy, p4, <http://www.treasury.nsw.gov.au/pubs/tpp2004/tpp04-1.pdf> (accessed 26 April 2006)

⁸⁷ Mr Pierce, Evidence, 3 April 2006, p45

⁸⁸ Mr Pierce, Evidence, 3 April 2006, p45

⁸⁹ Mr Pierce, Evidence, 3 April 2006, p45-6

⁹⁰ Mr Pierce, Evidence, 3 April 2006, p52

⁹¹ NSW Treasury, NSW Government Procurement Policy, p29, <http://www.treasury.nsw.gov.au/pubs/tpp2004/tpp04-1.pdf> (accessed 26 April 2006)

according to which party is best able to manage them. The intention is to maximise value for money over the life of the project.⁹²

3.22 A central element of the *Working with Government Guidelines* is the so-called Public Sector Comparator (the Comparator), which is used in assessing whether a project should be delivered through a traditional public sector financial arrangement or through a PPP. The PSC measures the full long-term life-cycle costs of public sector delivery of a particular piece of infrastructure or service. Where the private sector can deliver the project or service at a lower cost than the PSC, then a PPP may be appropriate.⁹³ The Committee examines the Comparator in more detail in Chapter 4.

3.23 The Committee notes the following evidence from Dr Kerry Schott, Executive Director of Private Projects and Asset Management with NSW Treasury, on the likelihood of the private sector being able to complete a project more cheaply than the public sector, as determined by the Comparator:

I make a general point that where a PSC is unlikely to be beaten by the private sector is where the Government is largely just doing a design and construct of something that is pretty ordinary – it is moving dirt around, not much room for innovation, not much room for any other party to add anything to it and it is just straight up and down. Things that could fall into that category are things like the Port Botany expansion where they are just putting in pylons in the sea and filling it in. There is nothing that the private sector is likely to be able to do that will make the private financing of it add anything. And a project of that kind would not beat the public sector comparator and would be done just through a straight design and construction.⁹⁴

3.24 Mr Pierce in turn cited the proposed extension of the Illawarra rail line from Bondi Junction to Bondi Beach as an example of a possible PPP where the private sector was unlikely to be able to complete the project at a cost lower than the Comparator. In essence, Treasury came to the conclusion that the revenue stream from the project that the private sector was basing its assessment on was unlikely to be realised.⁹⁵

3.25 Treasury's *Working with Government – Guidelines for Privately Financed Projects* also incorporates at Appendix 2 a Public Interest Evaluation test. Under the test:

Government will develop partnerships with the private sector to deliver infrastructure where the combined ideas and experience of both sectors provide greater value for money and enhanced overall benefits to the community. All projects will undergo a broader assessment of public interest before they are offered as a PFP.⁹⁶

⁹² Office of Financial Management, NSW Treasury, 'Construction Procurement', <http://www.treasury.nsw.gov.au/procurement/construction.htm>, (accessed 26 April 2006)

⁹³ NSW Government, *Working with Government – Policy for Privately Financed Projects*, <http://www.treasury.nsw.gov.au/wwg/pdf/wwgpolicy.pdf> (accessed 26 April 2006), pp2-3

⁹⁴ Dr Kerry Schott, Executive Director, Private Projects and Asset Management, NSW Treasury, Evidence, 3 April 2006, p52

⁹⁵ Mr Pierce, Evidence, 3 April 2006, p51

⁹⁶ NSW Government, *Working with Government – Guidelines for Privately Financed Projects*, appendix 2, <http://www.treasury.nsw.gov.au/wwg/pdf/wwgguidelines.pdf> (accessed 26 April 2006)

3.26 The Committee notes that Treasury is currently conducting a review of the *Working with Government* guidelines, including the Public Interest Evaluation test, in light of the recommendations of the Committee in its first report on the Cross City Tunnel of February 2006. It is intended that the review will be completed by June or July 2006.⁹⁷ The Committee welcomes the Treasury's prompt response to its recommendations.

3.27 Mr Danny Graham, Director of Private Finance Projects, NSW Treasury, told the Committee that Treasury, as part of its revision of the *Working with Government Guidelines*, was also developing more technical guidance material to assist government agencies 'in a technical sense' to undertake PFPs:

It is a major task because we will be reviewing the whole of the guidance material to make sure there is consistency between recommendations coming out of the various inquiries to ensure that we have linked them all together. Consequently I have a team working on that at the moment. That will be matched by what we call standard commercial principles, a document that will supplement the Working with Government Guidelines to assist agencies in structuring their contracts, and a few other technical documents that may help agencies in undertaking and conducting their PPP procurement. The focus is on the new guidance material, but there will be other information to assist agencies in a technical sense to undertake the projects.⁹⁸

3.28 Where a Government agency does not have the required project management structure to undertake a PPP in accordance with Treasury guidelines, they may seek assistance from the Department of Commerce (as discussed in the following section) or an accredited external consultant. As stated by Mr Pierce:

Whilst Treasury sets down the overall policy, the Department of Commerce is available to agencies to use, so that when they are going through these processes they can have some confidence that they will be complying with that policy. Although, we do not direct people that they must use the Department of Commerce – the department charges a fee for this service, of course – the agency can choose to get external help from someone other than the Department of Commerce.

Where the Department of Commerce provides that sort of support, they would be involved in the development of the tender documentation and be a member of the appropriate evaluation committees. The Department of Commerce also provides an approved procurement system. This system consists of a number of templates and guidelines for things like risk allocation and tender processes. Whether the Department of Commerce is used or and external party is used, they must essentially use this procurement system.⁹⁹

3.29 Treasury also requires that high risk projects and projects costing over \$10 million be subject to gateway reviews. A gateway review is essentially a review of a project through its various stages of development to help identify problems at certain points along the way. An example is the review by Treasury of the adequacy of the business case that an agency has developed prior to a request for funding approval.¹⁰⁰

⁹⁷ Mr Pierce, Evidence, 3 April 2006, p45,47

⁹⁸ Mr Danny Graham, Director, Private Finance Projects, NSW Treasury, Evidence, 3 April 2006, p47

⁹⁹ Mr Pierce, Evidence, 3 April 2006, p47

¹⁰⁰ Mr Pierce, Evidence, 3 April 2006, p47

The role of the Department of Commerce

- 3.30** As indicated above, the Department of Commerce is a competitive service provider that manages infrastructure construction projects on behalf of NSW Government agencies, and is accredited by Treasury to do so. Each year, the Department manages between \$700 million and \$1 billion in projects.¹⁰¹
- 3.31** For example, the Department of Commerce is a major service provider to the Department of Education and Training (DET), which it has worked with for a long period of time to develop codes and guides for the delivery of DET projects. As stated by Mr Alan Marsh, Deputy Director General of the Office of Public Works and Services with the Department of Commerce:
- With other agencies, like the Department of Education and Training, we have a quite large role. We are a professional service provider. I have provided a brochure on Public Works and Services. The skills that we provide to an agency are usually skills that that agency would not have in-house, whether they be engineering services or land valuation services, or experts going out to a site and testing it for contamination or determination of endangered species and all those sorts of issues. So we help them put those parts together.¹⁰²
- 3.32** By contrast to DET, agencies such as the Roads and Traffic Authority (RTA) have full planning capabilities for the delivery of major infrastructure construction projects through PPPs, and generally manage their own projects in-house. As such, the Department of Commerce's involvement with the RTA is minimal.¹⁰³
- 3.33** As indicated, the Department of Commerce provides its services on a fee for service basis. Agencies are free to use other private sector service providers. However, in evidence, Mr Marsh suggested that the Department provides a unique service in terms of coverage of the whole state, which many other providers do not, and also in terms of expertise in special areas such as sustainable water supplies for country towns. The focus of the Department remains on the provision of services to the NSW public sector.¹⁰⁴

The role of the Department of Planning

- 3.34** The Department of Planning is the principal government authority vested with statutory and administrative responsibility for strategic land use planning, environmental impact assessment and development approvals. As such, the Department has no direct role in negotiating or implementing PPP projects.
- 3.35** The Committee heard evidence from the Director General of the Department of Planning, Mr Sam Haddad, and Executive Director of the Metropolitan Strategy, Ms Gail Connolly, in relation to the strategic context within which public infrastructure projects are considered.

¹⁰¹ Mr Marsh, Evidence, 12 April 2006, p13

¹⁰² Mr March, Evidence, 12 April 2006, p14

¹⁰³ Mr March, Evidence, 12 April 2006, p14

¹⁰⁴ Mr March, Evidence, 12 April 2006, pp15,17

3.36 Mr Haddad described the involvement of the Department of Planning in Public Private Partnership projects as being to assess the projects on their merit, and added:

The department has two further roles that indirectly impact on PPP projects: a strategic role, and a regulatory role of impact assessment and advice to governments on the approvals.¹⁰⁵

3.37 In relation to the Department of Planning's strategic role, it is responsible for the development and implementation of *City of Cities – A Plan for Sydney's Future* (the Metropolitan Strategy), released in December 2005. The Metropolitan Strategy:

sets the strategic framework and the planning blueprints to facilitate and manage growth and investment in Sydney for the next 25 to 30 years. The strategy makes provision for transport planning, it particularly informs infrastructure planning.¹⁰⁶

3.38 The Department of Planning is guided in its strategic role by the Metropolitan Strategy. Accordingly, the Department must assess planning decisions and associated conditions of approval against the Metropolitan Strategy prior to finalising the awarding of contracts.

3.39 In this regard, Mr Haddad noted in evidence that the introduction of Part 3A of the *Environmental Planning and Assessment Act 1979* has led to a more strategic approach to the assessment of major infrastructure projects. Mr Haddad noted:

As it is there is now legislative capability to consider concept plans, which can put more emphasis on consideration of alternatives and, in particular, it can expose [at] an early stage of projects all considerations and critical aspects of those projects to achieve the required objectives.¹⁰⁷

3.40 Mr Haddad subsequently noted to the Committee that the Metropolitan Strategy identifies a series of infrastructure projects in metropolitan Sydney that have priority for delivery and funding. Rail projects include the \$8 billion northwest – CBD – southwest railway link, completion of the Epping to Chatswood rail line by 2008, and completion of the \$1 billion railway clearways program by 2010.

3.41 Road projects included in the Metropolitan Strategy include completion of the \$0.5 billion north west transit-way by 2007, completion of the Parramatta transport interchange this year, construction of the Chatswood transport interchange in 2008, completion of the Lane Cove tunnel and completion of the upgrade of Windsor Road in 2007. The strategy also identifies future road projects that should be investigated such as the eastern extension of the M4, a possible new link between the M2 and F3, possible widening of the M4 and M5 and investigating the F6 corridor reservation.¹⁰⁸

¹⁰⁵ Mr Sam Haddad, Director General, Department of Planning, Evidence, 31 March 2006, p68

¹⁰⁶ Mr Haddad, Evidence, 31 March 2006, p68

¹⁰⁷ Mr Haddad, Evidence, 31 March 2006, p68

¹⁰⁸ Mr Haddad, Evidence, 31 March 2006, p70

PPPs and the Roads and Traffic Authority

3.42 As indicated previously, the RTA has extensive experience in the delivery of PPPs. This experience goes back to the original motorways that were constructed in Sydney – the M2, M4 and M5.

3.43 In his evidence to the Committee, Mr Mike Hannon, Acting Chief Executive of the RTA, indicated that the RTA has put together a team with considerable expertise in the technical, legal, financial and other aspects of PPPs. At the same time, Mr Hannon stated that the RTA has worked very closely with a number of other agencies, notably Treasury, in relation to the financial arrangement for PPPs. Mr Hannon told the Committee that:

In short, the RTA has been doing this now for a long time. It has been able to recruit and retain expertise, put good teams together and deliver significant projects.¹⁰⁹

3.44 Mr Hannon also indicated in evidence that the RTA utilises PPPs where the private sector has the capacity to fund and deliver infrastructure which would not otherwise be funded through the government budgetary process. Recent examples have included the Cross City Tunnel, the M7 Western Sydney Orbital and the Lane Cove Tunnel:

In summary, if major infrastructure is needed and the funds are not available within the budgetary process, then using the private sector to fund those projects and do all aspects of it – the funding, construction and maintenance – has been the way to go forward.¹¹⁰

3.45 Mr Hannon also subsequently noted that by getting the private sector involved in major road projects, the RTA gets access to private sector construction expertise, particularly tunnelling expertise in the case of projects like the Cross City Tunnel. While the RTA has considerable expertise in maintaining roads and undertaking small construction projects of up to \$30 million in value, it has no capacity to undertake large projects such as the Cross City Tunnel. Private sector contractors with the expertise to undertake such large projects include firms such as Leighton and Abigroup.¹¹¹

3.46 Mr Brett Skinner, Director of Finance with the RTA, also expanded in evidence on the way that most RTA PPP projects are financed. Mr Skinner indicated that in the first instance, when Government decides that a project is to be built, the RTA looks at the Comparator to determine whether it can be delivered by Government, based on Government's capacity to borrow at competitive rates and the risks associated with the project. If a decision is made to go to tender, there are a range of trust and partnership structures that are available to tenderers to finance a project – including debt structures that are not appropriate for Government but which can be taken on by the private sector given the tax advantages. As stated by Mr Skinner:

Using the public sector comparators we try to find the most efficient model through which government will provide it. That generally tends to be a fairly simplistic debt-type structure with government equity and contribution. The private sector has the

¹⁰⁹ Mr Mike Hannon, Acting Chief Executive, NSW RTA, Evidence, 31 March 2006, p23

¹¹⁰ Mr Hannon, Evidence, 31 March 2006, p11

¹¹¹ Mr Hannon, Evidence, 31 March 2006, pp23-24, 29

ability to do a number of different financial transactions that we do not necessarily consider within a government structure per se. Those models are moving all the time.¹¹²

3.47 The Committee also understands that in some instances, the RTA employs alliance arrangements in the construction of significant projects. Two recent examples have been the Lawrence Hargrave Drive project and the Windsor Road expansion. In the case of the Windsor Road expansion, the project raised significant issues in relation to water, electricity and gas supply, with the result that the documentation for the project was extremely complex. As a result, the RTA entered into an alliance arrangement with the contractor and is heavily involved in the delivery of the project – more so than is the case in other PPP projects.¹¹³

3.48 The Committee notes that once a PPP funded road infrastructure project is built, the RTA has an ongoing role in monitoring the operation and maintenance of the road, with a view to ensuring that it is ultimately returned to public ownership in an appropriate condition. The RTA also has an ongoing role in relation to the administration of contracts – for example where there is a change of ownership or refinancing of a project.¹¹⁴

3.49 Finally, specifically in relation to the Cross City Tunnel, as indicated in the Committee's first report, the NSW Premier's Department Infrastructure Implementation Group released the *Review of Future Provision of Motorways in NSW (IIG Review)* in December 2005. As noted in the first report, the review found that:

- As a general rule the authority should minimise the closure and/or alteration of existing roads unless directly at the heart of the specific objectives of a project.¹¹⁵
- The RTA should have greater regard to value for money for users when deciding which bid to accept for a project.¹¹⁶

3.50 In evidence, Mr Hannon said:

The recommendations of the Richmond report have been endorsed by government and, going forward, the Richmond report recommendations will be the way that the Government delivers future motorway projects.¹¹⁷

PPPs and local government

3.51 On 16 March 2004, the Liverpool City Council was dismissed following a failed PPP for the redevelopment and management of infrastructure within the Woodward Park precinct (the so-called 'Oasis' project).

¹¹² Mr Skinner, Evidence, 31 March 2006, p25

¹¹³ Mr Hannon, Evidence, 31 March 2006, p32

¹¹⁴ Mr Wielinga, Director Motorways, RTA, Evidence, 31 March 2006, pp25-26

¹¹⁵ Infrastructure Implementation Group, *Review of Future Provision of Motorways in NSW*, December 2005, p28

¹¹⁶ IIG Review, December 2005, p3

¹¹⁷ Mr Hannon, Evidence, 31 March 2006, p12

- 3.52** Subsequently, on 28 June 2004, Commissioner Maurice Daly handed down his second report on the Oasis project: *Recommendations for Public-Private Partnerships in Local Government*. The report found that Liverpool City Council lacked the in-house expertise required to successfully negotiate PPP arrangements, and made a series of recommendations about managing local government participation in PPPs in the future.
- 3.53** In response to the findings of Commissioner Daly, the Government introduced the *Local Government Amendment (Public-Private Partnerships) Act 2004*, which inserted a new Part 6 of Chapter 12 into the *Local Government Act 1993*, setting out a new framework for local government PPPs. That framework includes a definition of PPPs, guidelines to be followed by councils in relation to PPPs and restrictions on the use of PPPs by local government, including the requirement that a council must not enter into a PPP unless the council has provided the Director-General of the Department of Local Government with an assessment of the project. These provisions of the *Local Government Act 1993* commenced on 1 September 2005.
- 3.54** In addition, the Department of Local Government released on 2 September 2005 new *Guidelines on the Procedures and Processes to be followed by Local Government in Public-Private Partnerships*. The guidelines set out processes and procedures to be followed by councils should they decide to enter into a PPP, including preparing business plans, probity plans, financial feasibility statements, risk assessments, undertaking appropriate public consultation, meeting Council's own strategies and management plans, and engaging in appropriate market-testing processes. The guidelines also include a requirement to assess the economic feasibility of a PPP.¹¹⁸
- 3.55** In commenting on these arrangements, Mr Woodward, Deputy Director General of the Department of Local Government, observed in evidence:
- The department does not believe that the legislation or the guidelines will impose any onerous, additional burdens on councils entering into private-public partnerships. It is our view that any prudent organisation should undertake these investigations in any case. Councils considering a PPP must submit their proposal to the Director General of the Department of Local Government for determination as to whether a PPP project must be reviewed by the local government project review committee, prior to the council entering into the arrangement.¹¹⁹
- 3.56** Mr Woodward subsequently observed that in making a determination on a PPP project proposed by a local council, the Director General will assess the perceived risks associated with the project, with high risk projects referred to the Project Review Committee. Projects in excess of \$50 million, or projects where council's contribution is greater than 25% of its annual income, are automatically referred to the Project Review Committee.
- 3.57** The Project Review Committee is chaired by a representative of the Department of Local Government and comprises representatives from Treasury, the Premier's Department, the Cabinet Office and the Department of Planning. The role of the Committee is to assess local government PPP projects to ensure that councils adhere to the processes specified in the

¹¹⁸ Mr Woodward, Deputy Director General, Department of Local Government, Evidence, 31 March 2006, p2,3

¹¹⁹ Mr Woodward, Evidence, 31 March 2006, p2

*Guidelines on the Procedures and Processes to be followed by Local Government in Public-Private Partnerships.*¹²⁰

3.58 Commenting on the overall arrangements, Mr Woodward observed:

The intention of the Act is to ensure that all councils have a clear understanding of the risks they are entering into and to ensure they have covered them. It also ensures that the projects have community support. One of the underlying philosophies of the guidelines is that this process is open and transparent, that projects coming to the committee are well known in and supported by the community, and that they are in the council's management plan. It should not be a situation in which a developer approaches a council and the council, in secrecy, thinks it is a good idea and wants to progress it. When the project comes to the department, all that must be in the public domain and have been properly assessed in terms of economic viability.¹²¹

3.59 Mr Woodward subsequently noted that the Department has considerable internal expertise to call upon when assessing PPP projects referred to the Department by local councils. In more difficult cases, the Department can also draw on the expertise of other agencies such as Treasury through the Project Review Committee. The Department is also able to rely on Treasury for financial advice, or to call in at short notice Treasury-approved consultants if necessary.¹²²

3.60 The Committee notes that these new arrangements for assessing proposed local council PPP projects are broadly supported by the Local Government Association of NSW, although the association did indicate the following concerns:

- The provision of unfettered powers for the Minister for Local Government to examine any PPP project, regardless of the thresholds of \$50 million or 25% of the annual budget of a council, appears to be excessive and unnecessary.
- The Local Government Association of NSW is not represented on the Project Review Committee.¹²³

3.61 Mr Woodward also indicated that he was not aware of any adverse reaction by councils to the new requirements for assessing PPPs. Partly this is because the additional cost of assessing PPPs is borne by the Department of Local Government. At the same time, Mr Woodward did suggest that councils are now more aware of the potential pitfalls of PPPs and are more willing to consult with the Department to address any risk issues.¹²⁴

3.62 Since the introduction of the new arrangements for local government PPPs, six PPP projects have been referred to the Department of Local Government for review. Three projects have gone to the Project Review Committee: the Parramatta Civic Place redevelopment proposal, the Woollahra Council redevelopment of its Cosmopolitan Centre and the redevelopment of

¹²⁰ Mr Woodward, Evidence, 31 March 2006, p2

¹²¹ Mr Woodward, Evidence, 31 March 2006, p3

¹²² Mr Woodward, Evidence, 31 March 2006, p6

¹²³ Correspondence from Cr Genia McCaffery, President, Local Government Association of NSW, and Cr Col Sullivan, President, Shires Association of NSW, to Committee Chair, 30 March 2006

¹²⁴ Mr Woodward, Evidence, 31 March 2006, p9

Tapps Land in Liverpool. Three other projects have also been assessed by the Department, but without going to the committee: Leeton Council's commercial compost facility, Ryde City Council's changes to the Top Ryde shopping centre and Young Shire Council's proposal to redevelop its civic administration building.¹²⁵

- 3.63** By contrast with the Department of Local Government's current role in assessing local council proposed PPP projects, Mr Woodward noted that before the amendments to the *Local Government Act 1993*, the Department had very little or no direct involvement in PPP projects being undertaken by councils. This was the case in relation to the Liverpool City Council 'Oasis' project.¹²⁶
- 3.64** Finally, the Committee notes that it also took evidence from Ms Simone Coombes, representative of the South East Region Training and Enterprise Centre (SERTEC). SERTEC is a not-for-profit company that promotes employment and economic development in south-eastern NSW.
- 3.65** Ms Coombes indicated to the Committee that local governments find it increasingly difficult to maintain and develop infrastructure in rural and regional NSW, and that SERTEC believes that PPPs have the potential to play an important role in addressing this situation. As such, SERTEC is involved in negotiation of seven joint PPP projects on the south coast of NSW, with an estimated capital value of \$500 million.¹²⁷

PPPs and the Department of Education and Training

- 3.66** In recent years, the Department of Education and Training (DET) has let two major PFP contracts to provide government schools in new urban release areas under the *New Schools Privately Financed Project*. Under this project, contractors must:
- design, construct and commission specific school facilities at their own cost by specific dates
 - provide operational, cleaning, security, safety, utility maintenance and repair services for each school facility
 - hand the school facilities over to the government, or a new contractor nominated by the government, at the termination of the contract.
- 3.67** The first contract under the *New Schools Privately Financed Project* involved the provision of nine new schools at a total cost to government of \$137 million. Bids from the private sector were sought in October 2001, and the contract let in December 2002. The second contract of \$178 million involved the provision of 10 new schools. Bids were sought in May 2005, and the contract let in December 2005.¹²⁸

¹²⁵ Mr Woodward, Evidence, 31 March 2006, p8

¹²⁶ Mr Woodward, Evidence, 31 March 2006, p6

¹²⁷ Ms Coombes, Evidence, 3 April 2006, p66

¹²⁸ NSW Auditor General, *The New Schools Privately Financed Project*, March 2006, pp10-12

3.68 The nine schools delivered under the first contract were:

- John Edmondson High School (Liverpool)
- Glenwood High School
- Ironbark Ridge Primary School (Rouse Hill)
- Kellyville Ridge Primary School
- Sherwood Ridge Primary School (Kellyville)
- Dapto Primary School
- Tallowood School for Special Purposes (Kellyville)
- Mataram Road Primary School (Warnervale)
- Shell Cove Primary School.

3.69 Only four schools have been announced under the second contract (and they are yet to be constructed):

- Ashtonfield Primary School
- Hamlyn Terrace Primary School (Warnervale)
- Ropes Crossing Primary School (St Marys)
- Second Ponds Creek Primary School (Rouse Hill).¹²⁹

3.70 Since the evidence received by the Committee, the Hon Carmel Tebbutt, Minister for Education and Training, has announced the remaining six schools to be delivered under the second contract:

- Halinda School for Special Purposes
- Kelso High School
- Tullimbar Village Primary School
- Elderslie Primary School
- Hoxton Park South Primary School
- Rouse Hill High School.¹³⁰

3.71 The Auditor-General released a performance audit on the *New Schools Privately Financed Project* in March 2006. In his report, the Auditor-General found that the new school contracts ‘were established and let in a way that greatly assisted their potential for delivering value for money’, and that DET had developed:

¹²⁹ Correspondence from Mr Whyte, Project Director of Public Private Partnerships, DET to Committee Director, 19 April 2006

¹³⁰ Minister for Education and Training Media Release, ‘Six more public schools for NSW communities’, 11 May 2006

- a clearly defined business case with the objectives of a faster supply of schools, possible cost savings, innovation and simplified service management
- good tender lists with competitive tension maintained throughout the tender process
- a sound performance monitoring and reporting system, with provision for it to intervene in the case of poor contractor performance.¹³¹

3.72 However, the Auditor-General's report recommended some measures to improve the project further, including more complete disclosure of contract documents and greater use of the Comparator in comparing the costs, benefits and risks of different approaches. The Auditor-General also highlighted the need for careful ongoing management of the contracts over the 30-year life of the *New Schools Privately Financed Project*.¹³²

3.73 In evidence, Mr Terry Whyte, Project Director of Public Private Partnerships with DET, indicated that the current second round contract for ten new schools is expected to be delivered up to the beginning of 2009, after which there is an expectation that a new contract will be let, to commence in the following year.¹³³

3.74 Mr Whyte also expanded on the second contract arrangements. He indicated that five or six consortiums applied for the contract, and three were taken through to more detailed proposals. The successful consortium has responsibility for the delivery and maintenance of all ten schools. The consortium is using two builders to construct the new schools – Hanson Yuncken and St Hillier's – while maintenance services are provided by Spotless.¹³⁴

3.75 Mr Whyte also indicated to the Committee that the PFP used to deliver schools under the *New Schools Privately Financed Project* has enabled DET to deliver multiple new schools in a single year, whereas under previous contractual and funding arrangements DET only ever had the capacity to bring one or two new schools online each year. The new service delivery model over 30 years is also delivering a cost saving to the Department compared to traditional service and facility management.¹³⁵

3.76 Asked to comment on the response of teachers and parents to the new PPP schools, Mr Lindsay Wasson, Regional Director of Education in Western Sydney, observed:

The response has been overwhelmingly positive Principals noted several things that I think are critical here. One of them is the quality of the buildings. Given the fact that the consortium needs to maintain those schools, there is a vested interest in making sure that the quality is built in from the very beginning. So the standard is extremely high. Principals also note the efficiency of a one-stop shop for all maintenance and other issues associated with any ongoing site issues. There is obviously an efficiency built into that but it also frees them from a lot of the site management issues that take principals away from the core business of educational leadership and the improvement of learning outcomes. One of the very powerful

¹³¹ NSW Auditor General, *The New Schools Privately Financed Project*, March 2006, p2

¹³² NSW Auditor General, *The New Schools Privately Financed Project*, March 2006, p3

¹³³ Mr Whyte, Evidence, 3 April 2006, p73

¹³⁴ Mr Whyte, Evidence, 3 April 2006, p74

¹³⁵ Mr Whyte, Evidence, 3 April 2006, pp76-77

responses that I hear – and it is not only principals but also staff within the schools – is that there is a real sense that the school can focus on what it is there to do, which is to teach kids rather than having time diverted from that to issues around maintenance and other management issues that might well take people away from their core business.¹³⁶

3.77 Finally, the Committee notes the comment of Professor David Richmond, special advisor to the Infrastructure Implementation Group with the Premier's Department, that the *New Schools Privately Financed Project* has 'got the scoping' of the contract correct. That is to say that it is clear what the private sector is required to do both in terms of the construction process and also in terms of the ongoing operation of the facilities.¹³⁷

PPPs and Sydney Water

3.78 As indicated previously, Sydney Water has adopted a number of alliance arrangements in the construction of many of its infrastructure projects. As noted, alliance projects between public and private partners involve greater sharing of the risk of a project than is usual with a PPP. In the case of Sydney Water alliance arrangements:

- Sydney Water may typically bear 50% of the cost overruns associated with a project.
- Sydney Water typically undertakes the planning, and therefore takes responsibility for obtaining approval for the project from, typically, the Department of Planning.
- Sydney Water typically would undertake the communications element of the project, particularly if it becomes controversial and newsworthy.
- The private sector party or parties to the alliance manage other elements of the project, for example construction management.

3.79 In his evidence Mr Ron Quill, General Manager of Asset Solutions with Sydney Water, noted that the type of projects that lend themselves to alliance arrangements are large in size (\$100 million or more), complex in their scope, involve considerable risk and are typically short in their timeframe. He also suggested that establishing alliance arrangements is considerably easier than PPPs, allowing projects to be up and running more rapidly.¹³⁸

3.80 Sydney Water is currently involved in four alliance projects, and has previously completed two other projects, including the Northside Storage Tunnel, which was a \$465 million project. The current projects involve priority sewerage programs in the northern Illawarra and Warragamba/Silverdale areas, with future sewerage programs for Brooklyn and Dangar Island.¹³⁹

3.81 Asked to comment on the advantages of the alliance approach, Mr Quill observed:

¹³⁶ Mr Wasson, Evidence, 3 April 2006, p79

¹³⁷ Professor David Richmond, Special Advisor, Infrastructure Implementation Group, Evidence, 3 April 2006, p35

¹³⁸ Mr Ron Quill, General Manager, Asset Solutions, Sydney Water, Evidence, 3 April 2006, pp56-57

¹³⁹ Mr Quill, Evidence, 3 April 2006, p56

There have been numerous benefits. I guess the most important benefit that we have realised on alliance contracts of late is that we have had outstanding safety performance. That is one of our primary considerations on any contract. We are quite proud of that. The alliance partners are also proud of that because it means that people are not getting hurt on our jobs ... We have also saved money on particularly the Northside Storage Tunnel and the sewage pumping station alliance, which is also a benefit. Sydney Water has shared directly in the benefit of that by obtaining 50 per cent of the cost underruns involved. I also have to say that customer satisfaction, particularly with the priority sewerage program alliances, has progressively improved over time. Our project teams, working in co-operation with our Sydney Water customer staff, have developed protocols and systems and information particularly which has assisted our customers enormously as we move quite intrusively at times through their front yards or backyards or across their streets.¹⁴⁰

3.82 The Committee notes that Sydney Water has in the past also entered into PPP arrangements, as opposed to alliance projects. In the mid-1990s, Sydney Water entered into a build-own-operate contract over 25 years for four major water filtration plants in Sydney. However, Sydney Water has not entered into similar arrangements since that time.¹⁴¹

3.83 Asked to comment on the process by which Sydney Water decides between a traditional PPP and an alliance arrangement, Mr Quill indicated that Sydney Water has developed a decision-making matrix to determine the particular procurement method to be adopted for a particular project. That matrix takes into account a range of considerations, including expenditure by Sydney Water, design and construction types and so forth.¹⁴²

PPPs and RailCorp

3.84 RailCorp and its predecessors have been involved in two PPP projects. The first was the airport line, the contract for which was signed in 1995, and involved the construction and operation of the line from Central through the airport line stations to Wollli Creek. The line was commissioned in early 2000.¹⁴³

3.85 In response to a question from a Committee member in relation to the final cost to taxpayers of the agreement signed in 1995, Mr Graham said:

As I said earlier, the track and tunnels cost \$700 million. As a result of the receivership and of, in hindsight, the poor quality documentation that was part of the original agreement, a further \$80 million has been negotiated with the consortium and approved by government. Of that \$80 million, all is being paid on an annual basis, not as an upfront payment based on a revenue formula. I believe of the \$80 million, \$27 million has been paid to date. There is an expectation that the remainder will be paid for in a number of years.¹⁴⁴

¹⁴⁰ Mr Quill, Evidence, 3 April 2006, p61

¹⁴¹ Mr Quill, Evidence, 3 April 2006, p58

¹⁴² Mr Quill, Evidence, 3 April 2006, p62

¹⁴³ Mr Vince Graham, Chief Executive Officer, RailCorp, Evidence, 12 April 2006, p22

¹⁴⁴ Mr Graham, Evidence, 12 April 2006, p30

3.86 In further information provided in answer to a question taken on notice during the hearing, Mr Graham clarified that:

- RailCorp agreed to pay ‘a capped amount with a present value of \$80 million in settlement of the disputes arising from the original Stations Agreement.’
- The capped amount is not a lump sum payment, and is paid over time with 85% of the RailCorp train fare revenue earned from the sale of train tickets for travel to or from an airport line station and a RailCorp station, or between Airport Line stations, remitted to the Airport Link Company until the \$80 million has been extinguished.
- RailCorp has paid approximately \$36.25 million as at 1 April 2006, representing \$26.7 million in September 1 present value dollars. The outstanding balance is \$53.3 million.¹⁴⁵

3.87 The second is the current PPP process RailCorp is undertaking for the replacement of 500 non-airconditioned carriages on the Sydney CityRail network. Under the contract, the successful tenderer or tenderers will design, build, finance and maintain sufficient rolling stock to deliver 59 eight-car train sets on a daily basis to CityRail for a period of approximately 30 years, with RailCorp paying for the carriages on a daily basis. Failure by the successful tenderer or tenderers to deliver 59 eight-car train sets on any given day will entail financial penalties.¹⁴⁶

3.88 Mr Vince Graham, CEO of RailCorp, subsequently elaborated on the size of the project. In total, the capital cost of building approximately 500 carriages is in the order of \$1.5 billion, with the total cost of the 30-year maintenance arrangements expected to push the total cost of the project up to approximately \$4 billion.¹⁴⁷

3.89 The advantage of the PPP project cited by Mr Graham is that it will allow replacement of non-airconditioned carriages on the CityRail network far earlier than would otherwise have been possible. Mr Graham suggested that working through the Government’s standard capital works funding arrangements, RailCorp would not have sufficient funds to replace the rail cars much before 2016-2017,¹⁴⁸ a strong justification for using a PPP arrangement. In addition, Mr Graham argued that the PPP arrangements provide the manufacturer and operator with a significant incentive to provide reliable trains:

The PPP structure is fundamentally different in that ownership of the asset remains with the PPP. Because of the availability payment arrangements – in other words, unless you supply the train for passenger service you do not get paid – there is now an enormous incentive for those who design and build the train to build in the reliability because otherwise they are going to suffer the consequences of unreliability for an extended period of time.¹⁴⁹

3.90 In his evidence to the Committee, Mr Graham also indicated that RailCorp may well undertake additional PPP-type funding arrangements to finance additional rail infrastructure

¹⁴⁵ Mr Vince Graham, CEO, RailCorp, answer to question taken on notice, received 4 May 2006, p1

¹⁴⁶ Mr Graham, Evidence, 12 April 2006, p22

¹⁴⁷ Mr Graham, Evidence, 12 April 2006, p23

¹⁴⁸ Mr Graham, Evidence, 12 April 2006, p24

¹⁴⁹ Mr Graham, Evidence, 12 April 2006, p28

projects in the Sydney basin in the future, including possibly undertaking PPP projects to construct the new link to the south-western suburbs from Glenfield to Leppington, the north-west rail link, and the second harbour crossing.¹⁵⁰

PPPs and the Department of Corrective Services

3.91 The Department of Corrective Services is currently involved in a joint PPP project along with the Department of Health and Justice Health for a \$130 million redevelopment of the existing hospital at Long Bay Jail. The new hospital will incorporate both a forensic hospital and a prison hospital.¹⁵¹

3.92 In evidence, Mr Gerrard Schipp, Deputy Commissioner of Corporate Services with the Department of Corrective Services, elaborated on the new arrangements:

The forensic hospital will be part of the Justice-Health section of the Department of Health's side of the public department's joint venture. Corrective Services' responsibility will be the prison hospital. There are two hospitals involved in the project, the forensic hospital and the prison hospital. The forensic hospital will be on the site of the current prison hospital, which will be de-gazetted as a prison facility and re-gazetted as a health facility. The Department of Corrective Services will have no involvement at all in the operation of that facility

...

In respect of the prison hospital, however, the core services will be provided by the Department of Corrective Services. We will be providing prison officers, Justice-Health will be providing the health services, and the consortium that is providing the PPP will provide the finance, build the facility and provide the soft facilities maintenance, essentially the maintenance utilities, garbage removal and collection, those sorts of services.¹⁵²

3.93 The Committee also questioned Mr Schipp in evidence as to why the recent construction of the Central West Prison Facility at Wellington was not undertaken using a PPP. In response, Mr Schipp indicated that Cabinet took a decision in April 2004 that the facility should be publicly delivered, based on evidence of greater value for money in the delivery of the project as a public procurement. As stated by Mr Schipp:

When the feasibility study was undertaken to look at whether or not Wellington should be delivered as a PPP, it was demonstrated that it was not as effective or as cost effective as delivering it as a publicly provided facility.¹⁵³

3.94 The Committee understands that the Department of Corrective Services is currently examining the construction of correctional facilities with an additional 1,000 beds over the

¹⁵⁰ Mr Graham, Evidence, 12 April 2006, p24

¹⁵¹ Mr Gerrard Schipp, Deputy Commissioner, Corporate Services, Department of Corrective Services, Evidence, 3 April 2006, pp71,75

¹⁵² Mr Schipp, Evidence, 3 April 2006, p75

¹⁵³ Mr Schipp, Evidence, 3 April 2006, p72

coming four years, including a 500-bed facility at Nowra and two 250-bed facilities at Lithgow and Cessnock. No decision has yet been taken whether any of those projects will be procured through a PPP.¹⁵⁴

PPPs and the Department of Health

3.95 The Committee did not take evidence during its inquiry in relation to the use of PPPs by the Department of Health. However, the Committee notes that officials from the Department of Health appeared before the Public Accounts Committee on 17 February 2006 to outline their experience of PPPs.

3.96 As indicated above, the Department of Health is currently involved in a PPP with the Department of Corrective Services in the construction of a joint forensic and prison hospital at Long Bay Jail. The Department is also involved in the construction of Mater Hospital in the Hunter through a PPP. Commenting on the two projects, Mr Robert McGregor, Deputy Director General of the Department of Health, observed:

I would have to say the two projects are probably more complex than one would normally experience within a hospital. For example, a forensic hospital inside of a prison, being built in conjunction with a hospital inside a prison where you have got two agencies involved, represents some challenges, particularly with issues such as security, et cetera.

In terms of the project in the Hunter, the Mater Hospital, we had involved the Sisters, the Order, we had the affiliated health organisation, the independent board of trustees, we had to address issues such as canon law, alienation of land and a whole plethora of things. Having been through the experience of both those PPPs, I think we are pretty well suited now to be able to manage most health PPPs.¹⁵⁵

3.97 Mr McGregor also noted that the Department of Health has been involved in previous PPPs, including redevelopment of former hospitals. In addition, Mr McGregor noted that the Department works closely with Treasury, and has built up a great deal of experience in PPPs.¹⁵⁶ Mr McGregor commented:

If I could come back to your initial question about expertise and whether there should be a separate body, I think for organisations such as the RTA ... they have built up the expertise over a long period of time. I think we are in the same position ... we are a large procurer, so I think that for us it is appropriate to maintain our own expertise, but for a small agency - and we do do it on a centralised basis in Health, we do not leave it to the area health services to do it themselves, so we work with them or for them, but smaller agencies who might procure one major project every ten years I do not think would have the necessary expertise to do that, so there may be a need for stronger central support from those in Treasury or whatever body would do that.¹⁵⁷

¹⁵⁴ Mr Schipp, Evidence, 3 April 2006, p75

¹⁵⁵ Mr Robert McGregor, Deputy Director General, Department of Health, Evidence given to the Public Accounts Committee, 17 February 2006, pp9-10

¹⁵⁶ Mr McGregor, Evidence to the Public Accounts Committee, 17 February 2006, p10

¹⁵⁷ Mr McGregor, Evidence to the Public Accounts Committee, 17 February 2006, p13

- 3.98** Mr McGregor further indicated that the PPP model has also been applied to staffing of hospitals under labour service agreements, whereby hospital staff, including clinical and back-of-house staff, are managed by private sector firms, although they remain Department of Health employees. Mr McGregor indicated that there has been some resistance from unions and the Trades and Labour Council to such arrangements, and that early experience at Port Macquarie Hospital led to considerable staff dissatisfaction with the model. However, Mr McGregor suggested that, since then, the Department has struck on an ideal model.¹⁵⁸
- 3.99** On a separate note, Mr McGregor also commended to the Public Accounts Committee the usefulness of Treasury's *Working with Government Guidelines*, especially in relation to risk management.¹⁵⁹ This was reiterated by a number of officials accompanying Mr McGregor. Mr David Gates, Director of Asset and Contract Services with the Department of Health, noted that the guidelines have established consistency in the market place for PPPs between agencies and also between states.¹⁶⁰ Ms Elsie Choy, Associate Director of Joint Sector Development with the Department of Health, indicated that the guidelines have been very useful in providing a framework for identifying projects that are appropriate for a PPP.¹⁶¹ In turn, Mr Glenn Monckton, Project Director of the Long Bay Forensic and Prison Hospitals PPP Project with the Department of Health, noted that the guidelines have proved an effective tool for the management of PPP projects, particularly in relation to the identification and treatment of risk.¹⁶²

Public Private Partnerships in other jurisdictions

- 3.100** The Committee notes that the NSW Public Accounts Committee's current Inquiry into Public Private Partnerships has a specific term of reference addressing 'New South Wales, Australian and international legislative and policy frameworks and practices regarding private sector investment in public infrastructure'.¹⁶³ The Public Accounts Committee's inquiries have included a study tour of the United Kingdom and the United States in December 2005 to investigate the way in which PPPs are conducted in those countries, as well as the taking of evidence in relation to Australian jurisdictions. As the Public Accounts Committee's report is imminent and with the intent of avoiding duplication, this Committee will confine itself to a brief outline of the key features of other jurisdictions.

¹⁵⁸ Mr McGregor, Evidence to the Public Accounts Committee, 17 February 2006, p10

¹⁵⁹ Mr McGregor, Evidence to the Public Accounts Committee, 17 February 2006, p9

¹⁶⁰ Mr David Gates, Director of Asset and Contract Services, Department of Health, Evidence to the Public Accounts Committee, 17 February 2006, p9

¹⁶¹ Ms Elsie Choy, Associate Director of Joint Sector Development, Department of Health, Evidence to the Public Accounts Committee, 17 February 2006, p9

¹⁶² Mr Glenn Monckton, Project Director, Long Bay Forensic and Prison Hospitals PPP Project, Department of Health, Evidence to the Public Accounts Committee, 17 February 2006, p9

¹⁶³ NSW Public Accounts Committee website, available at www.parliament.nsw.gov.au (accessed 26 April 2006)

Australia

- 3.101** All Australian states and territories have some experience with and involvement in PPPs. The two states with the most experience of PPPs, and with the greatest proportion of private provision of capital for public infrastructure are Victoria and New South Wales.

The National PPP Forum

- 3.102** The National PPP Forum was formed in 2004 and comprises members from all States, Territories and the Federal Government. The National PPP Forum is intended to harmonize policies and processes associated with PPPs, and encourage 'better coordination and information sharing among Australian governments.'¹⁶⁴

- 3.103** Membership of the National PPP forum includes Australian State and Territory Ministers who are responsible for PPPs in their jurisdictions (typically the Treasury), with the chair rotating between them. NSW chaired the Forum in 2005 and the Commonwealth is chairing it in 2006. The forum is supported by a working group of senior officers from the jurisdictions, who meet on a regular basis to exchange information and ideas on PPPs and to 'try to develop common approaches'.¹⁶⁵

- 3.104** The coordination of the various jurisdictions' approaches to PPPs is intended to reduce the transaction costs associated with bidding for PPP projects. This is seen as a necessary response to the relatively small size of the Australian capital market, where international consortia bidding on PPP projects are likely to be operating in more than one jurisdiction.

- 3.105** Mr Pierce, Secretary of NSW Treasury, in discussing the close collaboration between Victoria and New South Wales on PPP policy and guidelines, provided an explanation for the importance of that collaboration:

[I]n capital market terms Australia is relatively small and the transaction costs of doing these things can be quite high

...

We saw having as much commonality as possible between the jurisdictions as an important contribution to keeping the transaction costs of these things as low as possible so that things like the contracts and the need to employ lawyers to go through them was minimised.¹⁶⁶

- 3.106** The development of standard contract clauses across jurisdictions reflecting standard commercial principles initially developed in Victoria was one outcome of the 2005 Forum.¹⁶⁷ The Committee notes that this work is ongoing. The National PPP Forum also maintains a 'pipeline' of PPP projects on its website to provide a summary of PPP projects nationally.¹⁶⁸

¹⁶⁴ National PPP Forum website, available at www.pppforum.gov.au (accessed 28 April 2006)

¹⁶⁵ Mr Pierce, Evidence, 3 April 2006, p48

¹⁶⁶ Mr Pierce, Evidence, 3 April 2006, p48

¹⁶⁷ National PPP Forum website, available at www.pppforum.gov.au (accessed 28 April 2006)

¹⁶⁸ National PPP Forum website, available at www.pppforum.gov.au (accessed 26 April 2006)

Total PPP projects in Australia (at October 2005) have an estimated value of \$20 billion, including more than \$4 billion in the national economy, and over \$6 billion under consideration.¹⁶⁹

Victoria

- 3.107** Victoria's policy on PPPs is called *Partnerships Victoria*, which is also the name given to the government unit in Victoria responsible for overseeing PPP policy and implementation. It is located within the Victorian Department of Treasury and Finance.
- 3.108** The *Partnerships Victoria* policy was launched in June 2000, and since that time 15 contracts for major infrastructure projects have been closed, representing 10-12% of Victoria's capital expenditure.¹⁷⁰ High profile PPP projects in Victoria include the Spencer Street station upgrade and the EastLink tollway.
- 3.109** Mr Peter Fitzgerald, in his *Review of Partnerships Victoria Provided Infrastructure* (the Fitzgerald Review), suggested that the proportion of infrastructure projects provided through PPP projects (approximately 10%) reflected the appropriate 'niche' role PPPs fulfil within the spectrum of infrastructure provision methods.¹⁷¹
- 3.110** A comparison between the Victorian and NSW models for PPPs is made in Chapter 4.

International

- 3.111** Public Private Partnerships are used in many international jurisdictions, including the United States and countries of the European Union. This Second Report will focus on the United Kingdom, as the Victorian, New South Wales and UK PPP frameworks share many similarities and therefore the lessons learnt in one jurisdiction are often applicable to the other two jurisdictions.

United Kingdom

- 3.112** The United Kingdom has extensive experience with Public Private Partnerships. The Privately Financed Initiative (PFI) was established in 1992 under a Conservative government and was adapted by the incoming Blair Labour government in 1997. PFI projects are now an integral part of public social and economic infrastructure delivery. Between 10 and 15 per cent of total investment in public services is provided through PFI projects.¹⁷²
- 3.113** The current number of PFI projects signed has a total capital value of over £46 billion, with completed projects across a broad range of sectors including transport projects, schools

¹⁶⁹ National PPP Forum website, available at www.pppforum.gov.au (accessed 26 April 2006)

¹⁷⁰ Mr John Fitzgerald, Deputy Secretary, Victorian Department of Treasury and Finance, Evidence, 31 March 2006, p51

¹⁷¹ *Review of Partnerships Victoria Provided Infrastructure*, January 2004, p16

¹⁷² HM Treasury, *PFI: strengthening long-term partnerships*, March 2006, p13. Available at http://www.hm-treasury.gov.uk/media/1E1/33/bud06_pfi_618.pdf. (accessed 28 April 2006)

projects and health facilities.¹⁷³ The next five years will see approximately 200 PFI projects commence, with a capital value of £26 billion.¹⁷⁴

- 3.114** The UK Treasury sets PFI policy, and supports the Private Finance Units established in major government Departments. A Project Review Group, chaired by the UK Treasury, reviews individual PFI projects once they have been vetted by the relevant departmental Private Finance Unit. The Project Review Group is responsible for approving the award of PFI credit funding.
- 3.115** Partnerships UK, an organisation formed out of the UK Treasury, was established in 2000 and is a joint venture bridging the gap between public and private sectors. It is itself a public private partnership, with the private sector having a majority shareholding. Its mission is to:
- support and accelerate the delivery of infrastructure renewal, high quality public services and the efficient use of public assets through better and stronger partnerships between the public and private sectors.¹⁷⁵
- 3.116** Partnerships UK is a dedicated and permanent centre of expertise available solely to the public sector. It provides senior strategic support to public bodies, sharing responsibility for delivering successful PFI/PPP solutions, from the appointment and management of advisers to the scoping, development, troubleshooting and negotiation of value for money projects. It can share risk with its public sector partners by investing its own capital and human resources in projects and programmes, including the provision of senior members of staff for key roles, and therefore has a common interest with its partners in delivering successful outcomes.
- 3.117** *A Report on Operational PFI Projects* prepared by Partnerships UK and released in March 2006 reviewed the performance of PFI projects during their operational phase. The report, and the larger HM Treasury's *PFI: Strengthening long-term partnerships*, also released in March 2006, both have positive findings on the advantages and performance of PFI projects, citing, in particular, high levels of satisfaction from public sector managers of contracts with private sector partners.
- 3.118** However, the report highlighted the need to maintain contract management beyond the procurement phase and over the much longer operational phase. This was particularly so for social infrastructure projects such as education projects.
- 3.119** The most high profile UK PPP is the London Underground PFI, an approximately £20 billion project with a 30 year contract period. Two private consortia ('infracos' or infrastructure consortia) have responsibility for the tracks, signals and stations on the London Underground, while the public sector operates the trains.

¹⁷³ HM Treasury, *PFI: strengthening long-term partnerships*, March 2006, p13. Available at http://www.hm-treasury.gov.uk/media/1E1/33/bud06_pfi_618.pdf. (accessed 28 April 2006)

¹⁷⁴ HM Treasury, *PFI: strengthening long-term partnerships*, March 2006, p3. Available at http://www.hm-treasury.gov.uk/media/1E1/33/bud06_pfi_618.pdf. (accessed 28 April 2006)

¹⁷⁵ Partnerships UK mission statement, available at <http://www.partnershipsuk.org.uk/aboutpuk/overview.asp> (accessed 28 April 2006)

- 3.120** The Public Private Partnerships Programme (4Ps) was established in 1996 by the United Kingdom Local Government Association to provide support to local authorities undertaking projects and procurements, including PFI projects.

Conclusion

- 3.121** The Committee notes that PPPs are broadly spread across government agencies in New South Wales. They are an important element of infrastructure and service delivery in New South Wales, as they are in other jurisdictions.
- 3.122** The importance of an authoritative and effective framework supporting government agencies through the PPP process is clear. The Committee believes that public interest in and mistrust of the involvement of the private sector in the provision of public infrastructure and services means that the need for transparency and accountability in the process is paramount.
- 3.123** The Committee considers specific elements of the PPP framework in the following chapter, with the intention of identifying areas where the framework and processes can be improved.

Chapter 4 Frameworks for Private Public Partnerships

This chapter examines specific elements of the Public Private Partnership framework within NSW, draws comparisons with other jurisdictions, especially Victoria, and considers ways to improve the existing framework. Consideration is also given to the interaction between strategic planning and PPPs. The material presented here is not intended to be exhaustive, and the Committee has focussed on a small number of key areas where useful recommendations can be made. The Committee notes that the NSW Parliament's Public Accounts Committee is currently conducting an inquiry into PPPs, with broader terms of reference. The work of the two committees is complementary.

Financing public infrastructure

- 4.1 While the focus of this chapter is on the processes associated with government agencies in the use of PPPs, it is nevertheless important to canvass some of the contextual issues raised by witnesses at hearings and in submissions, relating to alternative methods of financing public infrastructure.
- 4.2 In the first stage of its Inquiry, the Committee heard a great deal of evidence about the various methods of financing public infrastructure. One of the principal points of contention was the desirability of using public debt to finance infrastructure. Similar arguments were raised by many witnesses in the hearings associated with this second stage of the Inquiry and are accordingly addressed here.
- 4.3 The Committee notes that the evidence heard addressed two distinct issues. The first is whether governments should use public debt to fund infrastructure and to what extent. The other issue is whether governments should make use of private finance to fund public infrastructure

Public Debt

- 4.4 The current NSW Government's position on public debt was succinctly described by the former Treasurer, the Hon Michael Egan, when he gave evidence to the Committee in December 2005:

All debt has to be repaid, all debt has to be serviced, and to go into debt to have the budget deficits at a time of very high economic growth and very high revenues would, in my view, have been quite reckless. You take advantage of the sun shining to fix the roof.¹⁷⁶

- 4.5 This position was expanded upon by Dr Kerry Schott, Executive Director, Private Projects and Asset Management, NSW Treasury. Dr Schott referred to the long term outlook for expenditure demand, that as a result of the aging population will be 'huge'. As a consequence, she said:

¹⁷⁶ Hon Michael Egan, former Treasurer, Evidence, 6 December 2005, p40

we prefer not to borrow because paying back the interest in the general government sector will mean that we have less services delivered in a few years time, when the demands are really going to be extensive.¹⁷⁷

4.6 Other witnesses pointed to the very low levels of general government debt in NSW and suggested that the economy could safely manage increased levels of debt and retain its triple A credit rating.¹⁷⁸

4.7 Professor Frank Stilwell, Professor of Political Economy at the University of Sydney's School of Economics and Political Science, stated that he believed the emphasis on debt reduction both at State and Federal levels was stronger than economic logic supported:

I think it goes beyond economic logic, not even logic of seeking a better credit rating. It is based on an ideological aversion to debt and public finance.¹⁷⁹

4.8 Mr John Pierce, Secretary of NSW Treasury, re-iterated that the Treasury and the NSW Government consider that debt needs to be used judiciously:

Given that governments tend to want to maintain a fairly constant rate of growth in service delivery, and hence a fairly constant rate of growth in capital expenditure to support that service delivery, we want to be able to use debt to finance that during the slower times, like they are having now on the revenue side during a downturn in the property market, and then pay it off during the upswings.¹⁸⁰

4.9 The Committee reinforces comments made in the First Report that while it is appropriate that Government make policy decisions about levels of expenditure and public debt, one of the consequences of not using public debt is the potential impact on the future flexibility of government in relation to the State's infrastructure.

Private Finance or public expenditure and debt

4.10 Mr Pierce reminded the Committee that 85 to 90% of the capital program for infrastructure was procured through 'traditional procurement and financing methods', and Treasury never expected that PFPs would be 'any more than 10 to 15% of the overall capital program'.¹⁸¹

4.11 Accordingly, between 85 and 90% of all capital works expenditure in NSW is funded from either government revenue or government debt, with only 10 to 15% funded using private finance.

¹⁷⁷ Dr Kerry Schott, Executive Director, Private Projects and Asset Management, NSW Treasury, Evidence, 7 December 2005, p4

¹⁷⁸ See evidence in the First Report from, for example, Mr Tony Harris, former Auditor General, Professor Bob Walker, the NRMA, and Mr Ken Morrison, Property Council of Australia.

¹⁷⁹ Professor Frank Stilwell, Professor of Political Economy, School of Economics and Political Science, University of Sydney, Evidence 3 April 2006, p23

¹⁸⁰ Mr John Pierce, Secretary of NSW Treasury, Evidence, 3 April 2006, p50-51

¹⁸¹ Mr Pierce, Evidence, 4 April 2006, p48

- 4.12** The Committee notes that one of the frequently made claims about privately financed PPP projects is that they enable the early provision of public infrastructure – infrastructure brought forward because the public sector does not need to provide the capital for the project.
- 4.13** Professor John Quiggin, Australian Research Council Federation Fellow at the University of Queensland, argued that:
- although the idea of PPPs as a source of additional funds has been repeatedly discredited, and disavowed in official policy statements, it remains influential and continues to distort public policy.¹⁸²
- 4.14** Representatives of both the NSW and Victoria Treasury told the Committee that PPPs did not provide a source of additional funds.
- 4.15** Mr John Fitzgerald, Deputy Secretary of the Victorian Department of Treasury and Finance, explained that in Victoria, while the funding for a PPP project is approved and allocated in the budget before a decision is made to use a PPP, this does not create additional funds once a PPP is chosen:
- People say, “Well, that is good because that gives us more capital expenditure”, but it does not because it has disappeared; you have spent it but just in a different way.¹⁸³
- 4.16** Mr Fitzgerald explained that in such a case the capital budget set aside is converted into a recurrent budget to enable future payments on the PPP project.
- 4.17** NSW Treasury witnesses have been explicit about the fact that infrastructure projects can generally only be brought forward where an alternative source of revenue is available. Mr Pierce elaborated:
- In general the decision as to which things will be PFPed or not does not affect how much capital in total we procure. We essentially make that assessment as if we are going to be doing it ourselves. The one exception is that if it is done in a way that generates an additional stream of revenue that would not be available if the Government procured it, then that can cause projects to—because there is additional revenue stream—to be procured usually earlier than they would be otherwise.¹⁸⁴
- 4.18** Mr Pierce cited the Department of Education and Training’s New Schools Project as an example, and tolled road infrastructure projects such as the Cross City Tunnel and the M7 Westlink are other obvious examples.
- 4.19** Mr Fitzgerald confirmed that in the case of road infrastructure projects, tolling allows projects to be brought forward. However, he commented that tolling could be either public or private, it is not the PPP nature of the project that enables it to be brought forward so much as the alternative revenue stream represented by tolling.¹⁸⁵

¹⁸² Submission 72, Professor John Quiggin, Australian Research Council Federation Fellow, p4

¹⁸³ Mr John Fitzgerald, Deputy Secretary, Victorian Department of Treasury and Finance, Evidence, 31 March 2006, p56

¹⁸⁴ Mr Pierce, Evidence, 3 April 2006, p50

¹⁸⁵ Mr Fitzgerald, Evidence, 31 March 2006, p56

- 4.20** Professor Graeme Hodge, Co-Director of Monash University's Centre for Regulatory Studies and editor of the book *The Challenge of Public-Private Partnerships*, in his evidence to the Committee commented that much of the UK literature on the subject of PPPs suggests that a predilection for private financing can lead to projects being commissioned because they are amenable to being PPPs, and not necessarily because they meet a public interest priority:

A lot of the UK literature talks about the danger of the private finance partnership deal wagging the planning dog so that government works committees, for example, end up taking the recommendations of various merchant banks which walk in the door and propose all sorts of infrastructure projects which can capture the revenues most appropriately for private investors rather than those projects that meet the highest public interest tests.¹⁸⁶

- 4.21** Professor Hodge went on to canvass the possibility of Treasuries becoming advocates for particular funding options rather than 'public stewards' and the associated dangers:

Once treasuries go down the road of advocating and having a preference for private finance deals they cross the fence and become, all at once, a policy advocate, a contract developer, an implementer, a governor, a planner and a parliamentary adviser as well as the public steward.¹⁸⁷

- 4.22** Mr Pierce, Secretary of NSW Treasury, implicitly refuted this assertion. He stressed that when deciding whether or not to engage in a particular project, Treasury separates the investment decision from the procurement decision and the investment decision is based on the desirability of the project regardless of the potential for it be funded privately:

[W]hen we are making that investment decision—does government want to buy this asset—we are essentially treating it as if we are going to be funding it ourselves, as if we are going to be funding it out of tax revenue or, if it is something that has a user charge, as if it is going to be part of the Government's public trading enterprise sector.¹⁸⁸

Alternative financing options

- 4.23** The Committee also heard evidence that reflected a broad range of opinion about PPPs as a desirable financing option for the delivery of public infrastructure. The academic literature on the subject is equivocal and a number of witnesses suggested that the desirability of PPPs was an ideological preference rather than an empirical decision.

- 4.24** Professor Graeme Hodge, an academic who has 'looked at questions of contracting with governments and public-private partnerships'¹⁸⁹ for more than ten years, told the Committee that:

¹⁸⁶ Professor Graeme Hodge, Co-Director, Centre for Regulatory Studies, Monash University, Evidence, 31 March 2006, p59

¹⁸⁷ Professor Hodge, Evidence, 31 March 2006, p60

¹⁸⁸ Mr Pierce, Evidence, 3 April 2006, p50

¹⁸⁹ Professor Hodge, Evidence, 31 March 2006, p57

there is a large volume of evidence, ranging at one extreme from some of the United Kingdom evidence that states, "Public-private partnership deals give the best deal possible in eight out of 10 cases"—which is Michael Pollick's work in the United Kingdom—right through to the other end where Professor Carsten Greve in Denmark suggests that, as a result of taking on some of these deals, they have resulted in the biggest scandals in public administration history in their country. Indeed, people have ended up in prison and taxes have been raised in order to pay for the multi-decade deals that governments have signed up.¹⁹⁰

4.25 Professor Hodge attempted to account for this difference:

I think partly it is ideologically driven. Some people when they do research know the answer before they look at the empirical evidence.¹⁹¹

4.26 While the available literature and analysis does not present a unified position in relation to PPPs, there are many lessons to be learnt from previous PPP experiences. In particular, there have been a large number of reviews and reports on PPP projects from jurisdictions including NSW, Victoria and the United Kingdom.

4.27 The most recent reports have included two reports from the United Kingdom, the HM Treasury *PFI: Strengthening long-term partnerships* and the Partnerships UK *Report on Operational PFI Projects*, both released in March 2006. Also released in March 2006 was the NSW Auditor General's Report on the Performance Audit of the *New Schools Privately Financed Project* (the *New Schools Report*). The Victorian *Review of Partnerships Victoria Provided Infrastructure*, an independent report prepared by Mr Peter Fitzgerald, was released in January 2004 (the *Fitzgerald Review*).

4.28 In addition to these reports there have been a number of United Kingdom House of Commons reports into the London Underground PPP, and into Privately Financed Initiatives more generally, as well as reports from the UK National Audit Office on managing PFI relationships. The NSW Public Accounts Committee has also released a number of reports on matters related to Public Private Partnerships over the past decade.

4.29 The *New Schools Report* reviewed the Department of Education and Training's (DET) PPP to deliver new schools (detailed in Chapter 3 of this Report) and concluded that the contracts 'were established and let in a way that greatly assists their potential for delivering value for money.' The *New Schools Report* also concluded that '[t]he contracts will need to be carefully managed over the 30 year period to ensure that benefits are realised and that costs do not escalate beyond expectations.'¹⁹²

4.30 The *New School's Report's* approval of elements of the contract was such that a specific recommendation called on the DET to consider applying elements of the PFP approach to its other projects.¹⁹³

¹⁹⁰ Professor Hodge, Evidence, 31 March 2006, p57

¹⁹¹ Professor Hodge, Evidence, 31 March 2006, p60

¹⁹² NSW Auditor General's Report on the Performance Audit of the *New Schools Privately Financed Project*, March 2006, p2

¹⁹³ NSW Auditor General's Report on the Performance Audit of the *New Schools Privately Financed Project*, March 2006, p3

- 4.31** The Auditor General, in his Foreword to the *New Schools Report* commented, in relation to PFPs more generally, that:

In the right circumstances – and if properly managed – privately financed projects (PFPs) can deliver better value for money than traditional public sector procurement.¹⁹⁴

- 4.32** The HM Treasury's *PFI: Strengthening long-term partnerships* report concluded that there was a continuing role for PFI in delivering public services and noted that:

It will continue to be used only where it can demonstrate value for money and is likely to continue to comprise around 10-15 per cent of total investment in public services.¹⁹⁵

- 4.33** The Partnerships UK *Report on Operational PFI Projects* demonstrated a generally positive response from public sector respondents to the performance of the private service providers, but noted a greater level of contract management was required in the education projects for which improved staff skills in the public sector were required.¹⁹⁶

- 4.34** The Fitzgerald *Review* incorporated an independent review of eight PPP projects and concluded that there was credible evidence of the benefits that may flow from PPPs, including innovation of design, timeliness of delivery, certainty of price and a whole-of-life approach to maintenance. Some of these benefits were cited by NSW government agencies in relation to NSW PPPs (detailed in Chapter 3 of this Report). Some specific comments about the manner in which risk evaluation and the pricing of transferred risk are addressed in this chapter in the context of the Public Sector Comparator.

- 4.35** Professor Hodge commented that governments were not limited to financing infrastructure by either PPPs or public sector delivery:

We seem to regard PPPs or PFPs as a kind of one or zero: you either go back to some bygone era, which we will tell you all about through a public sector comparator, or you will go down this new track put forward by the merchant bankers. I think that is quite a false dichotomy to be put in. Most governments are as creative as they wish to be. When it comes to governments having the capacity to raise public bonds or take out public debt or take private finance, for example, I think there are probably a number of ways in which governments can more intelligently handle the need to provide infrastructure at minimum cost. I do not really think you need to go to a high-priced loans agent to get that infrastructure delivered.¹⁹⁷

- 4.36** Professor Frank Stilwell, Professor of Political Economy at the University of Sydney, suggested that there were many funding alternatives available to governments, noting however

¹⁹⁴ NSW Auditor General's Report on the Performance Audit of the *New Schools Privately Financed Project*, March 2006, Foreword

¹⁹⁵ HM Treasury, *PFI: Strengthening long-term partnerships*, March 2006, p1

¹⁹⁶ Partnerships UK, *Report on Operational PFI Projects*, March 2006, pp1-2

¹⁹⁷ Professor Hodge, Evidence, 31 March 2006, p60

that ‘the answer[s] to most economic problems are political questions’.¹⁹⁸ He briefly outlined some of those funding alternatives to the Committee:

- Public provision of finance through the issue of bonds.
- Increased levels of taxation, specifically land taxation to capture ‘the benefits arising from infrastructure improvement’ and recoup them for public benefit, not private windfall.
- Funding major infrastructure projects through low or zero interest loans from the Reserve Bank of Australia.
- Ensuring a proportion of superannuation funds are directed to financing public infrastructure projects by regulation.¹⁹⁹

4.37 Professor Stilwell acknowledged that some of these options would require a change of policy position at a Commonwealth government level.

4.38 The Hon Paul Keating, former Prime Minister and Treasurer, in his submission to the Committee reprising a speech given to the Asia Pacific Roads Conference in September 2002, said in relation to the financing of large scale public infrastructure projects:

Nobody can borrow in Australia as cheaply as the Commonwealth and the State governments. No business has the cash flows of the Commonwealth and the State governments.

Perhaps I should make the risk point first. No organisation in Australia can more competently or more safely handle financial risk than the Commonwealth or the State governments. A set of private individuals investing through a trust or a set of financial institutions is not in anything like the same position as governments in these respects.

...

I believe there is a pressing role for the Commonwealth and the State governments to invest tax expenditures directly into these projects. If they are to see these projects built off budget, to use the device of government contribution to minimise financial risk. In this way, the public is not ripped off and their ordinary right to free traffic movement within cities is not flagrantly compromised.²⁰⁰

4.39 Professor Ed Blakely, former Chair of the Metropolitan Strategy Reference Panel, was generally supportive of the idea of PPPs:

I think the public-private partnership is here to stay. We should use it because it is efficient. It takes debt off the public books and it provides a way of getting both superannuation and equity into public infrastructure that we are going to need in the future. It provides an efficient way of ensuring that we use our capital well.²⁰¹

¹⁹⁸ Professor Stilwell, Evidence, 3 April 2006, p23

¹⁹⁹ Professor Stilwell, Evidence, 3 April 2006, p23

²⁰⁰ Submission 70, Hon Paul Keating, former Prime Minister and Treasurer, p2,3

²⁰¹ Professor Ed Blakely, former Chair of the NSW Metropolitan Strategy Reference Panel, Evidence, 3 April 2006, p12

- 4.40** Professor Blakely had some suggestions for changes in the way PPPs are delivered. In the specific case of road infrastructure, his proposal for PPPs would see the private sector design, construct and own the infrastructure, then lease it to the public sector. The public sector would then collect the tolls and make payments to the private sector owners of the asset until such time as the concession period ended and the asset reverted to the public sector. This would enable the public sector to be flexible about toll collection across the network.²⁰²
- 4.41** Professor Blakely proposed that ‘there should be a uniform toll across all debt structures because this is public infrastructure, not infrastructure for a particular locale.’ He went on to suggest that the NSW Government should ‘toll peripheral roads that go around the city and those that are inner-city connectors, not in the city.’²⁰³
- 4.42** In relation to PPPs more generally, Professor Blakely’s proposed model framework for overseeing PPPs would include:
- An independent board to review all PPP options before they are undertaken. People with expertise in the field to be appointed to the board for terms longer than an election cycle. Board members full time, exclusive appointments to ensure no potential conflict of interest.
 - The feasibility of the project to be assessed by external independent contractors and not a consultant hired by investment bankers, with the contractors appointed by the independent board.
 - A sinking fund established to protect against default for all projects, and to cover unexpected contingencies.
 - Projects entered into should have long-term strategies attached to them – they should be a part of a wider strategy with a ‘larger set of objectives’.²⁰⁴

Conclusions

- 4.43** The Committee recognises the appropriateness of Governments making policy decisions about levels of public expenditure and public borrowing. The Committee also accepts that PFPs are a significant and appropriate, albeit often contentious and high profile, method of providing public infrastructure.
- 4.44** The Committee recognises that PPP policy is an evolutionary area, with lessons learnt from previous projects applied to future projects to improve the value for money delivered to the community. To that end, the Committee encourages the NSW Government to ensure that the NSW Treasury continues to develop world best practice for the implementation of PPPs.
- 4.45** The Committee believes that NSW Treasury, as the agency responsible for the development and implementation of PPP policy, should conduct a regular review of world best practice and compare it with the NSW situation, including examples of failed or problematic PPP projects. Such a review should be made publicly available, and should have a direct influence on any future revisions to guidance documentation for PPPs.

²⁰² Professor Blakely, Evidence, 3 April 2006, p16

²⁰³ Professor Blakely, Evidence, 3 April 2006, p12

²⁰⁴ Professor Blakely, Evidence, 3 April 2006, p12

Recommendation 7

That NSW Treasury, and relevant government agencies or parliamentary committees, conduct regular reviews of world best practice in the area of PPP policy, including examples of failed or problematic PPP projects, with the reviews to be made publicly available. Where possible, the reviews should be timed so that they can influence future revisions of PPP policy and guidance documentation.

- 4.46** In the following sections, the Committee will review specific elements of the framework that governs PPPs. Given that PPPs are likely to remain an important part of the way in which government delivers public infrastructure in the foreseeable future, it is critical to ensure that the framework within which they are progressed is structured so as to ensure they offer value for money over the publicly funded alternative, and that the process for reaching those decisions is transparent and comprehensible to the community whose interests are being served by the provision of the infrastructure.

The Public Sector Comparator

- 4.47** Much of the criticism of PPPs stems from the way in which they are compared with a public sector equivalent. In this section, the Committee examines the specific issues of the role and operation of the Public Sector Comparator, and the transfer and allocation of risk.
- 4.48** The Public Sector Comparator (the Comparator) is a ‘model of the costs (and in some cases, revenues) associated with a proposal under a government financed method of delivery.’ It is developed for all proposals in order to assist the Government to ‘determine whether a private finance arrangement offers superior value for money over traditional methods of government delivery.’²⁰⁵
- 4.49** The Committee notes the distinction drawn by officials from the Department of Commerce between the pre-tender estimate prepared by the Department and the Comparator. The pre-tender estimate is a measure of the cost of the procurement of an asset. By contrast, the Comparator looks at both the capital cost of a project and the whole-of-life cost (i.e. incorporating ongoing running costs).²⁰⁶

²⁰⁵ NSW Government, *Working with Government : Guidelines for Privately Financed Projects*, November 2001, p45

²⁰⁶ Mr Brian Baker, Group General Manager, Project Management, Department of Commerce Evidence, 12 April 2006, p18

4.50 Mr Danny Graham, Director of Private Projects at NSW Treasury, elaborated on this explanation:

The difference between a pre-tender estimate and the public sector comparator on PFP projects is we are taking into account certain services that are also included in the tender price, and we are going for a longer period of time than maybe three to five years during a construction period.²⁰⁷

4.51 In its First Report, the Committee concluded that details about the comparison that was conducted between the Comparator and the tender bids for the Cross City Tunnel project were difficult to ascertain. The *Cross City Tunnel Summary of contracts* did not contain any details of the Comparator comparison other than the result. The following extract from the *Cross City Tunnel Summary of contracts* provides an example of the information that is provided in relation to the Comparator for PPP projects:

For a 'public sector comparator' based on the most efficient likely form of public sector delivery of a hypothetical project with the shorter tunnels originally approved in October 2001—but with adjustments for other changes to the project since then, such as the new, separate ventilation tunnel and the Cowper Wharf Roadway connection to the harbour crossings—the estimated net present value of the risk-adjusted financial cost of the project to the RTA was \$41.93 million.

In contrast, the finally approved project, with longer tunnels and other significant improvements and to be delivered by the private sector in accordance with the rights, obligations and risk allocations described in this report, is expected to result in a significant net financial *benefit* to the RTA, with the financial costs of the project to the RTA being outweighed by (a) a substantive transfer of risks to the private sector and (b) an up-front payment to the RTA which had to be (and was) made by the private sector participants by 30 December 2002, as described in section 2.5 below.²⁰⁸

4.52 There was no information relating to the calculations used to determine the Comparator, or the assumptions that underlay it. This is also the case for other contract summaries for PPP projects, such as the Lane Cove Tunnel project.

4.53 Mr Fitzgerald told the Committee that Victoria does not publish details of the Comparator because of the possibility of providing an advantage to the private sector in the event of negotiations during the construction phase:

I very much believe that publishing details of the public sector comparator, which includes an element for risk et cetera, any time during construction of a project or probably for a short period post construction – which is where a loss of the risk is in the project – could potentially give the private sector an advantage in terms of negotiation if there is a problem.²⁰⁹

4.54 The Public Sector Comparator relies on discount rates to account for the risk associated with the project. The discount rate that is used in the Comparator calculations can greatly affect the

²⁰⁷ Mr Danny Graham, Director of Private Projects, NSW Treasury, Evidence, 3 April 2006, p52

²⁰⁸ RTA, *Cross City Tunnel: Summary of contracts*, June 2003, p11

²⁰⁹ Mr Fitzgerald, Evidence, 31 March 2006, p54

final comparison with private sector tenders. Mr Peter Fitzgerald, in his *Review of Partnerships Victoria Provided Infrastructure (the Fitzgerald Review)*, provided a case study to demonstrate that using discount rates of 5.7 per cent or 8.65 per cent would provide two very different conclusions as to the relative value of the Comparator compared to a private tender. He concluded that:

The discount rate and risk adjustments are therefore integral to the issue of whether the commercial arrangements proposed in a tender offer value for money over public procurement.²¹⁰

4.55 Professor Hodge cited the Fitzgerald *Review* to make the point that:

The financial benefits achieved through these arrangements were highly dependent on the discount rate that you used in getting your public sector comparator figures. If you used a lower discount rate you would come out with a 9 per cent saving on the traditional public sector alternative. If you used a higher discount rate you came out with these deals that were probably 6 per cent more expensive.²¹¹

...

That is an interesting finding: that the worth of these deals in financial terms depends on the individual financial figures you put in for discount rates.²¹²

4.56 Professor Hodge went on to cite the situation in the UK, where the Comparator had been criticised in the literature:

I make the point that it matters dearly which figures Treasury is using. The public sector comparator has been designed by advisers, large accounting companies and Treasuries in the United Kingdom and are being exported around the world. My understanding of the United Kingdom practice is that they have actually reduced their discount rate down to about the 5.5 per cent level. We have not followed suit.²¹³

4.57 The UK House of Commons Committee of Public Accounts, found that the desire to show that the Private Finance Initiative deal was ‘cheaper’ than the public sector comparator led to manipulation of the underlying calculations and erroneous interpretations of the results.²¹⁴

4.58 Mr John Fitzgerald acknowledged the criticisms of the UK, commenting that the UK situation in relation to the Comparator was ‘a little more transient’, and distinguished the Victorian approach:

I believe we have gone a lot further in terms of technically how the public sector comparator is built up, and have a very clear policy position that if the bid does not

²¹⁰ Mr Peter Fitzgerald, *Review of Partnerships Victoria Provided Infrastructure*, January 2004 p24

²¹¹ Professor Hodge, Evidence, 31 March 2006. pp57,58

²¹² Professor Hodge, Evidence, 31 March 2006, p57

²¹³ Professor Hodge, Evidence, 31 March 2006, p62

²¹⁴ See for example, Public Accounts Committee *Government Communications Headquarters (GCHQ): New Accommodation Programme, 2004-2005*, UK House of Commons; Public Accounts Committee *Delivering better value for money from the Privately Financed Initiative*, 2003, UK House of Commons

better the public sector comparator the project does not go ahead with that bidding party.²¹⁵

4.59 The Fitzgerald *Review* noted that discount rates used by the Victorian Treasury to reflect market risk had been revised such that they now reflected more accurately the actual risk being transferred.

4.60 Despite this, one of the findings of the Fitzgerald *Review* was that ‘the evaluation and adjustments made to reflect the existence and transfer of risks needs to be further revised. It needs to be based on better evidence. Further, the pricing of transferred market risk needs to be done more selectively.’²¹⁶

4.61 Mr John Fitzgerald, Deputy Secretary of the Victorian Treasury, told the Committee that the position taken in Australia in relation to discount rates is ‘very much in accord with the rest of the world who participate in these sorts of transactions.’²¹⁷

4.62 Mr Pierce, Secretary of the NSW Treasury, explained that the Comparator uses discount rates that reflect the risks associated with a specific project, not the cost of government finance, which is underpinned by the government’s taxation powers:

The adjustments we make to the discount rate are adjustments to reflect those project specific type risks. If we did not do that then I would argue that we would not be taking full account of the costs of investing in a particular project because we would be ignoring some of the risks involved, for instance, if there is a risk associated with budget overruns, with late delivery, with the sorts of services that are expected out of the asset not materialising.²¹⁸

4.63 The cost of government finance is therefore not the only variable considered:

[I]f we were not to make those adjustments then we would be explicitly building on that taxation power, which is independent of whether this is a good project or not.²¹⁹

Conclusions

4.64 The Committee believes that NSW Treasury is acting appropriately in using a risk-adjusted discount rate to prepare the Comparator. This enables a ‘like for like’ comparison to be conducted. The fact that governments, relying on their taxation powers, can borrow at a lower rate does not reduce the risks associated with a particular project and should not of itself be a technical reason for preferring a public sector option.

4.65 However, given the large number of variables and assumptions implicit in the Comparator, and the public suspicion of PPPs, the Committee believes it is important that the operation of the Comparator is more rigorously explained to the public. The Committee’s First Report contained a recommendation that the Comparator be explained in more detail as part of the

²¹⁵ Mr Fitzgerald, Evidence, 31 March 2006, p55

²¹⁶ Mr Peter Fitzgerald, *Review of Partnerships Victoria Provided Infrastructure*, January 2004 p22

²¹⁷ Mr Fitzgerald, Evidence, 31 March 2006, p47

²¹⁸ Mr Pierce, Evidence, 3 April 2006, p50

²¹⁹ Mr Pierce, Evidence, 3 April 2006, p50

contract summary currently required to be prepared under the *Working with Government Guidelines*. The Committee will make a further recommendation on the disclosure of the Comparator later in this chapter.

Risk calculation and transfer of risk

- 4.66** The stated aim of the *Working with Government Guidelines* in relation to risk management is ‘to optimise risk allocation so that value for money is maximised in each project on a whole-of-life basis; the aim is not to maximise risk transfer from government to the private sector.’²²⁰
- 4.67** Professor Frank Stilwell, Professor of Political Economy at the University of Sydney, was sceptical of the claim that PPPs allow for the transfer of risk from the public sector to the private sector:

the claim of sharing of risk is often, I think, out of kilter with what actually happens where contracts are drawn up in a way that they effectively privatise the profits but socialise the risks, because in many cases these infrastructure projects relate to matters of such public importance that they could not be allowed to fail, so that the government must necessarily underwrite the risk in the last resort.²²¹

- 4.68** Professor Stilwell cited the example of the airport rail link, where the NSW Government provided approximately \$800 million to ensure the completion of the project.²²²

Conclusions

- 4.69** The Committee has previously discussed the issue of risk allocation in relation to the Cross City Tunnel project. The transfer of risk, in this case patronage and therefore revenue risk, was clearly not illusory, as the major equity investor in the project, CKI, has just devalued their holding by A\$102 million. This is a clear demonstration of the fact that the financial risk has been removed from the public sector and placed with the private sector.
- 4.70** However, in its First Report the Committee heard from some witnesses who argued that this transfer of patronage risk did not optimise risk allocation because the public sector was best situated to manage the risk, having greater control over the road network. The cost of the transferred risk in such a case would be higher than the cost of risk to the public sector and would be reflected in a higher cost for the project (paid for by road users through higher tolls). The Committee noted too that other costs were being borne by the community and the NSW Government – the cost of inconvenience on surface streets and the political backlash against the incumbent Government.²²³
- 4.71** Professor Hodge described an holistic approach to the issue of transfer of risk:

[W]e would not have these parliamentary committees, nor those in Victoria or in the United Kingdom, if it was really as simple as the private sector bearing the risks. The

²²⁰ NSW Government, *Working with Government Guidelines*, November 2001, p33

²²¹ Professor Stilwell, Evidence, 3 April 2006, p22

²²² Professor Stilwell, Evidence, 3 April 2006, p27

²²³ Joint Select Committee on the Cross City Tunnel, *First Report*, February 2006, p36, p46

private sector certainly does bear some commercial risks, that is true, but it does not bear the governance risks because Parliament bears the governance risks; it does not bear the political risks because, like it or love it, citizens expect governments to provide essential services, and many of these things that are subject to private finance partnerships are deemed by citizens to be essential services.²²⁴

Disclosure of contractual documents

4.72 The Committee recommended in its first report that the revised NSW government guidelines for the public release of documents should take into account the recommendations of the IIG *Review* and the Auditor General, and should clarify the status of amendments and variations to existing contracts.²²⁵

4.73 The NSW State Chamber of Commerce also recommended the public release of all contractual documents. Ms Margy Osmond, Chief Executive, said in the Chamber's submission that:

Once a contract is signed, all documents should be publicly released and explained so that the community and road users thoroughly understand the nature of the project.²²⁶

4.74 Victoria requires full disclosure of all contract documents above \$100,000, including those for PPPs. Mr John Fitzgerald, Deputy Secretary of the Victorian Department of Treasury and Finance, told the Committee that the concept of full disclosure of contractual documents was not initially popular with the private sector, but that attitudes changed over time:

in the early days there was some opposition from the private sector to disclosure of all of the information in the contracts. But when we worked our way through that with them they agreed. We pushed back and held the line fairly hard on that. There is a change in attitude in the private sector. Some of those that opposed such transparency of information are now supporting it. They are saying that for good debate and outcomes that information must be there. They have probably realised that historically they have been too sensitive about what they think is commercial-in-confidence.²²⁷

4.75 Mr Fitzgerald commented that openness and full disclosure worked in favour of government and the private sector:

I think the private sector can look back over contracts and see why and how somebody won a contract. Just as important is the request for tender that is published because they can see how someone else married a contract with the service we were asking for. I think it can be used as an educational source of information, which creates competition and better understanding—I think this is very important—of what the State is looking for in terms of contracted service delivery. If it creates better

²²⁴ Professor Hodge, Evidence, 31 March 2006, p65

²²⁵ NSW Parliament, *Cross City Tunnel First Report*, Joint Select Committee on the Cross City Tunnel, February 2006, Recommendations 16 and 17

²²⁶ Submission 64, Ms Margy Osmond, Chief Executive, NSW State Chamber of Commerce, p3

²²⁷ Mr Fitzgerald, Evidence, 31 March 2006, p51

understanding of government's needs and does not adversely affect competitive tension, I believe that is a good outcome for government as well.²²⁸

- 4.76** The Treasury's proposed memorandum for the public release of documents, included in the First Report as Appendix 6, excluded commercial in confidence material, including the base case financial model.
- 4.77** Professor Richmond, Special Advisor to the Infrastructure Implementation Group, when discussing the memorandum, commented that some of the material would remain commercial in confidence and should not be released – specifically elements of the Public Sector Comparator and the base case financial model. The IIG *Review*, in turn, expressed reservations about the impact of the release of commercial in confidence information, particularly that contained in the Public Sector Comparator and the base case financial model.
- 4.78** The Committee notes that the base case financial models for the Cross City Tunnel and for the Lane Cove Tunnel were tabled in Parliament and are publicly available. The Committee, while noting the reservations expressed by Professor Richmond and contained within the IIG *Review*, accordingly believes it is appropriate for the base case financial model to be publicly released once the contracts have been entered into.
- 4.79** Nevertheless, parties should have the option of applying to an independent body, such as the Auditor General, to seek an exemption to public disclosure on specific commercial in confidence grounds.
- 4.80** Mr Pierce, Secretary of NSW Treasury, told the Committee that a new memorandum on the public release of documents was being prepared:

For privately financed projects I expect that this memorandum will require disclosing the full contract, excluding confidential information, and disclosing material variations to the contract.²²⁹

- 4.81** The Committee's First Report recommended that a summary of the Comparator comparison be included in the contract summary, with this summary overseen and signed off by the Auditor General, as for the contract summary. Summaries of the contract and the Public Sector Comparator, as well as the full versions of those documents and the base case financial model, if publicly available, would go a long way toward addressing public concerns about PPPs.
- 4.82** The Committee notes that the NSW Public Interest Evaluation contained in the *Working With Government Guidelines*, currently under review by NSW Treasury, includes an evaluation of the impact of the project on key stakeholders, with general indicators including:

Identification of those likely to be affected and the likely social, economic, employment and environmental issues.²³⁰

²²⁸ Mr Fitzgerald, Evidence, 31 March 2006, p52

²²⁹ Mr Pierce, Evidence, 3 April 2006, p45

²³⁰ NSW Government, *Working with Government: Guidelines for Privately Financed Projects*, Appendix 2, p57

Recommendation 8

That the documents to be publicly released for any Public Private Partnership or Privately Financed Project include:

- the full contract and any material variations
- a contract summary (verified for accuracy by the Auditor General)
- details of the public interest evaluation conducted prior to the decision to enter into the PPP or PFP
- a summary of the Public Sector Comparator and the comparison between it and the successful project (verified for accuracy by the Auditor General)
- the base case financial model
- The Public Sector Comparator.

That, notwithstanding the above paragraph, an independent body, such as the Auditor General, be authorised to assess the question of whether elements of any of the above documents be considered commercial in confidence, on the request of the parties to the contract.

That the NSW Government take proactive steps to ensure that the public are made aware that these documents are publicly available.

Accountability concerns

4.83 Professor Hodge, in his evidence to the Committee, discussed his concerns about the Treasuries becoming advocates for particular funding options rather than ‘public stewards’:

It probably means that we need to rethink our lines of accountability to ensure that whatever evaluations are done have a much stronger veracity than perhaps they had in the past. So PPPs in many ways are a confluence of interests and I have some concerns that accountability is below the radar.²³¹

4.84 One of the possible accountability mechanisms suggested by Professor Hodge for the Victorian situation was that a ‘sensible, rigorous summary’ of the contract be prepared that is checked by the Auditor General. Professor Hodge also suggested that ‘simple requests for the calculation of the return on public funds invested’ would also maintain confidence in accountability.²³² The Committee notes that contract summaries, endorsed by the Auditor General for veracity, are currently required under the NSW *Working with Government Guidelines*. The Committee’s recommendation in relation to the public disclosure of documents addresses Professor Hodge’s second suggestion.

²³¹ Professor Hodge, Evidence, 31 March 2006, p60

²³² Professor Hodge, Evidence, 31 March 2006, p61

4.85 In relation to the need for oversight of the PPP process, Professor Hodge made the following comments:

That actually concerns me. It does not concern me if I know that some committee, some department, some perhaps regulator-general or perhaps some auditor-general somewhere does have some kind of oversight role, I am not convinced in my own mind that we do have that oversight role.²³³

4.86 The opportunity for parliamentary oversight, through the work of Committees such as this one, is a valuable accountability mechanism, and is reflected in the way in which the recommendations of the Committee's First Report are being implemented.

Approaches to Public Private Partnerships - similarities and differences between Victoria and New South Wales

4.87 Victoria and New South Wales are the two leading states in terms of the size and scope of their involvement in Public Private Partnerships. The Committee heard a considerable amount of evidence comparing the approaches of the two jurisdictions.

4.88 Mr Pierce, Secretary of NSW Treasury, told the Committee that there were more similarities between the approaches of NSW and Victoria than there were differences:

The differences I think are marginal. The approval and tender processes are virtually identical in terms of when you go to your Cabinet committees and that sort of thing.

4.89 Mr Pierce nevertheless identified a number of areas of distinction, which he identified as being in 'the way these things are operationalised rather than in the decision making process'²³⁴:

- NSW views the procurement process as the primary responsibility of the agency procuring the project, whereas Victoria 'allocates more resources to providing guidance from an oversight by its Treasury throughout the procurement process.'²³⁵
- The NSW guidelines 'clearly differentiate between social and economic infrastructure.'²³⁶
- Victoria publicly discloses the full contract details, whereas NSW publishes a more comprehensible contract summary which 'provides an added layer of transparency and accountability'.²³⁷ Mr Pierce commented that he thought this point of difference would disappear imminently (because the revision of the *Working with Government Guidelines* is likely to recommend the release of the full contract document).

4.90 One of the main points of difference between the two jurisdictions is the amount of guidance material that is provided to assist agencies in entering into PPPs. Mr John Fitzgerald, Deputy

²³³ Professor Hodge, Evidence, 31 March 2006, pp62,63

²³⁴ Mr Pierce, Evidence, 3 April 2006, p49

²³⁵ Mr Pierce, Evidence, 3 April 2006, p49

²³⁶ Mr Pierce, Evidence, 3 April 2006, p49

²³⁷ Mr Pierce, Evidence, 3 April 2006, p49

Secretary of the Victorian Department of Treasury and Finance identified the available guidance materials as a point of difference between the Victorian and New South Wales approach to PPPs:

Our Partnerships Victoria guidance material is more detailed ... we have produced five pieces of guidance material, a couple of policy documents and also a number of smaller technical notes and process notes that help in the process of developing these projects.²³⁸

4.91 Mr Danny Graham, Director of Private Projects with the NSW Treasury, in evidence to the Committee commented that the work of the National PPP Forum on standard commercial principles had led to the NSW Treasury:

modifying the standard commercial principles as developed by the Victorians to reflect the contractual arrangements and the contractual form that New South Wales is using for its product.²³⁹

4.92 Mr John Fitzgerald commented on the fine balance between satisfying public mistrust and encouraging innovation when developing guidance material:

My view is be careful that guidelines do not become too prescriptive and become a rule book rather than a guideline. When a number of agencies and departments are involved in delivering projects like these, the challenge is not the guidelines themselves but their interpretation, and I think a natural human ambition is to have your own view about what works best and what does not. Managing the raft of advisers who have different views from you on these things is a big challenge. That is what you need to manage.²⁴⁰

4.93 Another key difference identified by Mr Fitzgerald was the level to which the design of the facility or infrastructure was prescribed:

In Victoria we very much try to develop a sound output specification that is focused on the facilities, management and services that are to be provided by the private sector, whereas New South Wales tends to focus a lot more than we do on the design and functionality of the facility itself or the infrastructure.²⁴¹

4.94 Mr Fitzgerald commented that all contracts of over \$100,000 are fully disclosed and available online:

The only exception from time to time is where a private sector party can demonstrate very clearly that there is an element of commercial in confidence material in those contracts. If they can convince the Government that is the case, then perhaps a clause, sentence, number might be excluded or blocked out of the contract.²⁴²

²³⁸ Mr John Fitzgerald, Deputy Secretary, Victorian Department of Treasury and Finance, Evidence, 31 March 2006, p46

²³⁹ Mr Danny Graham, Director, Private Projects, NSW Treasury, Evidence, 3 April 2006, p54

²⁴⁰ Mr Fitzgerald, Evidence, 31 March 2006, p53

²⁴¹ Mr Fitzgerald, Evidence, 31 March 2006, p46

²⁴² Mr Fitzgerald, Evidence, 31 March 2006, p47

4.95 Mr Fitzgerald also commented on the rigour of the Victorian public interest test. He explained to the Committee that the public interest test considered about eight different public interest issues, including equity for disadvantage, imbalance in the financial impact of a project on one part of the community, and environmental issues:

Before you sign a contract with the private sector party, it is a requirement under our guidelines that those public interest matters be scrutinised in terms of the contract you are about to sign, to make sure you can tick them all off.²⁴³

4.96 Mr Fitzgerald added that while the public interest test is not published, the Victorian Auditor General ‘certainly looks at it pretty closely.’²⁴⁴ Mr Fitzgerald said he believed the Victorian public interest test was very stringent and added:

I am unaware whether New South Wales has such a stringent process in terms of public interest.²⁴⁵

4.97 Professor Hodge agreed that demonstrating that a particular PPP satisfied the public interest was an essential requirement of PPP policy:

I think the public interest is in fact the core business of government in the same way as it is the core business of a private company to give good returns to its shareholders. I think meeting the public interest, however that is defined through parliaments, is the core business of government.²⁴⁶

4.98 Professor Hodge told the Committee, however, that he felt reducing the public interest test to a series of boxes to tick ‘is a nonsense’.²⁴⁷

4.99 Mr Pierce told the Committee that following the recommendations of the Committee’s First Report, the public interest evaluation used in NSW would be ‘strengthened’.²⁴⁸ Treasury is in the process of revising the *Working with Government Guidelines*, taking into account the existing recommendations of the IIG Review and the Committee’s First Report, and the future recommendations of the Auditor General’s Performance Audit of elements of the Cross City Tunnel and this Second Report.

4.100 The existing public interest tests for the two states are attached at Appendices 4 and 5.

4.101 Another significant difference between the two jurisdictions was the location of the expertise for establishing and monitoring PPPs. In Victoria, the expertise is concentrated centrally, whereas in NSW there are a number of agencies that retain sufficient expertise.

4.102 Mr Fitzgerald, in evidence to the Committee, said that Partnerships Victoria remains engaged with agencies throughout the PPP process, acting as almost a member of their team:

²⁴³ Mr Fitzgerald, Evidence, 31 March 2006, p54

²⁴⁴ Mr Fitzgerald, Evidence, 31 March 2006, p55

²⁴⁵ Mr Fitzgerald, Evidence, 31 March 2006, p47

²⁴⁶ Professor Hodge, Evidence, 31 March 2006, p58

²⁴⁷ Professor Hodge, Evidence, 31 March 2006, p58

²⁴⁸ Mr Pierce, Evidence, 3 April 2006, p45

from that initial decision point right through to financial close, and in fact beyond that. We look at the sort of contract management arrangements that exist post-completion of the project.²⁴⁹

- 4.103** Professor David Richmond, Special Advisor to the NSW Premier's Department Infrastructure Implementation Group, told the Committee that it was 'increasingly clear that there is a need for greater co-ordination and surveillance at a central level' and commented that the positive report provided by the Auditor General in relation to the Department of Education and Training's New Schools Project was partly as a result of:

A strong guiding influence from the Treasury through the capability of Dr Kerry Schott and her team. I think that team needs to be strengthened.²⁵⁰

- 4.104** In commenting on the RTA's expertise in managing PPP road infrastructure projects, Mr Mike Hannon, Acting Chief Executive of the RTA, in evidence to the Committee said:

I think the success of the RTA has had in delivering these projects has been in the teams it has been able to put together, led by RTA personnel but certainly drawing on significant expertise in the private sector. That is in the technical, legal, financial and other areas. It has been able to put together effective teams and to call upon extremely good resources.²⁵¹

Conclusions

- 4.105** The Committee notes that there is regular and high level collaboration between agencies in these two jurisdictions in particular, beyond the involvement of all Australian jurisdictions in the National PPP Forum.
- 4.106** The Committee believes that the sharing of information and experience between jurisdictions is important and commends the NSW and Victorian Treasuries, in particular, on their efforts in this area.
- 4.107** The Committee believes that standardisation of approaches by Australian jurisdictions to PPPs is sensible and appropriate, given the relatively small nature of the market for PPPs and the international nature of competitors within that market.

Recommendation 9

That the NSW Treasury continue to collaborate with other Australian jurisdictions and pursue a standardisation of approaches in relation to Public Private Partnerships.

²⁴⁹ Mr Fitzgerald, Evidence, 31 March 2006, p48

²⁵⁰ Professor David Richmond, Special Advisor to the NSW Premier's Department Infrastructure Implementation Group, Evidence, 3 April 2006, p42

²⁵¹ Mr Mike Hannon, Acting Chief Executive, NSW RTA, Evidence, 31 March 2006, p23

Public Private Partnerships and strategic planning

4.108 The Committee heard evidence from the Director General of the Department of Planning, Mr Sam Haddad, and Executive Director of the Metropolitan Strategy, Ms Gail Connolly, in relation to the strategic context within which public infrastructure projects are considered.

4.109 Mr Haddad described the involvement of the Department of Planning in Public Private Partnership projects as being to assess the projects on their merit, and added:

The department has two further roles that indirectly impact on PPP projects: a strategic role, and a regulatory role of impact assessment and advice to governments on the approvals.²⁵²

4.110 In relation to the Department of Planning's strategic role, it is responsible for the development and implementation of the *City of Cities – A Plan for Sydney's Future* (the Metropolitan Strategy), released in December 2005. The Metropolitan Strategy:

sets the strategic framework and the planning blueprints to facilitate and manage growth and investment in Sydney for the next 25 to 30 years. The strategy makes provision for transport planning, it particularly informs infrastructure planning.²⁵³

4.111 Mr Haddad explained that the Metropolitan Strategy identified future infrastructure needs for Sydney, including major public transport infrastructure such as railways, buses and 'more general transport infrastructure'.²⁵⁴

4.112 Some of the specific current and future projects cited by Mr Haddad as being identified in the Metropolitan Strategy include:

- the \$8 billion North West-CBD-South West railway link
- the Epping to Chatswood rail link, identified for construction by 2008
- completion of the \$1 billion rail clearways project by 2010
- the \$0.5 billion north-west bus transitway for completion by 2007.²⁵⁵

4.113 Mr Haddad commented that the Department of Planning's role did not include advocating for particular projects to be either PPPs or to be traditionally procured:

We do not really go into whether it should be a privately or a publicly funded project, nor for that matter who should be the proponent for those projects. ... Our role is to assist Treasury to make those decisions, but we do not really make any recommendations in that regard.²⁵⁶

²⁵² Mr Sam Haddad, Director General, Department of Planning, Evidence, 31 March 2006, p68

²⁵³ Mr Haddad, Evidence, 31 March 2006, p68

²⁵⁴ Mr Haddad, Evidence, 31 March 2006, p69

²⁵⁵ Mr Haddad, Evidence, 31 March 2006, p69

²⁵⁶ Mr Haddad, Evidence, 31 March 2006, pp69-70

4.114 Mr Haddad also referred to the recent changes to the *Environmental Planning and Assessment Act 1979* (the *EP&A Act*), amended in 2005 to add Part 3A covering major infrastructure projects, as an opportunity to ‘inject a more strategic approach’ to the assessment of major infrastructure projects such as the Cross City Tunnel:

there is now legislative capability to consider concept plans, which can put more emphasis on consideration of alternatives and, in particular, it can expose at an early stage of projects all considerations and critical aspects of those projects to achieve the required objectives.²⁵⁷

4.115 NSW Treasury is responsible for establishing a State Infrastructure Strategy (SIS) to identify and explain the main drivers of infrastructure requirements in NSW, and to prioritise potential infrastructure projects ‘consistent with expectations about demand, government service delivery priorities and funding constraints.’²⁵⁸

4.116 The SIS is a 10 year plan with a statewide focus, and includes information sourced from the Metropolitan Strategy, Total Asset Management Plans for general government agencies, Business Plans for public trading enterprises and the Budget Papers, particularly the Infrastructure Statement.²⁵⁹

4.117 Mr Pierce explained to the Committee that the SIS helps guide agencies as to which projects may be ‘put up’ for an investment decision such that they are ‘consistent with the general direction that government wants to head in relation to its capital program.’²⁶⁰ New infrastructure projects must be approved by the Infrastructure and Planning Cabinet Committee and the Budget Committee of Cabinet before proceeding.

4.118 Mr Pierce re-iterated his comments that the investment decision is separated from the procurement decision, and decisions about whether a project is to be a PPP or not are made after the decision to go ahead with a particular infrastructure project.

4.119 A number of witnesses identified public transport infrastructure as a critical priority for New South Wales, and in particular Sydney. Dr Garry Glazebrook, Urban Planning Transport Consultant, commented that the increasing population of Sydney and the consolidation of that population in established areas means that Sydney will need to have more reliance on public transport in future.²⁶¹

4.120 Dr Glazebrook gave his opinion that:

I think we have had a failure of long-term planning for public transport in this city, and the real problem is a lack of [a] guaranteed funding plan to underpin that long-

²⁵⁷ Mr Haddad, Evidence, 31 March 2006, p68

²⁵⁸ Mr Pierce, Evidence, 3 April 2006, p45

²⁵⁹ Dr Kerry Schott, NSW Treasury, Answer to question on notice taken during evidence 3 April 2006, p5

²⁶⁰ Mr Pierce, Evidence, 3 April 2006, p45

²⁶¹ Dr Garry Glazebrook, Urban Transport Planner, Evidence, 12 April 2006, p32

term planning. You can plan all you like but if there is no money there it is really fairly meaningless.²⁶²

- 4.121** Professor Peter Newman, former NSW Sustainability Commissioner, said in his submission to the Inquiry that when he was NSW Sustainability Commissioner he had identified Sydney's need for a 'transformative public transport system' as the only way of overcoming the city's 'chronic traffic and public transport problems'.²⁶³
- 4.122** Professor Newman pointed to the existence in all Australian cities of Strategic Plans that emphasize the importance of a set of 'urban centres linked by quality public transport infrastructure'.²⁶⁴ In the case of Sydney, the Metropolitan Strategy is committed to the \$8 billion North West – CBD – South West rail link, which Professor Newman referred to as the Global Arc Rail, to reflect the connections it makes between the global arc of new economy jobs in those regions. Professor Newman also cited an improved city light rail and an upgraded rail system out to the west as critical elements of a transformative public transport system.²⁶⁵
- 4.123** PPPs could be used for the provision of public transport infrastructure projects as well as major road infrastructure projects, according to Professor Newman, but 'only if the politics also favour this priority'.²⁶⁶
- 4.124** Dr Glazebrook proposed a range of ambitious measures intended to re-focus attention on public transport over private transport:
- Road pricing should be used as a traffic demand management measure, rather than as a means of paying for additional roads. Congestion charging could be adopted in Sydney, with the money raised directed to public transport improvements.
 - Parking across Sydney should be categorised and levied, including existing free parking at shopping centres.
 - Vehicles should be fitted with GPS receivers that charge according to roads used, distance travelled and time travelled – charging for the scarce resource that is roads and pricing it according to that scarcity.
 - A moratorium should be placed on all new major toll roads until more investment has been made in public transport infrastructure and pedestrian/cycling access.
 - A sustainable transport fund should be established, using revenue from parking, toll road peak surcharges, a CBD congestion charge and a levy on all new houses across Sydney. With the sustainable transport fund, a world-class public transport system could be built 'within 15 years'.²⁶⁷

²⁶² Dr Glazebrook, Evidence, 12 April 2006, p33

²⁶³ Submission 75, Professor Peter Newman, former NSW Sustainability Commissioner, p2

²⁶⁴ Submission 75, Professor Newman, p2

²⁶⁵ Submission 75, Professor Newman, p3

²⁶⁶ Submission 75, Professor Newman, p3

²⁶⁷ Dr Glazebrook, Evidence, 12 April 2006, pp34,35

4.125 Dr Glazebrook told the Committee that he believed PPPs ‘are a means to an end’ and, while not a substitute for well-considered public policy, could be used for major infrastructure projects:

there are some benefits to be obtained from engaging the private sector in major infrastructure projects. Sometimes they come up with innovative ideas. They usually are very good at producing projects on time and within budget. They claim to be better managers of risk and to enhance access to capital.²⁶⁸

4.126 Some of the problems Dr Glazebrook associated with PPPs included a cost of funds ‘much higher’ than government, the creation of risks where there were previously none, limitations on competition included in the projects distorting investment strategies, and the sending of inappropriate pricing signals.²⁶⁹

4.127 For PPPs to be used for the provision of toll roads, Dr Glazebrook suggested a full disclosure of all terms and conditions, with no limits on provision of public transport and peak period surcharges to be imposed, with revenue going to public transport provision.²⁷⁰

Conclusions

4.128 The Committee notes that most of the large PPP projects in New South Wales have been tolled road infrastructure projects, because there is an appetite for these projects in the private sector and the New South Wales government have not been required to make a financial contribution to their construction. Public transport infrastructure can be provided through PPPs, but they are unlikely to be self-funding and therefore require a greater commitment by Government to funding, even if on a recurrent basis rather than as an up-front capital investment.

4.129 The evidence heard by the Committee from officials of the NSW Treasury and the Department of Planning clearly establishes that there is strategic planning occurring in New South Wales for the future infrastructure needs of Sydney and the State, and the Committee has been assured by these government agencies that the nature of the funding of the projects is of secondary importance to their priority within the strategic framework. The existence of the Infrastructure Implementation Group within the Premier’s Department is evidence of the importance that is being placed on the coordination and strategic planning of infrastructure in the State.

4.130 The suggested transport planning measures of Dr Glazebrook would represent a significant and ambitious change of direction for the State. The Committee believes that it is important to have transport planning alternatives openly discussed in the wider community as the city of Sydney continues to grow and traffic congestion issues become more pronounced.

²⁶⁸ Dr Glazebrook, Evidence, 12 April 2006, p35

²⁶⁹ Dr Glazebrook, Evidence, 12 April 2006, p35

²⁷⁰ Dr Glazebrook, Evidence, 12 April 2006, p36

Concluding comments

- 4.131** Public Private Partnerships are a small but significant element in the NSW Government's range of financing options for providing public infrastructure. Certain PPPs, of which the Cross City Tunnel is a prime example, have attracted a great deal of public attention and mistrust.
- 4.132** The Committee notes that there is an extensive amount of evidence and analysis from government and independent reports of PPPs in this country and overseas that suggests that PPPs offer many benefits over traditional procurement methods. The focus of this Report has been on addressing areas of concern with the framework in NSW, not on comprehensively reviewing the evidence on the relative value for money of PPPs over traditional procurement methods.
- 4.133** The Committee believes that there is a place for PPPs in the provision of public infrastructure in New South Wales, but only if they genuinely offer value for money over the alternative methods of provision, and only if the community are satisfied that the processes followed by government agencies are appropriate and have been followed.
- 4.134** In NSW, the framework within which PPPs are decided and delivered has evolved over time and has benefited from the many opportunities there have been to learn from the mistakes of earlier PPPs both in this state and in other jurisdictions.
- 4.135** One of the most recent examples of a PPP that has offered important lessons in this regard is the Cross City Tunnel project, lessons which this Committee has identified in its First Report, and which the NSW Government and agencies are attempting to learn from as they respond to the Committee's First Report.
- 4.136** The work of the Victorian and NSW Treasuries in developing policies and guidelines to govern PPPs, in particular, demonstrates that governments do have the capacity to deliver PPPs satisfactorily.
- 4.137** The Committee has identified some areas where the processes could be improved, and acknowledges that the key players in this area are also constantly improving the processes based on experience with past and present projects.
- 4.138** The Committee has focused on recommendations that will improve the transparency and accountability of the processes undertaken by government agencies in engaging in PPPs; and on the importance of ensuring PPPs that are delivered are part of the strategic planning framework for the State.

Appendix 1 Submissions

No	Author
1	Mr Mike Hannon, NSW Roads and Traffic Authority
2	Mr Stephen Kozicki, Gordian Business
3	Mr Flash Langley
4	Ms Leonie Blair
5	Mr Alan Limbury
6	Mr Neville Peck
7	Mr Ross Nolan, Aircar Industry
8	Mr Matt Mushalik
9	Mr Richard Gration, Owners Corporation (the Horizon)
10	Dr David Sonnabend
11	Mr Tony Harris
12	Mr Bruce Loder
13	Mr Michael Rolfe, Natural Allies
14	Mr Bob Lemon
15	Mr Peter Ramshaw, NSW Taxi Council Ltd
16	Mr Peter Whitehead
17	Ms Robyn Hall
18	Mr Will Trippas
19	Mr Sam Harding
20	Mr Ralf Harding
21	Mrs Carole Ferrier
22	Mr Peter Mills
23	Mr Stephan Gyory, Darlinghurst Business Partnership
24	Mrs Kama Harding
25	Mr Jonathon Falk, Jonathon Falk Planning Consultants Pty Ltd
26	Mrs Elinor Wrobel, John Passmore Museum of Art
27	Miss Jane Barnett
28	Ms Mary-Ann Bonney
29	Mrs Kylie Cossa
30	Ms Felicity Crombach
31	Miss Catherine Lyons
32	Mr Barrie Shepherd

No	Author
33	Mr W.G. Hamilton
34	Mr Alex Unwin, Bicycle New South Wales
35	Ms Suzanne O'Connor, Kings Cross Community Liaison Group
36	Mr Warwick Hatton, Woollahra Municipal Council
37	Mr Richard Jones
38	Mr Peter Sansom, CrossCity Motorways Pty Ltd
39	Dr Deborah Dearing, The Royal Australian Institute of Architects
40	Ms Elizabeth George, Cross City Tunnel Action Group
41	Dr Ray Kearney, Lane Cove Tunnel Action Group Inc
42	Dr Norman Thompson
43	Mr Craig Tansley
44	Ms Lucy Robertson
45	Mr Geoff Phillips
46	Ms Julia Perry, Darlinghurst Residents Action Group
47	Ms Jan Morrison
48	Dr Gerard Milton
49	Ms Narelle Thirkettle, Sydneysiders Against Polluting Stacks and Ms Lalita Lakshmi, UnitingCare Harris Community Centre
50	Mr Charles Kelly
51	Mr Benjamin Kelly
52	Ms Wanda Jaworski, 2011 Residents Association Incorporated
53	Ms Jo Holder, Action City East
54	Mr Brett Gale, NRMA Motoring and Services
55	Mr Richard d'Apice
56	Mr Malcolm Duncan - Partially Confidential
57	Mr John Oultram
58	Mr Mark Curren, Residents Against Polluting Stacks
59	Ms Denyse Rockey
60	Mr Peter Snepvangers
61	Ms Stacey Miers, Residents of Woolloomooloo
62	Ms Jill Yates, City of Sydney Residents' Network
63	Mr Michael Gormly
64	Ms Margy Osmond, State Chamber of Commerce
65	Mr Jozef Goj, UBTSC
66	Councillor Nick Dyer, Leichhardt Council

No	Author
67	Professor Bob Walker and Ms Betty Con Walker
68	Professor Anthony Blackshield
69	Mr Gregory Reich
70	The Hon Paul Keating
71	Ms Jenny Allum, SCEGGS Darlinghurst
72	Professor John Quiggin, University of Queensland
73	Ms Carol Young
74	Dr Garry Glazebrook, Glazebrook and Associates
75	Professor Peter Newman, Institute for Sustainability and Technology Policy

Appendix 2 Witnesses

Date	Name	Position and Organisation
6 December 2005	Mr Paul John Forward	Former Chief Executive, Roads and Traffic Authority
	Mr Michael John Hannon	Acting Chief Executive, Roads and Traffic Authority
	Mr Brett James Skinner	Director of Finance, Roads and Traffic Authority
	Mr Leslie Robert Wielinga	Director Motorways, Roads and Traffic Authority
	Mr Christopher Patrick Ford	Director Traffic and Transport, Roads and Traffic Authority
	Hon Robert John Carr	Former Premier NSW
	Hon Michael Rueben Egan	Former Treasurer NSW
7 December 2005	Mr Peter Sansom	Chief Executive and Managing Director, CrossCity Motorway
	Dr Kerry Elizabeth Schott	Executive Director, Private Projects and Asset Management, NSW Treasury
	Mr Daniel Joseph Graham	Director, Private Finance Projects, NSW Treasury
	Mr Simon Arthur Yarwood Smith	Deputy Director General, Department of Environment and Conservation
	Ms Elizabeth Corbyn	Director General, Department of Environment and Conservation
	Mr Simon Arthur Yarwood Smith	Deputy Director General, Department of Environment and Conservation
	Mr Joe Woodward	Executive Director Operations, Department of Environment and Conservation
	Mr Sam Haddad	Director General, Department of Planning
	Hon Nicholas Frank Hugo Greiner	Former Premier NSW
	9 December 2005	Mr Christopher Joseph Wilson
Dr John Louis Goldberg		Honorary Associate, Faculty of Architecture, University of Sydney
Ms Clover Moore MP		Member for Bligh and Lord Mayor of Sydney

Date	Name	Position and Organisation
1 February 2006	Mr Anthony Clement Harris	Former NSW Auditor General
	Professor Robert Graham Walker	Consultant, Centennial Consulting
	Ms Betty Con Walker	Principal, Centennial Consulting
	Ms Suzanne Lorraine O'Connor	Former member, Kings Cross Community Liaison Group
	Mr John Oultram	Former member, Kings Cross Community Liaison Group
	Mr Malcolm Bruce Duncan	Former member, Kings Cross Community Liaison Group
	Ms Jo Holder	Co-convenor, Action City East
	Ms Stacey Lee Miers	Member, Residents of Woolloomooloo
	Mr Stephan Reuben Gyory	Communications Director, Darlinghurst Business Partnership
	Ms Julia Perry	Co-convenor, Darlinghurst Residents Action Group
	Ms Carole Rae Ferrier	Member, 2011 Residents Association
	Mr John Eric Pierce	Secretary, New South Wales Treasury
	Dr Kerry Elizabeth Schott	Executive Director, Private Project and Asset Management, New South Wales Treasury
	Mr Daniel Joseph Graham	Director, Private Project, New South Wales Treasury
	Dr Colin Gellatly	Director General Premier's Department
Professor Anthony Roland Blackshield	Emeritus Professor, Macquarie University	
Ms Michelle Zeibots	Transport researcher	
2 February 2006	Ms Deborah Jane Anderson	Adult Educator and Vice President, Eastern Sydney Neighbourhood Association
	Ms Suzanne Laurel Pynenburg	Business Manager, Sydney Church of England Girls Grammar School
	Ms Lalita Lakshmi	Community Development Worker, Harris Community Centre,
	Mr Mark Curran	Representative, Groups Against Stack Pollution
	Ms Narelle May Thirkettle	Member, Air Quality Community Consultative Committee

Date	Name	Position and Organisation
	Dr Raymond Kearney	Representative, Groups Against Stack Pollution
	Dr Peter Charles Manins	Member, Air Quality Community Consultative Committee
	Mr Michael John Hannon	Acting Chief Executive, Roads and Traffic Authority
	Mr Brett James Skinner	Director of Finance, Roads and Traffic Authority
	Mr Leslie Robert Wielinga	Director Motorways, Roads and Traffic Authority
	Mr Christopher Patrick Ford	Director Traffic and Transport, Roads and Traffic Authority
	Mr Robert John Sendt	Auditor-General, New South Wales Audit Office
	Professor David Richmond	Special Adviser, Infrastructure Implementation Group, Premier's Department
	Mr Roger Frederick Wilson	Manager and Acting Chief Executive, State Transit Authority
	Mr Ian James Glasson	Manager and Director General, Ministry of Transport
	Mr Lyall William Kennedy	Manager and Director of Transport Planning, Ministry of Transport
	Dr Robert David Lang	Chief Executive Officer of the Sydney Harbour Foreshore Authority
	Ms Diana May Talty	Executive Director Major Projects, and Sydney Harbour Foreshore Authority
3 February 2006	Hon Craig John Knowles	Former Minister for Infrastructure, Planning and Natural Resources NSW
	Hon Dr Andrew John Refshauge	Former Minister for Planning NSW
	Mr Gregory Stewart	Manager, Public Infrastructure, Woollahra Municipal Council,
	Ms Kerri Lawson Huxley	Councillor, Woollahra Municipal Council
	Ms Margaret Eve Hamilton	Member, Central Community Liaison Group
	Ms Patricia Muller	Member, Central Community Liaison Group
	Mr Gunda Alpard Frenda	Member, Central Community Liaison Group
	Ms Monique Louise Roser	President, New South Wales

Date	Name	Position and Organisation
		Division, Planning Institute of Australia
	Mr Ken Morrison	New South Wales Executive Director, Property Council of Australia
	Mr Garry Robert Bowditch	Project Director, Infrastructure Partnerships Australia
	Mr Dennis Russell O'Neill	Chief Executive Officer, Australian Council for Infrastructure Development
	Mr Peter Sansom	Chief Executive and Managing Director, CrossCity Motorway
	Mr Paul Levins	General Manager, Corporate Affairs, Bilfinger Berger Australia
31 March 2006		
	Mr Ross Woodward	Deputy Director General, NSW Department of Local Government
	Mr Mike Hannon	Acting Chief Executive, NSW RTA
	Mr Les Wielinga	Director, Motorways, NSW RTA
	Mr Brett Skinner	Director, Finance, NSW RTA
	Mr Graham Mulligan	Chief Executive, CrossCity Motorway
	Mr John Fitzgerald	Acting Deputy Secretary, Department of Treasury and Finance, Victoria
	Professor Graeme Hodge	Co-Director, Centre for Regulatory Studies, Faculty of Law, Monash University
	Mr Sam Haddad	Director General, Department of Planning
	Ms Gail Connolly	Executive Director, Metropolitan Strategy, Department of Planning
3 April 2006		
	Mr Alan Evans	President, NRMA
	Ms Wendy Machin	Board Director, NRMA
	Professor Edward Blakely	Co-Chair, Planning Research Centre, Faculty of Architecture, University of Sydney
	Professor Frank Stilwell	Professor of Political Economy, School of Economics and Political Science, University of Sydney
	Professor David Richmond AO	Special Advisor, Infrastructure Implementation Group, Premier's Department
	Mr John Pierce	Secretary, NSW Treasury

Date	Name	Position and Organisation
	Dr Kerry Schott	Executive Director, Private Projects and Asset Management, NSW Treasury
	Mr Danny Graham	Director, Private Finance Projects, NSW Treasury
	Mr Ron Quill	General Manager, Asset Solutions, Sydney Water
	Ms Simone Coombes	Consultant, South East Region Training and Enterprise Centre (SERTEC)
	Mr Andrew Cappie-Wood	Director General, Department of Education and Training
	Mr Paul Culshaw	Director, Asset Management, Department of Education and Training
	Mr Terry Whyte	Project Director, Public Private Partnerships, Department of Education and Training
	Mr Lindsay Watson	Regional Education Director, South West Region, Department of Education and Training
	Mr Gerry Schipp	Deputy Commissioner, Corporate Services, Department of Corrective Services
12 April 2006	Mr Paul Willoughby	Former Director of Communications, RTA
	Mr Alan Marsh	Deputy Director General, Office of Public Works and Services, Department of Commerce
	Mr Brian Baker	Group General Manager, Project Management, Department of Commerce
	Mr Vince Graham	Chief Executive, Railcorp
	Dr Garry Glazebrook	Lecturer in Urban Planning and Urban Planning Transport Consultant

Appendix 3 Joint Select Committee on the Cross City Tunnel – First Report – Recommendations

- Recommendation 1** **36**
 That the Working with Government: Guidelines for Privately Financed Projects be made more prescriptive in relation to the public interest evaluation of projects before the decision to consider them as a Privately Financed Project. Specifically,
- the part of Government responsible for making the decision should be clearly identified
 - the decision, including a summary of the evaluation, should be made public.
- Recommendation 2** **54**
 That toll levels for future toll roads should not be assessed only in terms of what the private sector offers during tender processes and contract negotiations. Mechanisms must be in place to ensure that appropriate environmental and planning consideration is given, in particular, to the impact of tolls and tolling regimes on mode shift, traffic inducement, and value for money for the motorist.
- Recommendation 3** **60**
 That the review of the Working with Government: Guidelines for Privately Financed Projects consider specific issues raised in relation to the Cross City Tunnel project, including:
- process to be followed where both conforming and non-conforming bids are to be considered by agencies contemplating the use of privately financed projects
 - clearer guidance on the role of the environmental planning and assessment process and its relationship to other processes and procedures required in entering into privately financed projects.
- Recommendation 4** **60**
 That a separate, more detailed, policy on privately financed projects be developed to guide government agencies. This will be further considered in the Committee’s second report.
- Recommendation 5** **60**
 That both the Working with Government: Guidelines for Privately Financed Projects and the detailed policy on privately financed projects include review mechanisms to ensure that changes to relevant government policy, changes to key agencies and structures, and significant issues arising out of project reviews of privately financed projects can be incorporated in an efficient and timely manner.
- Recommendation 6** **79**
 That the Summary of Contracts for future infrastructure projects include a summary of the comparison of the Public Sector Comparator with private sector proposals. The summary should:
- outline the criteria used in the comparison and relative weightings assigned to those criteria
 - include details of the analysis conducted against the criteria.
- Recommendation 7** **83**
 That the NSW Roads and Traffic Authority request that CrossCity Motorway place daily and monthly Cross City Tunnel traffic use figures on their website.
- Recommendation 8** **85**
 That any policy of charging private consortia a fee for a ‘right to operate’ a piece of infrastructure be expressly discontinued.

- Recommendation 9** **90**
That any information relevant to an increase in toll pricing resulting from contract variations should be transparent and publicly available. The information should include:
- the original toll price proposed
 - toll price projections for each period where a price escalation or Consumer Price Index increase is provided in the contract
 - the price component of specific contract variations that increase the toll price.
- Recommendation 10** **107**
That the Government review existing community consultation practices, particularly in relation to major infrastructure projects, and develop standardised, plain English guidelines available to the community defining 'community consultation' in relation to such projects.
- Recommendation 11** **107**
That the Government refer the issue of community consultation to the Standing Committee on Social Issues to conduct a review of the experiences of New South Wales residents with consultation processes, and perform a comparative study of best practice consultation methods.
- Recommendation 12** **114**
That the NSW Roads and Traffic Authority ensure that the community consultation process in relation to Bourke Street's future status is inclusive and considers the wide variety of opinions and views in the community. The process should be conducted with a view to addressing the opposing views and if possible develop a consolidated position.
- Recommendation 13** **114**
The trial closure of Bourke Street ends on 28 February 2006. The Committee recommends that the NSW Roads and Traffic Authority immediately reopen the street while the review is being conducted.
- Recommendation 14** **126**
That the NSW Roads and Traffic Authority immediately reverse the traffic measures identified in Appendix 5 of this report and categorised as category B, C or D and further investigate reversing those referred to as category A as soon as possible.
- Recommendation 15** **126**
That the Government continue to encourage the operators of the Cross City Tunnel to lower the toll. A reduction of the toll to \$2.90, as suggested by the NSW Roads and Traffic Authority's traffic consultants, would be revenue neutral and improve patronage of the tunnel.
- Recommendation 16** **134**
That the Government finalise the revised guidelines for public release of documents, taking into consideration the recommendations of the Infrastructure Implementation Group's Review of Future Provision of Motorways in NSW and the Auditor General.
- Recommendation 17** **134**
That the revised guidelines for the public release of documents clarify the status of amendments or variations to existing contracts.

Appendix 4 Victorian Public Interest Test

Source: Partnerships Victoria – Practitioner’s Guide June 2001: Appendix D

Partnerships Victoria

Practitioners’ Guide

Appendix D: Public interest test

Protecting the public interest		
Public interest element	Standard	Assessment
<p>Effectiveness</p> <p>Is the project effective in meeting government objectives?</p>	<p>List government’s output/service delivery requirements for the project:</p> <ul style="list-style-type: none"> consider government’s output/service delivery requirements in similar projects delivered previously, either under public procurement or another public/private partnership; and identify any minimum government standards (in quality or quantity etc.) to be met for each output/service delivery requirement identified above, whether a legislative or policy requirement. 	<ul style="list-style-type: none"> Which of the output/service delivery requirements identified in the previous column are met by the project? How effectively are the requirements met, i.e. what are the mechanisms used to achieve the requirements? Are they fully met, or only partly met? What are the deficiencies, i.e. which of the identified requirements, or what part of a particular requirement, does the project not meet and what are the consequences? Can this be addressed?
<p>Accountability and transparency</p> <p>Do the partnership arrangements ensure that:</p> <ul style="list-style-type: none"> the community can be well-informed about the obligations of government and the private sector partner; and that these can be oversighted by the Auditor-General? 	<ul style="list-style-type: none"> Identify government’s current policy on disclosure and transparency during both the bidding and negotiation stages and after contract signing. Identify legal disclosure requirements and government obligations, e.g. Freedom of Information Act. If there is no policy or there are no legal requirements, identify the disclosure requirements under previous, similar projects. Identify Auditor-General’s obligations to oversee government/private party obligations. Consider any legal duties the Auditor-General may have (e.g. under specific legislation). Consider government’s policy on the Auditor-General’s role: are there specific compliance requirements/standards under this policy? 	<ul style="list-style-type: none"> Which of the transparency/disclosure requirements (of a legal or policy nature) identified in the previous column are met by the project? How is each requirement met (i.e. what are the mechanisms used to achieve the requirements)? Are they fully met, or only partly met? What are the deficiencies? That is, which of the identified requirements – or what part of a particular requirement – may not be met for the length of the project and what are the consequences? Can they be addressed, e.g. through contractual or regulatory means?

Protecting the public interest		
Public interest element	Standard	Assessment
<p>Affected individuals and communities</p> <p>Have those affected been able to contribute effectively at the planning stages, and are their rights protected through fair appeals processes and other conflict resolution mechanisms?</p>	<ul style="list-style-type: none"> • Identify: <ul style="list-style-type: none"> ➢ Those individuals/sectors of the community who will be affected by the project; and ➢ how they will be affected. (The analysis referred to below will assist in this identification process.) • Conduct: <ul style="list-style-type: none"> ➢ an appropriate public consultation process; ➢ as appropriate, an environmental impact analysis (consisting of an environmental effects statement. Identify all other requirements under environmental and planning laws and regulations); and ➢ social and regional impact analysis. • Identify relevant rights of affected individuals and communities: <ul style="list-style-type: none"> ➢ any legal requirements; ➢ current government policy requirements; and ➢ minimum requirements from previous similar projects. 	<ul style="list-style-type: none"> • Which of the identified individuals/sectors have had some form of involvement in the process? What was their level of involvement? Does it meet the identified legal and policy standards? • Where the planning stages have not been concluded by government, how does the contract/regulatory regime protect the rights identified in the previous column and/or how does it accommodate the required redress avenues? What are the mechanisms? • What are the deficiencies? That is, which of the identified requirements (or what part of a particular requirement) does the project not meet and what are the consequences? Can this be addressed, e.g. through contractual or regulatory means?

Protecting the public interest		
Public interest element	Standard	Assessment
<p>Equity</p> <p>Are there adequate arrangements to ensure that disadvantaged groups can effectively use the infrastructure or access the related service?</p>	<ul style="list-style-type: none"> • Identify disadvantaged groups who will use the infrastructure or access the related service and how they will be using it. (It may be useful to refer to the consultations/analysis conducted previously.) • Identify any specific rights of the groups identified: <ul style="list-style-type: none"> > at law (e.g. anti-discrimination laws); > under government policies; and/or > from standards agreed to in previous projects. 	<ul style="list-style-type: none"> • Which of the 'usage' rights (of a legal or policy nature) identified in the previous column are met by the project? • How is each identified right satisfied, i.e. what are the mechanisms used to provide and protect these rights? Are these rights fully or only partly met? • What are the deficiencies? That is, which of the identified rights are not provided for or protected for the duration of the project and what are the consequences? Can this be addressed (e.g. through contractual or regulatory means)?
<p>Public access</p> <p>Are there safeguards that ensure ongoing public access to essential infrastructure?</p>	<ul style="list-style-type: none"> • Identify what kind of public access is required, i.e. when the public needs access to the infrastructure and to which parts. • Are there any legal or policy access requirements? 	<ul style="list-style-type: none"> • Which of the identified access requirements are met by the project, (i.e. those of a legal or policy nature, or otherwise identified as being required by the public under the relevant project)? • How is each identified access requirement satisfied? That is, what are the mechanisms used to provide and protect these access requirements? Are these rights fully or only partly met? • What are the deficiencies? That is, which identified access requirements are not provided or protected throughout the project and what are the consequences? Can they be addressed (e.g. through contractual or regulatory means)?

Protecting the public interest		
Public interest element	Standard	Assessment
<p>Consumer rights</p> <p>Does the project provide sufficient safeguards for service recipients, particularly those for whom government has a high level of duty of care, and/or the most vulnerable?</p>	<ul style="list-style-type: none"> • Identify: <ul style="list-style-type: none"> > those recipients to whom government owes a high level of duty of care (either at law, under government policy or simply on an 'as appropriate' basis); and > those who are most vulnerable. (The consultations/analysis conducted previously will assist in this process.) • Do any rights or needs of these recipients need to be provided for or protected by government: <ul style="list-style-type: none"> > at law (consider statutory/regulatory bodies); or > under government policy? • Identify how previous similar projects protected the recipients identified above. 	<ul style="list-style-type: none"> • Which of the special needs and rights identified in the previous column are met by the project? • How are each of the identified needs and rights satisfied (i.e. what are the mechanisms used to provide for/protect these requirements)? Are these rights fully met, or are they only partly met? • What are the deficiencies? i.e. which of the identified needs or rights are not provided for or protected throughout the project and what are the consequences? Can they be addressed (e.g. through contractual or regulatory means)?
<p>Security</p> <p>Does the project provide assurance that community health and safety will be secured?</p>	<ul style="list-style-type: none"> • Identify all public health and safety standards that government is required to meet: <ul style="list-style-type: none"> > at law (e.g. health and safety legislation); > under government policy; or > from government's political accountability to the public. 	<ul style="list-style-type: none"> • Which of the health and safety standards identified does the project meet? • How is each identified standard satisfied? That is, what are the mechanisms used to protect the public's health and safety to the identified standards? Are these standards fully or only partly met? • What are the deficiencies? That is, which of the identified standards are not provided for or protected throughout the project and what are the consequences? Can they be addressed, e.g. through contractual or regulatory means?

Protecting the public interest		
Public interest element	Standard	Assessment
<p>Privacy</p> <p>Does the project provide adequate protection of users' rights to privacy?</p>	<ul style="list-style-type: none"> • Identify the users' rights to privacy (whether at law or otherwise). • Identify government's obligations to the public: <ul style="list-style-type: none"> > under law; > under government policy; > from government's political accountability to the public; or > from any other undertaking by government to the public, to protect the rights to privacy identified above. 	<ul style="list-style-type: none"> • Which of the rights identified in the previous column are protected under the project? • How is each identified right protected? That is, what are the mechanisms used to protect the public's privacy rights and hold government accountable for its obligations? • What are the deficiencies? That is, which of the identified rights are not provided for or protected throughout the project and what are the consequences? Can they be addressed, e.g. through contractual or regulatory means?

Appendix 5 NSW Public Interest Evaluation

Source: NSW Government - Working with Government: Guidelines for Privately Financed Projects – Appendix 2

Appendices 57

Appendix 2 Public Interest Evaluation

Government will develop partnerships with the private sector to deliver infrastructure where the combined ideas and experience of both sectors provide greater value for money and enhanced overall benefits to the community. All projects will undergo a broader assessment of public interest before they are offered as a PFP.

The following is a guide to the types of factors government will consider in looking at the benefits and costs of a proposal. The list is not exclusive or prescriptive and the Government may take into account any other relevant factors to determine whether a proposed PFP is in the public interest.

Effectiveness

Is the project effective in meeting government objectives?

General indicators:

- whether the proposed project's outputs, service delivery and standard of performance are consistent with:
 - the host agency's budget, service objectives and delivery strategy
 - the Government's short and longer term policy objectives for that agency or portfolio

- the Government's legislation and policies relating to the efficient allocation of resources, employment and the environment
- concurrent government initiatives/projects (potential for extra benefits/synergies or detriment/conflicts)
- offers better value for money than the best practicable public sector delivery model.

Impact on Key Stakeholders

Does the project allow for consultation with affected individuals and groups, such as employees, unions, community and action groups, local councils?

General indicators:

- identification of those likely to be affected and the likely social, economic, employment and environmental issues
- impact on the likely affected groups or concerns
- consultation/input processes ensuring participation by affected groups and confidence those views will be taken into account and given fair consideration

NSW Government – November 2001

- economic and regional development in the area concerned, including investment and employment growth
- compliance of processes with legal requirements, broader policy standards and government commitments to stakeholders.

Accountability and Transparency

Are project processes transparent and do they allow the community to be appropriately informed about the key elements of the project?

General indicators:

- comprehensive probity plan and measures to ensure transparency of process
- clear responsibility and accountability for project reporting.

Public Access and Equity

Are there adequate arrangements to ensure that the public, including disadvantaged groups, can access and use the government service(s) and related infrastructure?

General indicators:

- identification of the likely equity groups and any specific needs that must be met
- identification of the nature and extent of public access needed
- the extent to which the project plans to meet these needs

- third party access to essential major infrastructure and services
- the proposed output/product's compliance with project requirements, specific statutory requirements and government policy standards relating to public use and access
- provisions/mechanisms to address deficiencies.

Consumer Rights

Does the project provide sufficient safeguards for the people who receive the services?

General indicators:

- compliance with project requirements, relevant statutory requirements and government policies relating to consumer rights
- identification of individuals or groups to whom the government has a high level of duty of care
- strategies/mechanisms to meet these needs
- the quality, cost and performance of the proposed project.

Security

Does the project provide assurance that there will be minimum risk to the safety and security of the people who receive the services?

General indicators:

- compliance with project requirements and all relevant statutory public health and safety standards
- provisions to address deficiencies.

Privacy

Does the project provide adequate protection of users' rights to privacy?

General indicator:

- compliance with project requirements and specific legal rights as well as any relevant government policies.

Appendix 6 Minutes

Minutes No 11

Thursday 9 March 2006

Parkes Room, Parliament House, at 1.43 pm

1. Members Present

Revd Nile (Chairman)

Mr Pearce

Ms Rhiannon

Mr Constance

Mr Daley

Mr McLeay

Mr Turner

2. Apologies

Ms Fazio

3. Confirmation of Minutes

Resolved, on the motion of Mr Pearce: That Minutes No 10 be confirmed.

4. Correspondence

Resolved, on the motion of Mr Pearce: That following correspondence sent and received be noted:

- *Sent*

- 27 February 2006, from the Chairman, requesting written advice on publication of elements of the confidential draft report of the Inquiry into the Cross City Tunnel from:
 - Ms Anne Davies, *Sydney Morning Herald*
 - Mr Alex Mitchell, *The Sun Herald*
 - Ms Anna Patty, *Daily Telegraph*
 - Mr Simon Benson, *Daily Telegraph*
 - Mr Alan Jones, *Radio 2GB*
- 28 February 2006, from the Chairman to Ms Jane Anderson, providing a copy of a response from the Clerk Assistant-Committees to the East Sydney Businesses Committee regarding possible witness intimidation.
- 28 February 2006, from the Chairman to Mr Mike Hannon, NSW Roads and Traffic Authority, requesting information relating to the toll escalation methodology for the Cross City Tunnel toll.
- 27 February 2006, from the Chairman to the Hon John Della Bosca, MLC, Leader of the Government in the Legislative Council, advising that the Committee has resolved to seek an extension to the reporting date for the second part of the inquiry until 31 May 2006.
- 27 February 2006, from the Chairman to Mr Robert Stefanic, Acting Clerk Assistant – Committees, regarding a possible breach of parliamentary privilege arising from an unauthorised disclosure of the confidential draft first report of the Joint Select Committee on the Cross City Tunnel.
- 28 February 2006, from the Chairman to Mr John Evans, Clerk of the Parliaments, presenting the Joint Select Committee on the Cross City Tunnel's first report together with tabled minutes of proceedings.
- 28 February 2006, from the Chairman to Mr Russell Grove, Clerk of the Legislative Assembly, presenting the Joint Select Committee on the Cross City Tunnel's first report together with tabled minutes of proceedings.

- 2 March 2006, from the Chairman requesting written advice on publication of elements of the confidential draft report of the Inquiry into the Cross City Tunnel to:
 - Ms Madeleine Foley, Principal Council Officer
 - Mr Michael Phillips, Principal Council Officer
- **Received**
 - 24 February 2006, from Ms Jane Anderson to the Chairman, relating to her amendments to her transcript of hearing.
 - 28 February 2006, from Mr Alan Jones AO of Radio 2GB, responding to the Chairman's letter of 27 February 2006, advising that he is unable to assist with determining the source of the disclosure.
 - 28 February 2006, from Ms Laura Milkins, A/Council Officer Assistant to the Director, responding to the Chairman's letter of 27 February 2006, advising that she made no unauthorised disclosures.
 - 28 February 2006, from Mr Matt Brown MP, to the Director, responding to the Chairman's letter of 27 February 2006, advising that he did not disclose any contents of the draft report to any other persons.
 - 1 March 2006, from Mr John Evans, Clerk of the Parliaments and Clerk of the Legislative Council, responding to the Chairman's letter of 27 February 2006, advising that he made no unauthorised disclosures.
 - 1 March 2006, from Mr Simon Johnston, Principal Council Officer to the Director, responding to the Chairman's letter of 27 February 2006, advising that he made no unauthorised disclosures.
 - 1 March 2006, from Mr Robert Stefanic, A/Clerk Assistant – Committees, responding to the Chairman's letter of 27 February 2006, advising that he made no unauthorised disclosures.
 - 2 March 2006, from Ms Anne Davies of the *Sydney Morning Herald* via John Fairfax Publications Pty Limited, responding to the Chairman's letter of 27 February 2006, advising that Ms Davies is not in a position to assist in determining the source of the disclosure
 - 2 March 2006, from Mr Imre Salusinszky of *The Australian*, responding to the Chairman's letter of 27 February 2006, advising that he is unable to assist with determining the source of the disclosure.
 - 2 March 2006, from Mr Simon Benson, *The Daily Telegraph*, responding to the Chairman's letter of 27 February 2006, advising that he is unable to assist with determining the source of the disclosure.
 - 2 March 2006, from Ms Anna Patty, *The Daily Telegraph*, responding to the Chairman's letter of 27 February 2006, advising that she is unable to assist with determining the source of the disclosure.
 - 2 March 2006, from the Hon Carl Scully MP, Leader of the House to the Chairman, advising that Mr Matthew Brown MP will resume his place on the Committee, replacing Mr Daley MP.
 - 2 March 2006, from Ms Cathy Nunn, Senior Council Officer, to the Director, responding to the Chairman's letter of 27 February 2006, advising that she made no unauthorised disclosure.
 - 2 March 2006, from Dr Michael Phillips, Principal Council Officer, responding to the Chairman's letter of 27 February 2006, advising that he made no unauthorised disclosure.
 - 2 March 2006, from Ms Madeleine Foley, Principal Council Officer, responding to the Chairman's letter of 27 February 2006, advising that she made no unauthorised disclosure.
 - 2 March 2006, from Ms Rachel Simpson, Director, responding to the Chairman's letter of 27 February 2006, advising that she made no unauthorised disclosure.
 - 2 March 2006, from the Chairman, Joint Standing Committee Cross City Tunnel to the Director, advising that he made no unauthorised disclosures.
 - 2 March 2006, from Hon Greg Pearce MLC responding to the Chairman's letter of 27 February 2006, advising that he made no unauthorised disclosures.

- 3 March 2006, from Mr Alex Mitchell, *The Sun-Herald*, responding to the Chairman's letter of 27 February 2006, advising that he is unable to assist with determining the source of the disclosure.
- 3 March 2006, from Ms Lee Rhiannon MLC to the Director, responding to the Chairman's letter of 27 February 2006, advising that she did not disclose any contents of the draft report to any other person.

5. Questions on Notice

- 24 February 2006, from Clover Moore MP, Lord Mayor of Sydney, providing answers to questions on notice from the hearing on 9 December 2005.

Resolved, on the motion of Ms Rhiannon: That the Committee publish answers to questions on notice.

6. Publication of correspondence

Resolved, on the motion of Mr Pearce: That the Committee not publish the correspondence from Ms Anderson dated 24 February 2006, and the Chairman write to Ms Anderson informing her of the Committee's resolution.

7. Disclosure of Draft First Report

Resolved, on the motion of Mr Constance: That the Committee defer consideration of this matter until the next meeting of the Committee.

8. Future committee activity

Resolved, on the motion of Ms Rhiannon: That the hearing dates for the second stage of the Committee's inquiry be Friday 31 March 2006 and Monday 3 April 2006, with Wednesday 12 April 2006 as a reserve date.

Resolved, on the motion of Mr Brown: That the following witnesses be invited to give evidence to the Committee:

1. Professor Frank Stilwell, Professor of Political Economy, School of Economics and Political Science, University of Sydney.
2. Professor Peter Newman, former NSW Sustainability Commissioner.
3. Professor John Quiggin, University of Queensland.
4. Professor Ed Blakely, Chair of Metropolitan Strategy Panel (Chair of Urban and Regional Planning at the University of Sydney's Faculty of Architecture).
5. Professor Graeme Hodge, Co-Director, Centre for Regulatory Studies, Faculty of Law, Monash University.
6. NSW Treasury - Mr John Pierce, Secretary; Dr Kerry Schott; Mr Danny Graham.
7. Premier's Department – Professor David Richmond AO.
8. RTA – Mr Mike Hannon, Acting Chief Executive; Mr Paul Willoughby, Director of Communications.
9. Representative from Sydney Water.
10. Representative from Rail Corp.
11. Representative from the Department of Commerce.
12. Representative from Department of Education.
13. Representatives from Department of Planning.
14. Representatives of Department of Corrective Services.
15. CrossCity Motorway Pty Ltd – Mr Graham Mulligan, Chief Executive.
16. NRMA – Mr Graeme Blight, Director; Ms Wendy Machin, Director.
17. Ms Marea Moulton, South Coast Business Enterprise Centre (Bega).
18. Hon Paul Keating, former Prime Minister.
19. Hon Frank Sartor MP, former Lord Mayor, Sydney City Council.
20. Hon Carl Scully MP, and Hon Joseph Tripodi MP; former Ministers for Roads.
21. Hon Eric Roozendaal MLC, Minister for Roads.

- 22. Representative of Partnerships Victoria
- 23. Local Government and Shires Association

9. Adjournment

The Committee adjourned at 2.02pm until Friday 31 March 2006 at 9.45am (public hearing).

Simon Johnston
Clerk to the Committee

Minutes No 12

Friday 31 March 2006

Legislative Council Chamber, Parliament House, at 9.45am

1. Members Present

Revd Nile (Chairman)
Mr Pearce
Ms Rhiannon
Mr Constance
Mr Brown
Mr McLeay
Ms Fazio

2. Apologies

Mr Turner

3. Public Hearing

The witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding procedures for the hearing.

Mr Ross Woodward, Deputy Director General, NSW Department of Local Government, was sworn and examined.

Mr Woodward tendered documents. Resolved, on the motion of Mr McLeay: That the documents be accepted and published.

Questioning concluded, the witness withdrew.

Mr Mike Hannon, Mr Les Wielinga and Mr Brett Skinner, RTA, were examined under a previous oath.

Mr Wielinga tendered a document. Resolved, on the motion of Ms Fazio: That the document be accepted and published.

Questioning concluded, the witness withdrew.

Mr Graeme Mulligan, Chief Executive of CrossCity Motorway, was sworn and examined.

Questioning concluded, the witness withdrew.

4. Deliberative Meeting

Confirmation of minutes

Resolved, on the motion of Ms Rhiannon: That Minutes 11 be confirmed, with a correction to the 'Members Present' item to replace Mr Daley with Mr Brown.

Correspondence

Resolved, on the motion of Mr Constance: That the following correspondence sent and received be noted:

Sent

- 10 March 2006, from the Chairman, to Ms Jane Anderson, in response to her correspondence dated 24 February 2006.
- 10 March 2006, from the Chairman, to the Hon Joseph Tripodi MP, Minister Assisting the Treasurer on Business and Economic Regulatory Reform, inviting him to give evidence to the inquiry.
- 10 March 2006, from the Chairman, to the Hon Carl Scully MP, Minister for Police, inviting him to give evidence to the inquiry.
- 10 March 2006, from the Chairman, to the Hon Frank Sartor MP, Minister for Planning, inviting him to give evidence to the inquiry.
- 10 March 2006, from the Chairman, to the Hon Eric Roozendaal MLC, Minister for Roads, inviting him to give evidence to the inquiry.

Received

- 8 March 2006, from Mr Andrew Constance MP, to the Secretariat, responding to the Chairman's letter of 27 February 2006.
- 9 March 2006, from Mr Paul McLeay MP, to the Secretariat, responding to the Chairman's letter of 27 February 2006.
- 9 March 2006, from Mr John Turner MP, to the Chairman, responding to the Chairman's letter of 27 February 2006.
- 17 March 2006, from Mr David Evans, Managing Director, Sydney Water, to the Secretariat advising that Mr Rob Quill, General Manager, Asset Solutions, Sydney Water, will appear as a witness on 3 April 2006. The letter includes a submission provided to the Public Accounts Committee Inquiry into Public Private Partnerships, and the transcript of Mr Quill's appearance at a public hearing of that Committee.
- 22 March 2006, from Mr Vince Graham, Chief Executive Officer, RailCorp, to the Secretariat, advising that he is unable to appear as a witness on 3 April 2006 but would be available on another occasion.
- 30 March 2006, From Cr Genia McCaffery and Cr Col Sullivan OAM, to the Chairman, stating that they are unable to attend the Committee's scheduled hearings.
- 31 March 2006, from the Hon Frank Sartor MP, Minister for Planning, responding to the Chairman's letter of 10 March 2006.
- 31 March 2006, from the Hon Eric Roozendaal MLC, Minister for Roads, responding to the Chairman's letter of 10 March 2006.
- 31 March 2006, from the Hon Carl Scully MP, Minister for Police, responding to the Chairman's letter of 10 March 2006.

Submissions

- No 70 – Mr Paul Keating, former Prime Minister
- No 71 – Ms Jenny Allum, Head of School, SCEGGS Darlinghurst
- No 72 – Prof John Quiggin, Federation Fellow, University of Queensland.
- No 73 – Ms Carole Young, private citizen.

Resolved, on the motion of Ms Fazio: That submissions 70-73 be published.

Disclosure of Draft Report

Resolved, on the motion of Ms Rhiannon: That the Committee formally seek the advice of the Clerk of the Parliaments in relation to further action to be taken.

Other Business

The Chairman noted that the Committee has previously resolved to accept further questions from members by 5pm on the working day following the hearing. Questions for witnesses at the hearing on 31 March to be provided to the secretariat by 5pm Monday 3 April 2006.

Resolved, on the motion of Mr Pearce: That the following witnesses be invited to give evidence to the Committee:

1. Mr Paul Willoughby, former Director of Communications, NSW RTA
2. Representative of RailCorp
3. Representative of NSW Department of Commerce
4. Mr Peter Newman, former NSW Sustainability Commissioner.

5. Public Hearing (continued)

The witnesses, the public and the media were admitted.

Mr John Fitzgerald, Secretary, Department of Treasury and Finance Victoria, was sworn and examined.

Questioning concluded, the witness withdrew.

Professor Graeme Hodge, Co-Director, Centre for Regulatory Studies, Faculty of Law, Monash University, was sworn and examined.

Questioning concluded, the witness withdrew.

Mr Sam Haddad, Director General, Department of Planning was examined under a previous oath, and Ms Gail Connolly, Executive Director, Metropolitan Strategy, Department of Planning was sworn and examined.

Questioning concluded, the witness withdrew.

6. Adjournment

The Committee adjourned at 5:30pm until Monday 3 April 2006 at 9:00am (public hearing).

Simon Johnston
Clerk to the Committee

Minutes No 13

Monday 4 April 2006

Room 814/5, Parliament House, at 9.45am

1. Members Present

Revd Nile (Chairman)
Mr Pearce
Ms Rhiannon
Mr Constance

Mr Brown
 Mr McLeay
 Ms Fazio
 Mr Turner

2. Public Hearing

The witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding procedures for the hearing.

Mr Alan Evans, President and Director, and Ms Wendy Machin, Director, both of NRMA Motoring and Services, were sworn and examined.

Questioning concluded and the witnesses withdrew.

Professor Edward Blakely, City and Regional Planning, University of Sydney, was sworn and examined.

Questioning concluded and the witness withdrew.

Professor Frank Stilwell, School of Economics and Political Science, University of Sydney, was sworn and examined.

Questioning concluded and the witness withdrew.

Professor David Richmond, Special Advisor, Infrastructure Implementation Group, Premier's Department, was examined under a previous oath.

Questioning concluded and the witness withdrew.

3. Deliberative Meeting

Confirmation of minutes

Resolved, on the motion of Mr Pearce: That Minutes 12 be confirmed.

Correspondence

Resolved, on the motion of Mr Pearce: That the following correspondence sent and received be noted:

Sent

- 3 April 2006, from the Chairman, to Mr Michael Coutts-Trotter, Department of Commerce, inviting representatives to give evidence to the inquiry.
- 3 April 2006, from the Chairman, to Mr Vince Graham, RailCorp, inviting representatives to give evidence to the inquiry.

Received

- 31 March 2006, from Mr Michael Coutts-Trotter, Director General, NSW Department of Commerce, to the Chairman declining the invitation to give evidence to the Committee.
- 3 April 2006, from Hon Amanda Fazio MLC responding to the Chairman's letter of 27 February 2006, advising that she made no unauthorised disclosures.

Other Business

The Chairman advised the Committee that he would be giving the opening address to the National Tolls Road Summit on Thursday 6 April in his capacity as Chairman of the Committee.

The Chairman noted that from 13 April, Ms Rachel Simpson would no longer be the Director of the Joint Select Committee on the Cross City Tunnel. The Committee congratulated Ms Simpson on her new appointment and thanked her for her work with the Committee.

4. Public Hearing (continued)

The witnesses, the public and the media were admitted.

Mr Kerry Schott, Executive Director, Private Projects and Asset Management, Mr John Pierce, Secretary, and Mr Danny Graham, Director, Private Finance Projects, all of NSW Treasury, were examined under a previous oath.

Mr Pierce tendered a document. Resolved, on the motion of Mr Mcleay: That the document be accepted and published.

Questioning concluded and the witnesses withdrew.

Mr Ronald Quill, General Manager Asset Solutions, Sydney Water Corporation, was affirmed and examined.

Questioning concluded and the witness withdrew.

Ms Simone Coombes, Representative, South East Region Training and Enterprise Centre, was sworn and examined.

Questioning concluded and the witness withdrew.

Mr Terrence Whyte, Project Director – Public Private Partnerships, Department of Education and Training, and Mr Gerrard Schipp, Deputy Commissioner – Corporate Services, Department of Corporate Services, were sworn and examined and Mr Lindsay Wasson, Regional Director of Education – Western Sydney, and Mr Paul Culshaw, Director – Asset Management, both of the Department of Education and Training, were affirmed and examined.

Questioning concluded and the witnesses withdrew.

5. Adjournment

The Committee adjourned at 5:10 pm until Wednesday 12 April 2006 at 9:00 am in Room 814/5 (public hearing).

Simon Johnston
Clerk to the Committee

Minutes No 14

Wednesday 12 April 2006

Room 814/5, Parliament House, at 9.00am

1. Members Present

Revd Nile (Chairman)
Mr Pearce
Mr Constance
Mr McLeay
Ms Fazio

2. Apologies

Mr Turner
Mr Brown

Ms Rhiannon

3. **Public Hearing**

The witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding procedures for the hearing.

Mr Paul Willoughby, former Director of Communications, NSW Roads and Traffic Authority, was sworn and examined.

Point of order: Mr McLeay took a point of order regarding the relevance of the line of questioning of a member.

The Chairman upheld the point of order.

Questioning concluded and the witness withdrew.

Mr Alan Marsh, Deputy Director General, Office of Public Works and Services, and Mr Brian Baker, Group General Manager, Project Management, both of the NSW Department of Commerce, were sworn and examined.

Mr Marsh tendered a document. Resolved, on the motion of Ms Fazio: That the document be accepted and published.

Questioning concluded and the witnesses withdrew.

Mr Vince Graham, Chief Executive, Railcorp, was sworn and examined.

Questioning concluded and the witness withdrew.

Dr Garry Glazebrook, Lecturer in Urban Planning and Urban Planning Traffic Consultant, was sworn and examined.

Dr Glazebrook tendered a document. Resolved, on the motion of Mr McLeay: That the document be accepted and published as a submission.

Questioning concluded and the witness withdrew.

4. **Deliberative Meeting**

4.1 Confirmation of minutes

Resolved, on the motion of Ms Fazio: That Minutes 13 be confirmed.

4.2 Cross City Tunnel – Second Report

Resolved, on the motion of Ms Fazio: That consideration of the Chairman's draft second report take place on Monday 15 May 2006 between 10 am and 5 pm and that the Secretariat provide copies of the Chairman's second draft report to Members by Thursday 11 May 2006.

4.3 Extension of Inquiry – Lane Cove Tunnel

Resolved, on the motion of Ms Fazio: That advertisements calling for submissions be placed in the following newspapers:

- The Sydney Morning Herald
- The Daily Telegraph
- The North Shore Times
- The Northern District Times.

Resolved, on the motion of Ms Fazio: That members provide names of people and organisations to write to seeking submissions to the Secretariat by Wednesday 19 April 2006.

Resolved, on the motion of Ms Fazio: That members provide names of potential witnesses to the Secretariat by Wednesday 19 April 2006.

4.4 Hearing and meeting schedule

Resolved, on the motion of Mr McLeay: That the Chairman's hearing and meeting schedule be confirmed.

Resolved, on the motion of Mr McLeay, that hearings be held on Wednesday 14, Thursday 15 and Friday 16 June, 9am to 5pm.

Resolved, on the motion of Mr McLeay: That consideration of the Chairman's draft third report take place on Tuesday 15 August 2006.

4.5 Site visit

Resolved, on the motion of Mr McLeay: That a site visit take place on the morning of Wednesday 14 June 2006 between 9 am and 12 noon.

5. Other Business

The Chairman drew the Committee's attention to the departure of Ms Rachel Simpson, the Director, for a secondment to the Attorney-General's Department and she was warmly thanked.

6. Adjournment

The Committee adjourned at 12:30 pm until Monday 15 May 2006 at 10 am.

Simon Johnston
Clerk to the Committee

Minutes No 15

Monday, 15 May 2006

Room 1153, Parliament House, at 10.05am

1. Members Present

Revd Nile (Chairman)
Mr Brown
Ms Rhiannon
Ms Fazio
Mr McLeay
Mr Pearce

2. Apologies

Mr Turner
Mr Constance

3. Confirmation of Minutes No.14

Resolved, on the motion of Mr Brown: That Minutes 14 be confirmed.

4. Correspondence

- Received
 - Mr Michael Coutts-Trotter, Director-General, NSW Department of Commerce, to the Chairman, received 18 April 2006
 - Mr William Michail, private citizen, to Committee, received 24 April 2006
 - Mr Justin Wells, Sustainable Brisbane, to Committee, received 26 April 2006
 - Mr Mike Hannon, Acting Chief Executive, NSW RTA, to Chairman, received 26 April 2006
- Sent
 - Chairman to Mr John Evans, Clerk of the Parliaments, dated 18 April 2006
- Answers to questions on notice
 - Mr Sam Haddad, Director General, Department of Planning, received 12 April 2006
 - Mr Luke Mortimer, Executive Officer, Office of the Managing Director, Sydney Water, received 18 April 2006
 - Mr Terry Whyte, Project Director, NSW Department of Education and Training, received 19 April 2006
 - Mr Mike Hannon, Acting Chief Executive, RTA, received 20 April 2006
 - Ms Simone Coombes, Consultant, SERTEC, received 26 April 2006
 - Dr Kerry Schott, Executive Director, Private Projects and Asset Management Directorate, NSW Treasury, to the Committee, received 21 April 2006
 - Mr Mike Hannon, Acting Chief Executive, RTA to the Chairman, received 26 April 2006
 - Mr Paul Culshaw, Director, Strategic Asset Planning & Procurement, NSW Department of Education and Training, to the Committee, received 5 May 2006
 - Mr Vince Graham, Chief Executive Officer, RailCorp, to the Committee, received 5 May 2006
 - Mr Michael Coutts-Trotter, Director-General, NSW Department of Commerce, to the Committee, received 8 May 2006
 - Prof Graeme Hodge, Director, Centre for Regulatory Studies, Monash University, to the Committee, received 11 May 2006

Resolved, on the motion of Ms Fazio: That the Committee publish answers to questions on notice.

- Submissions received
 - No. 74 – Dr Garry Glazebrook, Lecturer in Urban Planning Transport
 - No. 75 – Mr Peter Newman, former NSW Sustainability Commissioner
 - No. 76 – Dr David Poole, Urban Development Institute of Australia
 - No. 77 – Ms Genia McCaffery, North Sydney Council

Resolved, on the motion of Ms Fazio: That the Committee publish submissions received.

5. Chairman's draft Second Report

The Chairman tabled the draft Second Report, which having been circulated, was taken as being read. The Committee proceeded to consider the draft Second Report in detail.

Chapter One read.

Resolved, on the motion of Mr Brown: That paragraph 1.22 be amended by inserting the sentence "The Committee thanks the Public Accounts Committee for their cooperation with the Cross City Tunnel Inquiry" after the last sentence.

Resolved, on the motion of Ms Fazio: That paragraph 1.25 be amended by deleting "made no findings that any person" and inserting instead "found that no person".

Resolved, on the motion of Mr Brown: That paragraph 1.27 be deleted and the sentence "The Law Society has advised Ms Rhiannon it will not be proceeding with this complaint" be inserted instead.

Resolved, on the motion of Ms Rhiannon: That Chapter One, as amended, be adopted by the Committee.

Chapter Two was read.

Resolved, on the motion of Ms Fazio: That paragraph 2.8 be deleted.

Resolved, on the motion of Mr Brown: That paragraph 2.12 be amended by deleting "a document prepared by the RTA's legal advisors Clayton Utz" and inserting instead "the project deed."

Resolved, on the motion of Ms Fazio: That paragraph 2.12 be amended by deleting the words "in the Clayton Utz document".

Resolved, on the motion of Mr Brown: That paragraph 2.21 be amended by deleting the words "including Bourke Street".

Resolved, on the motion of Mr Pearce: That paragraph 2.25 be amended in the first sentence to read "The halving of the toll on 5 March 2006 was described by Mr Mulligan...".

Resolved, on the motion of Mr McLeay: That paragraph 2.26 be amended by deleting "Mr Hannon" and inserting instead "Mr Mulligan".

Resolved, on the motion of Ms Fazio: That Recommendation 1 be amended by deleting "permanently" from the first sentence.

Resolved, on the motion of Ms Rhiannon: That Recommendation 2 be amended by deleting "any future" and inserting instead "all".

Resolved, on the motion of Mr Brown: That paragraph 2.40 be amended to read "...the community is continuing to pay the price of congested surface roads during construction of road changes and associated inconvenience, as well as the monetary price of the toll."

Resolved, on the motion of Ms Fazio: That Recommendation 3 be amended to read "That the Government ensure that motorists are advised to take appropriate precautions against possible adverse air quality in tunnels, with such advice displayed on entry to road tunnels, or by any other means."

Ms Rhiannon moved that a Recommendation be inserted after Recommendation 3 to read "That the Government require all existing and future tunnels to be filtered."

Question put and negatived.

Resolved, on the motion of Mr Pearce: That the issue of air filtration be deferred until proceedings of the Lane Cove Tunnel Inquiry.

Resolved, on the motion of Ms Rhiannon: That a Recommendation be inserted after paragraph 2.55 to read "That the Roads and Traffic Authority investigate ways to improve the operation of bus lanes in the Central Business District."

Ms Rhiannon moved that the following paragraphs and Recommendation be inserted after paragraphs 2.55 to read:

The Committee also received a submission from Mr Matt Mushalik, a civil engineer and town and regional planner, argued that the process of designing and approving the Cross City Tunnel was flawed as warnings about peak oil were ignored. He argued that in coming years motorists will be able to afford high petrol prices and high tolls.

Though it is notoriously difficult to predict accurately the timing of peak oil due to lack of reliable data, it should have been clear from the study of oil-geological reports that the global peaking of oil production could happen within the project deed period of 30 years.

The current deed would see the Government taking over the tunnel in 2035, a year well past the global peaking of oil production, when the value of a road tunnel will be very limited.

The Cross City Tunnel will not make money after peak oil. A public transport use must be found for it, otherwise our super funds, who have heavily invested in it, will financially suffer.

The Committee recommends that an immediate moratorium on new tollways be declared and a preliminary engineering study be undertaken into the feasibility of converting tollways into light rail corridors with particular consideration of the engineering and financial implications."

Question put and negatived.

Resolved, on the motion of Mr McLeay: That the following paragraph be inserted after 2.55:

“The Committee also received a submission from Mr Matt Mushalik, a civil engineer and town and regional planner, who argued that the process of designing and approving the Cross City Tunnel was flawed as warnings about peak oil were ignored. He argued that in coming years motorists will be able to afford high petrol prices and high tolls.”

Resolved, on the motion of Ms Fazio: That paragraph 2.56 be deleted.

Resolved, on the motion of Ms Fazio: That paragraph 2.57 be amended to read “Ms Wendy Machin, a board director of the National Roads and Motorists Association (NRMA), commented on...”.

Resolved, on the motion of Ms Fazio: That paragraph 2.71 be amended by deleting “The CEO of CCM is now citing...” and inserting instead “The new CEO of CCM, Mr Mulligan, is citing...”.

Resolved, on the motion of Ms Rhiannon: That Recommendation 5 be amended to read “That for future private toll road infrastructure projects, information on vehicle numbers be made publicly available on a regular basis.”

Resolved, on the motion of Mr Brown: That Chapter Two, as amended, be adopted.

Chapter Three read.

Resolved, on the motion of Mr McLeay: That paragraph 3.50 be amended by deleting “...committed the RTA to fully implementing the recommendations of the IIG Review” and inserting instead “In evidence, Mr Hannon said:

The recommendations of the Richmond report have been endorsed by government and, going forward, the Richmond report recommendations will be the way that the Government delivers future motorway projects.”

Resolved, on the motion of Mr Brown: That paragraphs 3.68 and 3.69 be updated according to the recent information contained in the 11 May 2006 media release of the Minister for Education and Training.

Resolved, on the motion of Mr Pearce: That, following paragraph 3.83, the following evidence given by Mr Graham be inserted, together with a summary of information contained in Mr Graham’s answer to a question taken on notice: “In response to a question from a Committee member in relation to the final cost to taxpayers of the agreement signed in 1995, Mr Graham said:

“As I said earlier, the track and tunnels cost \$700 million. As a result of the receivership and of, in hindsight, the poor quality documentation that was part of the original agreement, a further \$80 million has been negotiated with the consortium and approved by government. Of that \$80 million, all is being paid on an annual basis, not as an upfront payment based on a revenue formula. I believe of the \$80 million, \$27 million has been paid to date. There is an expectation that the remainder will be paid for in a number of years.”

Ms Rhiannon moved that paragraph 3.118 be amended by deleting “an important” and inserting instead “one”.

Question put and negatived.

Resolved, on the motion of Mr Brown: That Chapter 3 as amended, be adopted.

Chapter 4 read.

Resolved, on the motion of Ms Rhiannon: That paragraph 4.38 be amended by inserting the words “former Prime Minister and Treasurer”, and the following extract from the Hon Paul Keating’s submission:

“Nobody can borrow in Australia as cheaply as the Commonwealth and the State governments. No business has the cash flows of the Commonwealth and the State governments.

Perhaps I should make the risk point first. No organisation in Australia can more competently or more safely handle financial risk than the Commonwealth or the State governments. A set of private individuals investing through a trust or a set of financial institutions is not in anything like the same position as governments in these respects.”

Ms Rhiannon moved to delete paragraphs 4.43 and 4.44.

Question put and negatived.

Resolved, on the motion of Ms Rhiannon: That paragraph 4.45 be amended to include at the end of the first sentence “...including examples of failed or problematic PPP projects”, with the same words inserted after the words “PPP policy” in Recommendation 6.

Resolved, on the motion of Mr Brown: That the first sentence of Recommendation 6 be amended to read “The NSW Treasury and relevant government agencies and parliamentary committees...” and that the second sentence be amended to read “Where possible, the reviews should be timed...”

Resolved, on the motion of Ms Fazio: That Recommendation 7 be deleted.

Resolved, on the motion of Mr Brown: That paragraph 4.71 be amended to read “Professor Hodge described a holistic approach to the issue of transfer of risk:”

Resolved, on the motion of Mr Brown: that in paragraph 4.79 the word “proponents” be replaced by “parties”.

Resolved, on the motion of Mr Brown: That Recommendation 8 be amended in the second sentence to read “Notwithstanding the previous paragraph...”, with the words “private parties” amended to read “parties.”

Resolved, on the motion of Ms Rhiannon, that a new paragraph be inserted after paragraph 4.81: “The Committee notes that the NSW Public Interest Evaluation contained in the Working With Government Guidelines, currently under review by NSW Treasury, includes an evaluation of the impact of the project on key stakeholders, with general indicators including:

Identification of those likely to be affected and the likely social, economic, employment and environmental issues.”

Ms Rhiannon moved that Recommendation 9 be deleted and replaced with the following Recommendation:

“That the Government uses a variety of funding sources including bonds, increased levels of taxation, low interest loans from the Reserve bank of Australia and money fro superannuation funds to fund infrastructure and other projects. Where a federal policy change is required to facilitate these measures the NSW Government will work with the Commonwealth Government to achieve that change.”

Question put and negatived.

Resolved, on the motion of Ms Fazio: That paragraph 4.119 be amended by deleting the words “commented” and inserting instead “gave his opinion that”.

Resolved, on the motion of Ms Fazio: That Recommendation 10 be deleted.

Ms Rhiannon moved that two Recommendations be added after paragraph 4.137, as follows:

“That the Government borrow the necessary money to undertake a major upgrade of Sydney’s public transport – heavy and light rail, ferry and bus services. Once this upgrade is complete the loan is paid back form a sustainable transport fund that raises money from revenues from parking, toll road peak surcharges, a CBD congestion charge and a levy on all new houses in Sydney.”

“That there should be public ownership of public assets particularly those that will have specific social environmental or economic impacts.”

Question put and negatived.

Resolved, on the motion of Mr Brown: That Chapter 4, as amended, be adopted.

The Chairman indicated that he would endeavour to circulate a copy of his Foreword to the Committee on Tuesday 16 May.

Resolved, on the motion of Mr Brown: That the report, with amendments, be adopted by the Committee, signed by the Chairman and presented to the House on 18 May 2006.

Resolved, on the motion of Mr Brown: That the Committee Secretariat be authorised to make any typographical or grammatical changes to the report prior to tabling of the report.

Resolved, on the motion of Ms Fazio: That dissenting statements be submitted to the Secretariat no later than lunchtime (midday) Tuesday 16 May.

6. Lane Cove Tunnel Inquiry

The Committee considered the list of potential witnesses and agreed to provide additional witnesses to the secretariat no later than the afternoon of Thursday, May 18 2006.

7. Adjournment

The Committee adjourned at 12:10 pm until Wednesday 14 June 2006.

Victoria Pymm
Clerk to the Committee

Appendix 7 Dissenting statement

Dissenting Report – Lee Rhiannon Greens MLC

The majority report while detailing some of the problems with Public Private Partnerships has failed to make a number of key recommendations that will improve public transport in NSW and encourage the NSW government to ensure public assets are publicly owned.

Public Transport

A number of submissions highlighted that public transport is often disadvantaged by PPP toll ways.

Mr Tony Harris²⁷¹, the former NSW Auditor General, in his submissions stated:

“Another disadvantage from private ownership is that the government loses control of the design of public transport. Private developers are correct to be concerned that additional public transport and additional alternative roads can reduce their traffic and revenues and profits. Accordingly, they require government to provide compensation for any action that reduces traffic.

“While understandable, this constricts government action of the design of public transport for the life of the deal. Had the government developed the road, it too would suffer a loss in the value of an asset from the development of alternative public transport facilities. But that loss would not require negotiations – with all of their costs to government – and cash compensations.”

One way to protect bus services from the traffic disruption caused by the Cross City Tunnel is to upgrade dedicated bus lanes.

Recommendation 1

That the RTA investigate ways to improve the operation of bus lanes in the CBD and specifically the RTA does not convert the eastbound bus lane on Bathurst Street to a general traffic lane, and retains the bus lane upgrade on Druitt, Elizabeth and Clarence Streets.

Public ownership of public assets

While the report highlights problems associated with PPPs the basic thrust of the recommendations is to try and improve on this model rather than exploring how to ensure there is public ownership of public assets particularly those that will have specific social, environmental or economic impacts.

²⁷¹ Submission 11, Mr Tony Harris, former NSW Auditor General, pp5,6

Frank Stillwell Professor²⁷² from School of Economics and Political Science University of Sydney stated:

“There are, of course, viable alternatives for financing public infrastructure of this kind. Four spring immediately to my mind, one of which is the longstanding arrangement to which I have already referred of public provision finance through the issue of bonds. Loan finance is a perfectly legitimate way of providing infrastructure that will be of benefit not just to the current generation but also to future generations. As I have argued already, the interest burden is typically lower for public borrowing than for private.

“The second possibility is, of course, taxation. Commonly we have financed our infrastructure and service provision through taxation. It seems to me that land taxation offers, at least in principle, a major avenue for revenue raising for the financing of public infrastructure.

“Thirdly, there is the possibility of financing big infrastructure through little interest, or even zero, interest loans from the Reserve Bank of Australia [RBA]. There are many advocates for this form of monetary policy, which, to date, has not been used extensively in Australia.

“Finally, there are superannuation funds. There is an enormous amount of savings of Australian citizens in superannuation funds, currently in excess of \$700 billion tipped to rise to more than \$1,000 billion by the end of this decade. We ought to ensure some mechanisms by which at least a portion of those funds reliably go into the financing of public infrastructure.”

Recommendation 2

That the government uses a variety of funding sources including bonds, increased levels of taxation, low interest loans from the Reserve Bank of Australia and money from superannuation funds to fund infrastructure and other projects. Where a federal policy change is required to facilitate these measures the NSW government will work with the Commonwealth government to achieve that change.

Recommendation 3

That the government borrow the necessary money to undertake a major upgrade of Sydney’s public transport – heavy and light rail, ferry and bus services. Once this upgrade is complete the loan is paid back from a sustainable transport fund that raises money from revenue from parking, toll road peak surcharges, a CBD congestion charge and a levy on all new houses in Sydney.

²⁷² Professor Frank Stilwell, Professor of Political Economy, School of Economics and Political Science, University of Sydney, Evidence, 3 April 2006, p23

Impact of peak oil phenomenon

The Committee received a submission from Mr Matt Mushalik²⁷³, a civil engineer and town and regional planner. He argued that the process of designing and approving the Cross City Tunnel was flawed as warnings about peak oil were ignored, and that in coming years motorists will not be able to afford high petrol prices and high tolls.

Mr Mushalik commented:

“Though it is notoriously difficult to predict accurately the timing of peak oil due to lack of reliable data, it should have been clear from the study of oil-geological reports that the global peaking of oil production could happen within the project deed period of 30 years.

“The Cross City Tunnel will not make money after peak oil. A public transport use must be found for it, otherwise our super funds, who have heavily invested in it, will financially suffer.”

Mr Mushalik recommended that an immediate moratorium on new tollways be declared and existing tollways converted to light rail corridors with bus interchanges serving the adjoining suburbs.

Recommendation 4

A preliminary engineering study is undertaken into the feasibility of converting tollways into light rail corridors with particular consideration of the engineering and financial implications.

Filtering tunnels

Evidence was given to the inquiry about the experience of existing Sydney road tunnels that are not filtered. Mark Curran²⁷⁴, a member of Residents Against Polluting Stacks, stated in evidence “When we exposed flaws and breaches and tried to enforce compliance with conditions of approval, such as with the carbon monoxide levels in the M5 tunnel, the system responded by watering down those conditions, for this and for later projects, rather than fixing the problems”.

Recommendation 5

That the government require all existing and future tunnels to be filtered.

²⁷³ Submission 8, Mr Matt Mushalik, p1

²⁷⁴ Mr Mark Curran, Member of Residents Against Polluting Stacks, Evidence, 2 February 2006, p17