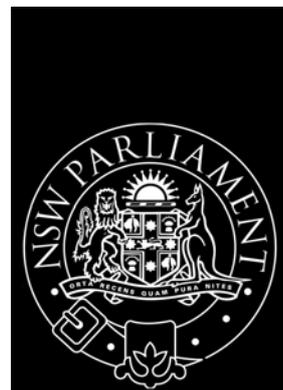


LEGISLATIVE ASSEMBLY



## Standing Committee on Public Works

THE NATIONAL CONFERENCE OF PARLIAMENTARY  
PUBLIC WORKS AND ENVIRONMENT COMMITTEES 2004  
MELBOURNE AND LORNE, VICTORIA

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## Chairman's Foreword

In July 2004, delegates from the NSW Standing Committee on Public Works attended the annual National Conference of Parliamentary Public Works and Environment Committees. The Conference was held in Melbourne and Lorne, Victoria, over three days from 12 July to 14 July. The Committee was represented by Ms Angela D'Amore MP and Ms Karyn Paluzzano MP and myself. Ms Carolynne James, Acting Committee Manager, also attended.

The Conference theme was *Emerging Challenges and Future Directions for Environment and Public Works Committees* and delegates discussed future issues concerning government management of the environment and public infrastructure.

The public works sessions focused on public/private partnerships in infrastructure provision. This has particular relevance to the NSW Public Works Committee and its ongoing terms of reference to examine joint ventures between the government and the private sector.

In my role as Chair of the NSW Committee, I was asked to present a paper on *The Changing Nature of Capital Works Programs and the Role of Public Works Committees – a State Perspective*. In this presentation, I highlighted the Public Works Committee's recent inquiries, which examine both the economic and environmental sustainability of infrastructure works, and argued that this should be a key theme for both environmental and public works committee inquiry programs.

Many Committees from other state and federal jurisdictions are still obliged to evaluate all capital works projects above set financial thresholds. The Conference identified the innovative approach of the NSW Public Works Committee, which scrutinises the strategic and environmental issues of infrastructure projects, as being more suitable to contemporary infrastructure provision.

On behalf of the Committee, I would like to thank our hosts from the Victorian Environment and Natural Resource Management Committee for organising the conference.

Kevin Greene MP  
Chairman



## Functions of the Committee

The Standing Committee on Public Works was originally established in New South Wales in 1887. Its operations were suspended in 1930.

It was re-established by Motion of the Legislative Assembly on 25 May 1995 with the following Terms of Reference:

That a Standing Committee on Public Works be appointed to inquire into and report from time to time, with the following Terms of Reference:

As an ongoing task the Committee is to examine and report on such existing and proposed capital works projects or matters relating to capital works projects in the public sector, including the environmental impact of such works, and whether alternative management practices offer lower incremental costs, as are referred to it by:

- the Minister for Public Works and Services
- any Minister or by resolution of the Legislative Assembly, or
- by motion of the Committee.

The Terms of Reference were renewed on 3 June 1999 by the 52<sup>nd</sup> Parliament.

The Committee comprises seven members of the Legislative Assembly:

- Mr Kevin Greene MP, Chairman
- Ms Marie Andrews MP, Vice Chairman
- Ms Angela D'Amore MP
- Mr Peter Draper MP
- Mrs Karyn Paluzzano MP
- Mr Steven Pringle MP
- Mr Ian Slack-Smith MP

The Hon Paul Whelan, Minister for Police and Leader of the Government in the Legislative Assembly, expanded on the role envisaged for the Committee by the Parliament in a speech to the House on 25 May 1995:

The Committee may inquire into the capital works plans of State-owned corporations and joint ventures with the private sector. The Committee will seek to find savings in capital works programs whilst achieving a net reduction in environmental impacts by public sector developers.

The Committee's work is expected to provide incentives to the public sector to produce more robust cost-benefit analyses within the government budgetary process and to give more emphasis to least-cost planning approaches.

The Committee will be sufficiently resourced to enable it to conduct parallel inquiries into specific projects and capital works programs generally.... it will have sufficient resources to inquire into the capital works program of all government agencies whose capital works programs affect the coastal, environmental and transport sectors.

Functions of the Committee

The Standing Committee on Public Works absorbed the functions of the Standing Committee on the Environmental Impact of Capital Works, which had been established by the 50<sup>th</sup> Parliament.

In the Fifty-First Parliament, the Committee examined health, education, Olympics, waterways and transport infrastructure as well as urban and environmental planning issues. It also investigated the development and approval processes for capital works procurement across the public sector.

In the 52<sup>nd</sup> Parliament, the Committee tabled eleven reports:

- Report on Capital Works Procurement (Report No 52/1)
- The National Conference of Parliamentary Public Works and Environment Committees 1999, Hobart, Tasmania (Report No. 52/2)
- Inquiry into Infrastructure Delivery and Maintenance: Volume One - Report on Office Accommodation Management (Report No. 52/3)
- The National Conference of Parliamentary Public Works and Environment Committees 2000, Darwin, Northern Territory (Report No. 52/4)
- Follow –Up Inquiry Into the Lake Illawarra Authority Report & NSW School Facilities Report (Report No. 52/5)
- Inquiry into Infrastructure Delivery & Maintenance: Volume Two - Land Fleet Management (Report No. 52/6)
- Inquiry Into Sick Building Syndrome (Report No. 52/7)
- Inquiry into Government Energy Reduction Targets (Report No. 52/8)
- Inquiry into Infrastructure Delivery and Maintenance: Volume Three - Building Maintenance Management (Report No. 52/9)
- The National Conference of Parliamentary Public Works and Environment Committees 2002, Adelaide, South Australia (Report No. 52/10)
- Inquiry into Urban Water Infrastructure (Interim Report No.52/11)

In the 53<sup>rd</sup> Parliament, the Committee has tabled two reports to date:

- The National Conference of Parliamentary Public Works and Environment Committees 2003, Perth, Western Australia (Report No. 53/01)
- Inquiry into Energy Consumption in Residential Buildings (Report No. 53/02)

## Introduction

The National Conference of Parliamentary Public Works was held in Victoria over three days from 12 July to 14 July 2004.

Over 80 delegates from Australian jurisdictions attended, along with guests from New Zealand, the South Pacific and Sweden.

The NSW Public Works Committee was represented by Chairman Mr Kevin Greene MP, Ms Angela D'Amore MP and Ms Karyn Paluzanno MP. Ms Carolynne James, Acting Committee Manager also attended.

In addition, the NSW Parliament was also represented by a delegation from the recently established Standing Committee on Natural Resource Management Committee. Attending members included Chair, Hon Pam Allan MP, Mr Gerard Martin MP, and Mr Tony McGrane MP. Ms Cassandra Adams, Assistant Committee Officer also attended.

The first day of the Conference was held at the Victorian Parliament in Melbourne and included a tour of the new Docklands commercial and residential redevelopment in Port Melbourne. From the second day the Conference was based at Lorne, south of Melbourne. From Lorne delegates were able to visit the Twelve Apostles and the Otway Fly, two environmental tourist sites.

The Conference theme was *Emerging Challenges and Future Directions for Environment and Public Works Committees*. Delegates examined future issues concerning government management of public infrastructure and the environment. The public works stream of the Conference focused on issues surrounding delivery of infrastructure by public private partnerships. Delegates also reviewed the Conference format and organisational arrangements in the final plenary session.

The purpose of this report is twofold. Firstly, it is an accountability mechanism to inform the House of the Committee's activities. Secondly, the report outlines the issues raised and contains summaries of key conference sessions.

The following Chapters contain summaries and excerpts from each day of the conference:

Chapter 1 – Commentary

Chapter 2 – Monday 12 July 2004

Chapter 3 – Tuesday 13 July 2004

Chapter 4 – Wednesday 14 July 2004



## Chapter One - Commentary

- 1.1 The 2004 Conference provided the NSW Public Works Committee with a valuable insight into the key issues surrounding public-private partnerships (PPPs) around Australia. Conference delegates heard from a mixture of practitioners, government agencies and academics on the merits and otherwise of this form of infrastructure procurement.
- 1.2 Moreover, the roles of the Parliament and in particular public works committees were explored both in the context of oversight of PPPs and of infrastructure development more generally.
- 1.3 The Chairman of the NSW Committee delivered a presentation on the role of public works committees, and argued for committees to expand their inquiry functions to include consideration of the planning, environment and financial elements of infrastructure proposals and general infrastructure management.
- 1.4 A final consideration was the future of the National Conference in terms of objectives and administration. These four issues are expanded in turn.

### **Public-Private Partnership Case Studies (Session 1, Session 3)**

- 1.5 Two sessions highlighted PPPs in practice. Presentations about two Victorian Department of Justice projects were extremely informative about the sophistication and adaptability of PPP mechanisms. Delegates were told about the Victorian County Court complex and a Victorian correctional facilities project.
- 1.6 Historically PPPs have been utilised in transport and utility portfolios. Victoria is one of the first states in Australia to extend PPP projects into human services portfolios. Mr Tim Cave of the Department of Justice Victoria outlined how critical it was to balance the innovation and value for money derived from PPP projects alongside the public interest issues in human services provision. For example, a key issue in the PPP development of courthouse facilities was the adequacy of the courtroom allocation management systems. The Department had to balance within the PPP structure the private sector's motivation for value for money maximum facility usage against the tensions of due process and the independence of the judiciary to manage the court.
- 1.7 To ensure the public interest was not compromised by the PPP project, a court facilities allocation system was introduced to ensure priority of allocation was given to the state, while still allowing the private sector owner (or contractor) the opportunity to raise additional revenue by renting out unused court facilities to third parties:  

**Mr CAVE:** They [the private sector] also get it from the potential to use the court for other purposes for third party use to the extent that we are not using it, and there is a growing business in the court at the moment for third parties to come in for moot courts, commercial arbitration, educational purposes and a whole range of other uses that they are able to gain additional income from. Providing we [the Department] have first call and we can reserve the number of courtrooms we need, that is quite okay by the state. (See Chapter 2, Session 1)
- 1.8 Similarly in the case of developing PPPs for prison facilities, care must be taken to ensure that the public interest and public expectations are recognised. In prisons,

PPP facilities design had to be both purpose built and also match the public expectations of a prison:

**Mr CAVE:** ...we are trying to get away from the look of a prison. At the same time we have got to balance that with the public perception of the need for the place to be a prison and to look like a prison so that people are going there to make some sort of recompense for the offences they have committed. It is a very fine balance architecturally to achieve that. (See Chapter 2, Session 1)

- 1.9 A further feature of PPP projects highlighted to delegates was the budgetary certainty that can be built into PPPs and the resulting benefits that this can mean for infrastructure maintenance:

**Mr CAVE:** We do not have to fund the maintenance as it is part of the contract. From a departmental point of view, to the extent that we have facilities in the Department of Justice under a PPP arrangement we have the funding in place and full maintenance is assured for 25 years. That is a lot different to us getting a capital grant from our committees saying, 'Go and build it' and then battling to get any money or trying to find the money to maintain it. Traditional procurement has been one of the reasons why over the years we have had a decline in our public facilities and why we are having to move into very expensive proactive maintenance regimes to ensure they are maintained. (See Chapter 2, Session 1)

- 1.10 Delegates were interested in how governments could take innovations that evolve from PPP projects (such as an electronic courtroom allocation system) and place them within existing government asset management processes. It was agreed that some innovations can and should be applied to public sector contexts while others pose interesting questions for traditional line agency management. For example, under the prisons PPP, there is the capacity for the Department to charge the contractor an "escape penalty" if a prisoner escapes. Delegates wondered whether such a commercial penalty could be built into traditional asset management arrangements.

- 1.11 A second presentation about PPPs in practice was a lecture from the Spencer Street Station Authority by its Project Director, Mr Tony Jolly. The Spencer Street Station renovation PPP was the first project undertaken by the new Victorian Government and delegates heard about its benefits and progress.

- 1.12 The Spencer Street Station project illustrates how important determining appropriate performance indicators are for getting good value for money. Mr Jolly argued that taking the time in PPP negotiations to set out stringent indicators is critical. For example the payments made by Government to the Spencer Station contractor are fully abatable. This means that should performance not be up to standard the quarterly payment by Government can be fully retained by the state if cleaning and building maintenance are not to standard. A well-specified performance indicator is a strong economic lever to deliver results.

- 1.13 Also of interest in this and other PPP projects is the management and transfer of risks between the Government and the private contractor:

**Mr JOLLY:** ...one of the fundamentals of the PPP is the opportunity to transfer a range of risks in a holistic context so that you get a situation where the private sector properly adopts and looks after the risks which it can best manage, such as the design of the overall facility and the construction. The state looks after areas such as planning, native title and so on, which it can best manage. (See Chapter 2, Session 3)

- 1.14 Mr Jolly explained that in hindsight the Spencer Street Station project had not necessarily allocated some of the risks optimally. In particular the project involved transferring some rail track and signal and timetable operations to a concessionaire and requiring the delivery of “equivalent rail functionality”.
- Mr JOLLY:** ...We began to go down the legal path as to what the interpretation really was and that became horribly expensive, so in the end we had to instruct a variation there. We took back part of that risk of rail functionality by saying, ‘You must do it this way’, so effectively it was instructing a variation. There are a few little idiosyncrasies like that in any contract.
- 1.15 Another area of risk transfer is the distinction between economic and political risk. For example the Government is not at economic risk should the Spencer Street Station project not be completed on time as it has built into the contract that it does not pay for each phase until completion:
- Mr JOLLY:** [The] contractor has indicated that it will not be able to finish the project on time. Does it matter? In a sense it does not matter to the state because it is not costing us anything. In pure economic terms it is a good thing because we do not pay until it is finished, and discount wise our \$300 million is actually diminishing every month that it is handed back late. Politically it is a slightly different story. It does not look good for the project if it is handed back late....
- 1.16 One of the final advantages of the Spencer Street Station project is that the commercial sector precinct was tendered. The brief was not narrowly specified, in order to draw out more opportunities for innovation. The proponents of the project argue this has resulted in an extremely commercially successful outcome for the Station.

### **Government and Parliamentary Committee Scrutiny of Public-Private Partnerships (Session 2, Session 4 and Session 7)**

- 1.17 Conference delegates heard three valuable perspectives on public accountability issues surrounding PPPs. This included sessions with Professor Graeme Hodge from Monash University (Session 2); industry practitioner representative Mr Doug Jones, National President of Engineers Australia (Session 4) and senior public servant Mr Russell Walker, Assistant Auditor-General with the Victoria Audit Office (Session 7).
- 1.18 All three speakers urged the Government and public works committees to objectively analyse the public interest values in PPP projects.
- 1.19 Professor Hodge outlined the history of privatisation and PPP projects in Australia, noting that Australia has been a radical privatiser in the last decade. With around \$100 billion in sales, Australia is ranked second or third in the OECD.
- 1.20 Professor Hodge argued that PPPs are difficult to define and the term is used differently across countries. He stated that PPPs consist of a family of techniques and evolve from the application of three economic concepts - competition, outsourcing and service purchasing within the context of government activity.
- 1.21 While government has always had relationships with business, the key new feature of PPPs is the use of private finance and the concept that this is means savings to government. This is a misnomer:

**Prof. HODGE:**... The big promise from PPPs for the last 10 years has been that they reduce pressure on public sector budgets. This is actually nonsense because what they do is convert a capital requirement into a kind of ongoing, recurrent requirement. There is no requirement for a smaller budget. You pay for it either immediately or in the long term...(Chapter 2, Session 2)

1.22 PPPs can provide value for money through the provision of a better service or product for the same price. But the state remains obligated to pay through some mechanism. What is of concern to Professor Hodge is that through long term PPP contracts of up to 30 years, the current government of the day is irreversibly committing the government of tomorrow. In effect the number of contracts locked into by the current government can diminish the mandate of future governments:

**Prof. HODGE:** To my way of thinking the long-term contract has actually become the new governance mechanism. I could ask everyone in this room, all elected members, 'Who do you think governs your public-private partnerships in your states?'. The answer is not you, you are just the government that signs up for the next 12 or 13 governments. What governs in your state is the long-term contract. That means we have to be a little bit careful about what we sign. (Chapter 2, Session 2)

1.23 It is argued that not enough care is taken by governments about the PPPs they commit to. Often public scrutiny is lessened because of commercial in confidence provisions. Interest rates need analysis and risks allocations are only focused on the small portion of known risks. In some cases agencies and bureaucrats argue that the deals are too complex to warrant the cost of external third party or parliamentary scrutiny. Nevertheless in is in the detail of agreements where significant issues can be buried:

**Prof. HODGE:** ...If you have ever had to wade through several metres of CityLink contracts to read appendix W subsection 353 to find out that the state's payments can vary by a factor of four at the call of the private contractor and they only have to pay the state back if they have sufficient cash and if they have earned more than 10 per cent real to their private investors, I can assure you there is a real transparency issue buried at the bottom of these contracts. The public should know and so should Parliament. It should be crystal clear. (Chapter 2, Session 2)

1.24 Hodge suggests that there are also vested interests at work both from the private sector proponents and, to some degree, the bureaucracy:

**Prof. HODGE:** ...One of the other observations I would make it is that I think the values of public servants have changed or perhaps the kind of persuasion, perhaps the incentives, have changed. There has been a shift in ground from the old school, dull, boring, neutral stewardship where the accountant would sharpen a pencil over to policy advocacy. Treasuries are there now, and they sell PPP policies. I always have a bit of difficulty about conflict of interest in those cases. I am never quite too sure which hats people are wearing when you speak to them. (Chapter 2, Session 2)

1.25 The session concluded with proposals to improve governance and scrutiny of PPPs. These included:

- Clear differentiation within government of the different roles associated with PPPs. Currently government can play too many overlapping roles i.e. advocate, evaluator, planner, promoter, regulator and manager without clear distinctions;
- Resourcing parliamentary committees to enable pre-proposal evaluation;

- Instituting oversight roles for parliamentary committees on a project by project basis in combination with regulatory bodies such as utility commissions and consumer protection commissions like the ACCC; and
  - Strengthening the role of the Auditor-General in evaluation of PPPs.
- 1.26 Delegates noted that currently few parliamentary committees were engaged in evaluation of PPPs, other than retrospectively. By the time most projects come to committees for consideration there is very little they can influence. Where PPP projects are funded by recurrent payments, they may not even fall within a committee's definition of capital/public works.
- 1.27 Most agreed that Parliaments needed to re-engage and form new processes to oversight PPPs.
- 1.28 Mr Jones, of Engineers Australia, presented a summary of the practitioners' perspective on PPPs, outlining Engineers Australia's recent review of infrastructure capability in Australia. Engineers Australia's 2001 report card ranks sections of national infrastructure in terms of fitness of performance. No section received a rank above a B, with some sections ranking as low as D minus in terms of their adequacy to meet future demand:
- Mr JONES:** ... Tens of billions of dollars will be needed to address the backlog of work as well as meeting the changing needs caused by the aging and growing population and its move to new housing estates and to the coastal fringe (Chapter 2, Session 4)
- 1.29 Mr Jones said that this issue has to be addressed by both public and private investment. His argument is that PPPs are not a single solution to infrastructure demands. A substantial portion of infrastructure improvement is needed on current works, whereas private investment in PPPs is much more attuned to new projects than to maintaining existing infrastructure.
- Mr JONES:**...much of the national investment in infrastructure is in local community assets and these are really unattractive to the private sector because private investors generally look for short-term returns rather than long-term returns that infrastructure can provide; difficulties associated with revenue collection for the provision of some infrastructure, particularly at a local level for, say, cultural infrastructure such as parks or the maintenance of waterways, asking how you keep your money on that and whether you have charged people for the use of those things; and the need to correct social, environmental or economic imbalances in the marketplace. In other words, the [report card] concluded that public investment in infrastructure was both justified and effective.
- 1.30 Engineers Australia along with other groups such as the Australian Council for Infrastructure Development are swinging away from the PPP solutions for critical infrastructure provision. There is now a growing group advocating that government should not be afraid of infrastructure debt. Debt may even be desirable (and vote winning) where it finances infrastructure projects that deliver value for money. Debt can usually be raised more cheaply by the public sector, for example, through the issue of infrastructure bonds. Also there are public finance mechanisms such as hypothecated taxes, like the East Timor and Medicare levies which may be more appealing to tax resistant publics.
- 1.31 Another issue highlighted is the decline in both engineering and contractual expertise in the public sector which can jeopardise government's capacity to generate the best value for money PPPs.
- Mr JONES:**...Given that a PPP can run for 30 years and involve complex financial risk and performance arrangements it is essential that the public sector has commensurate skills

to those of the private sector. This does not mean that it has to have the same level of expertise as its industry partner, because it has already denuded itself of that by de-engineering the public sector for years and years so it has not got enough engineers in the government to make proper assessments. ... The critical issue is not where the advice is located but how the government is guaranteed access to it when needed. To assist government agencies in this regard Engineers Australia has developed a model that enables agencies to obtain and maintain the most cost-effective level of technical expertise to be an informed buyer. This is available in our report *Government as an Informed Buyer*. ... We strongly encourage all government agencies to conduct a skills assessment before they embark on a PPP activity to ensure that they are as informed as their partner (Chapter 2, Session 4)

- 1.32 Delegates agreed that repeated messages were put to the public arguing against public investment in infrastructure. Some delegates noted that there may be a need to communicate a more sophisticated message:

**Ms CICCARELLO MP** —...One of the issues that politicians have at the moment is that most of our treasurers are obsessed with AAA ratings and not wanting to spend money. There are a lot of infrastructure projects that could get done. You talked about good debt. How can we change attitudes to convince governments that it is appropriate to invest in infrastructure and then you can spread the debt across a lot of decades. It is not just people now who are paying for it. It will be of benefit to the community and the cost can be spread over a number of years.

**Prof. HODGE** — Can I just add to that. The fact is that Standard and Poors has come out with a report saying that public debt is not bad. Government has plenty of capacity to take out public debt. The issue, as Alan Fels said in the paper on Saturday, is that citizens do not like it. The reason they do not like it is because parliamentarians have been telling them for the last 15 years that public debt is bad. It is now time for a new story, and the new story needs to be: if you are interested in investing in the future of your children and your children's children, it is now time to get serious about infrastructure and give out some public bonds.

- 1.33 Mr Russell Walker, Victorian Assistant Auditor-General, presented the final discussion, on governance and accountability. Mr Walker outlined the Audit Office's role in checking that due process applied to PPP projects in Victoria.

- 1.34 Despite a significant and prescriptive government policy framework for PPPs in Victoria, Mr Walker noted that many projects were adopted without full compliance. For example the Audit Office reported to the Victorian Parliament that in a number of cases comprehensive cost benefit analysis were not completed to support decisions to proceed with the selected PPP model.

- 1.35 Problems with the PPP selection mechanism also raised included:

- the use of a single public sector comparator against a project instead of multiple comparator values based on various scenarios;
- decisions based on getting arrangements recognised "off the balance sheet", instead of value for money decisions;
- the small size and structure of the PPP market in Australia leading to lack of diversity and competition in tenders;
- A clear pattern of underestimating costs and overestimating benefits by both parties when preparing large infrastructure projects; and

- Absence of a national accounting standard for disclosure of PPPs in public sector financial statements and budgets.
- 1.36 Inappropriate risk allocation in PPPs was also identified as a problem. Mr Walker argued that PPPs cannot be used to shield government from its underlying responsibilities associated with public sector service provision:
- Mr WALKER:**... Even when the risk has been transferred there remains a residual risk that the government may have to step-in in the event that the private sector contractor experiences difficulty in meeting its obligations... So it is no good entering into a private-public partnership arrangement which pushes all the risks to the private sector when we know quite well up the front end that the government, as an example, has the duty of care in relation to the provision of service. ...Then there are certain other uninsurable risks that perhaps may sit better with the public sector than the private sector. Or otherwise you may pay a huge premium by pushing them out or they may be allocated to the private sector but may not actually be effectively managed and therefore ultimately rest back with the government.
- 1.37 A final point noted by Mr Walker was continuity of government management of PPPs. With such long term and complex arrangements, there are concerns that the understanding of the arrangements and the capacity for government to scrutinise them will be lost:
- Mr WALKER:** The effective management and monitoring of PPP arrangements once established is critical to the outcome achieved. Typically, as the larger PPPs are being developed, specific purpose project teams are established drawing on internal and external expertise to work through the emerging issues associated with the effective creation of the arrangements. However, once the arrangements are established and operating these teams are generally disbursed with the resultant loss of detailed knowledge of the arrangements. This represents a major issue impacting on the effective and ongoing oversight of the arrangements... over time there is a loss of expertise in the effective oversight of these arrangements, given that governments may no longer be involved in areas similar to those subject to PPPs and therefore individuals responsible for oversight functions may not fully appreciate the associated management issues.

### **Role of Public Works Committees (Session 5 and Session 6)**

- 1.38 The conference also included presentations about the role of public works committees from the Hon Judi Moylan MP, Chair of the Commonwealth Joint Standing Committee on Public Works and Mr Kevin Greene MP, Chair of the NSW Public Works Committee.
- 1.39 The Hon Judi Moylan MP, Chair of the Commonwealth Joint Standing Committee on Public Works, outlined the history and activities of this federal committee.
- 1.40 Currently the committee is required by legislation to consider public works over \$6million and report to Parliament. A public work may not be commenced until the committee's report has been presented in both Houses of Parliament and Parliament has voted that it is expedient for the work to be carried out.
- 1.41 Historically this requirement has meant that very few Commonwealth capital works have avoided committee scrutiny. However, more recent PPP projects have not necessarily been examined by the committee. This is because many PPPs fall under the category of leases rather than capital works. The Chairman noted that the Act

failed to reflect modern procurement and financing practices and has left a gap in public scrutiny.

- 1.42 To some degree this has been remedied with the Commonwealth confirming that leases which deviate from standard market leases, can be subject to committee scrutiny. However Senator Moylan noted this does not mean that comprehensive scrutiny has been reactivated:

**Ms MOYLAN MP:** The committee recently conducted its first inquiry into a completely privately financed project ... While welcoming the opportunity to review this privately funded project, the inquiry processes highlighted the shortcomings of the existing Act with respect to these types of works. In the case of the joint operations command centre, Defence required committee approval before proceeding to the project tender stage. This puts the committee in a very difficult situation, as you can understand, because, in effect, the committee has examined the project and costs only at a conceptual level as the detailed design, construction and financing of the project will be developed by the successful private tenderer. Effectively the committee is being asked to sign off on the project before the detailed design specification costs have been determined. This stands in contradiction to the terms of the act, which stipulates that the project should be referred to the committee when all matters substantially affecting the costs have been determined. The joint headquarters example encapsulates some of the challenges facing the Public Works Committee in the changing environment. While the committee may consider and report on the work based on evidence presented to it, the final specification and financing details of the completed project may ultimately be very different to what the committee has approved.

- 1.43 One solution to this difficulty suggested by Ms Moylan is a two stage consideration and approval process for the committee: at stage one the committee approves the development concept and stage two, the plans and costings of the successful tender.
- 1.44 Another evolution of the committee is its expansion to consider energy efficiency, minimisation of greenhouse gases and other environmental issues as they relate to public buildings and infrastructure. This is highlighted by a recent review by the Commonwealth committee into contaminated sites.
- 1.45 Mr Kevin Greene MP, Chair of the NSW Standing Committee on Public Works presented an outline of the evolution of the NSW committee, noting that the Public Works Committee was one of the first committees established in a NSW Parliament. It was originally established in 1888 and re-established under new legislation in 1912.
- 1.46 The 1912 Act set out a threshold assessment approach, which is common to many public (or capital) works committees around Australia. This is where the Committee reports on all proposed capital works projects above a set value. Originally the committee reported on capital works greater than 20,000 pounds.
- 1.47 In the 1930s the committee ceased its activities, but in 1995 it was reconstituted with a new charter and approach. Unlike the Commonwealth and other states, the NSW committee is not obliged to review capital works above a financial threshold.
- 1.48 The examination of all forms of infrastructure procurement and environmental issues is well founded:

**Mr GREENE MP:** ... The new public works committee fills a gap not covered by the other committees. It reflects the contemporary capital works activities of government by highlighting scrutiny of state-owned corporations and joint ventures with the private

sector. It also introduced environmental awareness into the assessment criteria, directing the committee to find savings in capital works programs while achieving a net reduction in environmental impacts. Finally, it proposes more scrutiny of cost-benefit analysis and more emphasis on the least cost planning approaches. The committee's terms of reference capture these elements. It allows the committee freedom to examine future capital works as well as specific projects or infrastructure needs. Through this reference, the committee interest has shifted to a far more strategic viewpoint.

- 1.49 These elements have guided recent work including inquiries into: Sick Building Syndrome (2001); Government Energy Reduction Targets (2002); Urban Water Infrastructure (2002); and Energy Consumption in Residential Buildings (2004).
- 1.50 Mr Greene argued that while PPPs were a significant tool for infrastructure development, this was not the primary focus of the NSW committee. The strategic focus of the committee is best practice infrastructure planning. The Committee argues that getting the right mix of appropriate and environmentally sustainable infrastructure works is critical:

**Mr GREENE MP:** ... the broadened charter of the New South Wales committee ... looks at the drivers of infrastructure demand and how well the government manages them. The New South Wales committee is primarily focused on sustainable infrastructure planning. The key issue is whether the government is effectively identifying what infrastructure is needed and how it can be provided in an environmentally and economically sustainable way. The committee believes in a proactive approach. If planning and assessment of needs are done well with due consideration to the environment, to the future needs of the community and with comprehensive consideration of technology and alternative options, then the need for specific reactive project assessment is lessened.....The Public Works Committee sees public-private partnerships as one of a range of mechanisms for infrastructure delivery which may be appropriate on a case-by-case basis. Irrespective of individual projects, the government still retains the responsibility for identification and management of the community's infrastructure needs.

### **Role and Administration of National Conference (Plenary)**

- 1.51 The plenary session of the conference on Wednesday 14 July involved a summary of papers and a presentation of new initiatives for the national conference.
- 1.52 One of the key observations of the conference was the disparity and diversity in the roles and activities of public works and environmental committees across jurisdictions. Many committees expressed a desire to consider ideas for reform and changes in strategic directions. The approach of the NSW Public Works Committee was noted as a possible template approach that better complements contemporary methods and issues in infrastructure development.
- 1.53 The key message from the plenary session was the value generated from exchanging ideas and information and the desire to continue the annual conference arrangement.
- 1.54 In light of this view, the Commonwealth suggested that delegates consider a more formal structure involving the creation of a conference constitution and an ongoing inter-jurisdiction secretariat. A further suggestion was the formal integration of equivalent committees in the Pacific region.
- 1.55 The response from delegates was not to support more formalised arrangements but proposed that future conference hosts might consider sponsorship with contributions from other states for attendance of Pacific region delegates.

Commentary

- 1.56 The final item of the plenary session was determination of the hosts for the subsequent annual conferences. The final determinations were:
- ACT – Conference host for 2005
  - Queensland – Conference host for 2006
  - NSW – Conference host for 2007.
- 1.57 The NSW Committee looks forward to the opportunity to host the 2007 National Conference, building on the continued excellent standards of previous conferences.

## Chapter Two - Monday 12 July 2004

### DAY 1 – PUBLIC-PRIVATE PARTNERSHIPS

#### Session 1: Public-Private Partnerships in the Justice Sector

Presenter: Mr Tim Cave, Director, Major Projects Delivery Services, Department of Justice, Victoria (Abridged)

- 2.1 **Comparison of Two Justice Department Public-Private Partnerships (PPPs).** I want to talk about two themes. One is that public-private partnerships are a project delivery method. There are a lot of different types of project delivery methods, and you are very used to traditional procurement and D & C (design and construct). The public-private partnerships model is a multiple servicing model, and I want to say today that if they are effectively managed and if the circumstances are appropriate, and if it is in the public interest for the private sector to be involved, they bring community benefits and they are of benefit to departments and the government. The second theme is that if you are contemplating a PPP **you have to get the balance right between the potential of the private sector to add value to the project and the public interest issues** around its participation because if you do not get that right, you are going to have trouble going forward...
- 2.2 I am going to compare the PPP arrangements of two projects to demonstrate the value for money versus the public interest balance that we have to get right. How does the private sector add value? I am going to compare the two projects on seven criteria... Those criteria are:
1. financing and risk allocation;
  2. specialised service delivery— the capacity of the public sector to provide specialised services;
  3. the commercial synergies about building the facility that we need but allowing them to do other things around it that reduce the cost to us as an anchor tenant;
  4. innovation;
  5. working together with the private sector;
  6. cultural productivity benefits;
  7. whole-of-life asset management benefits, and whole-of-life costing and budgetary certainty...
- 2.3 The **Victorian County Court** building commenced operation in 2002. It is currently the biggest court building in Australia. It was done under a 20 year public-private partnership arrangement. There are 46 courtrooms, room for 50 people in custody underneath, judicial chambers for 70 people and administration space for 250 people — it is a very big building which takes up half a city block in the legal precinct in the Melbourne CBD.
- 2.4 The structure: as a public-private partnership it is owned by a private entity and managed under a special purpose vehicle called the Liberty Group. We have a 99-year

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ground lease with them, which is tantamount to ownership of the land — so they own the land. There is a 20 year court services agreement that sets out what we want in terms of design and construction and the performance standards that we expect over the 20 years of the operation of the facility — in other words, the way the building should be maintained and the sorts of services we are going to provide. So that is the commercial agreement we have, and that is with the Department of Justice.

- 2.5 They then went out and organised a design and construction contract, which was part of their bid, with the builder Multiplex. That was underwritten by the financier for the project, which went out and got the project finance for the construction element of the project, provided the guarantee that the building would be developed to program and to budget and also underwrote the financing for it. That is ABN Amro. They subsequently sold the building when it had been constructed to Challenger Financial Services, which currently owns the County Court building.
- 2.6 They then take the rent that we provide as a bespoke tenant over the 20 years. That is all set out in the contract as well. As I say, there is also an equity component. The debt is amortised over the 20 years of the contract, but a portion of that money stays in that project for the whole of the life of that project. That is money that has been put in and derived from the annuities market, the long-term financing market, and they are looking for the long-term benefits of being an owner in that court.
- 2.7 You can see there that **they provide facility management services, that is the building management and the maintenance and repair and refurbishment and also the security services for the building but not the custodial services** underneath, because the government was of the opinion that that should be managed by the public sector. It believes that custodial services is a core service and should be managed by the public sector, so there is an interface between the building security with the private sector and the public sector in the custody centre underneath and also IT services for all the computers and technology through the building. That is a typical PPP arrangement.
- 2.8 Now, there is a very interesting state fee model here. There is a **standard rent we pay each month. That is for the non-courtroom spaces.** It incorporates a building services fee which goes through to the maintenance contract. There is a 25-year maintenance contract on the building. That is a very long-term contract for a maintenance contractor to take out, and **we also reserve a minimum number of courtroom days every year. So what we are saying is that the state has first option on the courtrooms in that space. That means they get a guaranteed cash flow providing they meet our performance standards and the facility is kept up to standard;** and that services their debt component, which is amortised over the period of the contract. The equity gets its return from the extent that we use it more than we are reserving, and that reservation amount is based on existing courtroom demand. **They also get it from the potential to use the court for other purposes for third party use to the extent that we are not using it,** and there is a growing business in the court at the moment for third parties to come in for moot courts, commercial arbitration, educational purposes and a whole range of other uses that they are able to gain additional income from. Providing we have first call and we can reserve the number of courtrooms we need, that is quite okay by the state. The various services I told you about are a straight pass-through payment.
- 2.9 The **Partnerships Victoria correctional facilities project** is two prisons— a 300-bed and a 600-bed prison — **being done as a single transaction under a 25-year term which then**

**reverts back to the state.** That is different from the County Court deal because at the end of the County Court deal the contract is silent. There is no reversion of the facility back to the state. It stays in ownership with the private owner. I will explain the difference between those two arrangements in a minute. Their construction is on separate sites 40 kilometres apart. It is the same as the County Court. **We then lease and operate the facilities as prisons as a bespoke tenant, and we pay a monthly services charge for the spaces.** There is none of this usage stuff that we have around the County Court, it is just a straight payment for that space. So this is a very conventional public-private partnership arrangement. This one here would be the fourth contract that we have for prisons in the state. You can see the \$299 million capital arrangement. The County Court is \$140 million. Both of these projects fit the criteria of a project being at least \$100 million before you would entertain a public-private partnership. Simply because of the complexity of the arrangements and the longer lead-in time, usually you would not consider it for a smaller project.

- 2.10 ...[W]e are trying to get away from the look of a prison. **At the same time we have got to balance that with the public perception of the need for the place to be a prison and to look like a prison so that people are going there to make some sort of recompense for the offences they have committed.** It is a very fine balance architecturally to achieve that. This is a very interesting bid in the sense that it is an integrated bid. The owner of the facility, the builder and the facility manager are all from the same entity, so we can expect from them a fully-integrated bid— and we are in the design and construction phase at the moment— that we believe will provide an overall view on how to develop the facility and how they are going to maintain it for the full 20 years of working with the state.
- 2.11 **Benefits of PPPs.** Let us get back to the benefits. If we can go to that table I have compared two of them in terms of the potential benefits from PPP delivery. The Victorian County Court project, as I said, is what we call an innovative financing deal. **The contractor owns the land in the sense that it is under a 99-year lease and the contract is silent at the end of the 20-year term. That is an interesting position for a state to take, but we believe that things may change over the 20 years. Technology may move on. We may want to regionalise. We may want to move to another type of facility, and under those circumstances a very large core building may be redundant.** On the other hand, because the contractor is amortising his debt over a 20-year period, they will be looking to make their return— the equity owners — in the second term. So we believe we can get a very good commercial arrangement at the end of the first term, and it also provides the incentive for the contractor to maintain a very high-quality building and a very relevant building such that they would want to continue in the second term for us. From the point of view of community benefits then, we are getting a high-quality building built for us.
- 2.12 In terms of **prisons contract it is different. The facility is returning back to the state at the end of 20 years, so under those circumstances you have a situation where the contract has to be very clear on what we expect when it comes back to us.** There is a condition index in that contract that requires the facility to be performing at a particular level at the end of the term such that it can be returned to us in a state that we are expecting...
- 2.13 As to **risk allocation**, with both of them there is a large amount of risk allocation to the private sector. That is one of the benefits of a PPP over traditional procurement in the sense that you can allocate the risk of a facility in terms of having to perform for a

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long period of time across to the private sector. In the prison, however, that is constrained to a certain extent by the need for the state to take design risks, because for security reasons there are specific security systems that have to go into a prison so to the extent that you specify those and you ask them to use particular types of products obviously the contractor will just build to your specification rather than to their own. In the County Court it is much more of a, 'We require a building to perform to a certain performance. You go ahead and design it, and you accept the risk that it is going to meet those specifications'.

- 2.14 **Innovation is a huge advantage of PPPs.** I know it is a word that is bandied around a lot, but if you see the creative dynamic that is possible when you have the owner of a building who is concerned for that building in the long term, particularly in the County Court when they want that second term, in the same room as a builder who wants to build that building to specification and a facility manager who has to maintain building for 20 years, along with the state, which is the bespoke tenant and which is concerned with the functionality of the building, you are going to get an enormous creative benefit that is going to show up in terms of innovation. If you compare that to traditional procurement where you cash flow a builder, the builder comes along and builds the facility to your design and then they have a one or two-year defect liability period, and that is the last you see of them and you are left to maintain the building for the next 20 years, that is the difference in the conceptual model between the PPP and the capital works types of programs that are traditionally undertaken in the public sector.
- 2.15 In the County Court the consortium came up with the **courtroom allocation management system (CRAMS)** — that is, as the court reserves its courtrooms and books them, an automated system makes those courts available. There are 10 different types of courts in the County Court. The building services all come on at the appropriate times — the lighting, the airconditioning and the like — the security services are alerted, and they are made available at that particular point in time. **All the public display systems are updated for that particular courtroom. It is automatically set out onto the Internet. Finally it moves across to the invoicing system. That type of innovation would not happen in a traditional procurement environment unless the state came up with the idea itself.**
- 2.16 There is **specialised service delivery** and it is the **outsourcing component**. Both of [projects] had ancillary services being provided by the contractor. In the County Court the contractor put on two extra floors at its own risk and own cost in anticipation of the County Court wanting to expand at a future time and to ensure the building remained relevant in the long term. That is a speculation, if you like, on behalf of the contractor that we are going to need more space and to make sure that we do not get to the end of the 20 years and say that the building is too small and we want to move on. We also had some site left over. We were able to sell that to the contractor who put car parking and office space in there, which it is leasing out as a separate commercial development. Those sorts of commercial synergies are possible. Obviously that is inappropriate in a prison. You cannot do that in a prison, because a prison has certain requirements. In the public interest you cannot maximise the value-for-money potential from working with the private sector.
- 2.17 **Whole-of-life asset management is another major benefit in public-private partnerships.** In both our facilities the contractor has undertaken to maintain and refurbish the facilities to the same performance standards as when we accepted the facilities in the

first place. We commission the buildings, we accept the buildings, we run our commissioning tests and the building is new. Then over the next 20 years they will maintain the building at that level — I have already explained the commercial incentives of why they are doing that— so we get a high quality, highly maintained building for the whole of the 20 years as opposed to what I have already said about traditional procurement, where the builder goes away and we have to find our own money to maintain it over that period of time. You can see there is a very different dynamic working there in terms of whole-of-life asset management.

- 2.18 In terms of cultural benefits, the County Court has had to respond to the fact that we have a minimum reservation in the court, because we have aligned the budget with that reservation. The County Court uses more than the reserved amount of spaces that we have, and it has to find the money for that. Because it is paying on a usage basis it vastly improved its case flow management to the extent that three new judges have been appointed since the building opened. The court has been able to manage the case flow so it uses the same number of courtrooms. It has been able to do that through more productive use of those courtrooms, and that has saved it money. There is a commercial incentive that stops the client moving into a building which is bigger for future expansion and going, 'Ahhhh', and then in two or three years it is too small again, which tends to be a trend in these types of facilities.
- 2.19 Finally, in terms of **budgetary certainty** from a government point of view but mainly from a departmental point of view, we are assured of funding for 20 or 25 years, depending on the project for a fully maintained high quality facility. **We do not have to fund the maintenance as it is part of the contract.** From a departmental point of view, to the extent that we have facilities in the Department of Justice under a PPP arrangement we have the funding in place and full maintenance is assured for 25 years. That is a lot different to us getting a capital grant from our committees saying, 'Go and build it' and then battling to get any money or trying to find the money to maintain it. **Traditional procurement has been one of the reasons why over the years we have had a decline in our public facilities and why we are having to move into very expensive proactive maintenance regimes to ensure they are maintained.** All of these benefits are achieved within a demonstrated value-for-money comparison with a traditional procurement model.

### Comments and questions from the delegates

- 2.20 **Mr GREENE MP**— You talked about innovative ways of managing a project and how a private company would be keen to excess court time and all that. Why could the state not do that?
- 2.21 **Mr CAVE** — The state could do that, but unfortunately it does not. The state could do it. I have not seen any instances of the state doing it, but the state could do it. I suppose what I am suggesting is that the public-private partnerships model introduces another factor into the equation. It creates a commercial dimension. We all know that the private sector is orientated towards the commercial elements. The challenge, as I said, is to align that participation, the value for money or the commercial elements that are brought by the private sector with the public sector values that are important to us. Public sector values are about achieving service outputs.

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- 2.22 The dynamic in a PPP is that we make sure that we align the commercial advantage to the private sector to what we want, which is the service outputs. For instance, if there is an escape from a prison the contractor pays an escape fee to the state of, say, \$100 000 or whatever if a prisoner gets out.. That means there is a commercial incentive for the contractor not to have a person escaping from prison. You can see the alignment there. It is the same as assaults in prisons. We are going to abate the regime for an assault in a privately operated facility. It is the same if the lighting does not come on, we can abate the regime if the space is not available. If the airconditioning does not come on, we are going to abate the regime. Those sorts of benefits? I am not quite sure how we could do that just in a public sector environment other than you could say, 'We will reduce your funding if you do not perform'. I am interested in how anybody would be able to build that into a public sector funding arrangement.
- 2.23 **Mr GREENE MP** — Yes, that is part of it. You were talking about the way the court operated to make sure that they moved things through and operated on time schedules, and I would have thought the government could do that, but in terms of funding you are moving more towards the commercial operator being penalised financially. Surely they are going to build that into their overall funding over the 20-year period any way?
- 2.24 **Mr CAVE** — That is right. Then what we are looking for is a private sector bid in a competitive environment that demonstrates value for money or that is less expensive than what we call a public sector comparator, which is the traditional procurement model based on the capital value and what we believe it would cost to maintain it plus the pricing of risk. To the extent that we can demonstrate that to Treasury, and that is part of a business case that we put up, the project goes forward as a PPP. We test that, and though they might be pricing that element in — it is a risk premium if you like — it still works out in net present-cost terms, if you have to do the equation in net present-cost terms, and you find that it is value for money if it can be demonstrated in procedures of PPP.
- 2.25 When I am putting up a business case for a prison or a court I have to look for ways to add value to my business case, because I am competing against schools and other departments in the normal annual planning cycle. If I can put a PPP together that is going to add value to that project in the competitive process back into government seeking funding and approval I will take the PPP path. It is up to the government of course to decide whether it is in the public interest to take the PPP path or not, and that is the government of the day's decision on what the level of the private sector involvement should be....
- 2.26 **Mr McRAE MLA** — I support PPPs. There are some things that I still have some hesitation about. It goes to that leveraging of behavioural change and goes back to Kevin's question of whether reforms are available by direct management or whether you do them by business case comparisons between the private and public sectors and that is how you force change in the public sector. These are difficult questions for governments.
- 2.27 **Mr CAVE** — They are, and can I say it is not up to government to tell the judge how to run his court either. Do you know what I mean? If the judge wants to allocate judges across all the courtrooms in the facility at maximum cost to the government,

we cannot step in the way of the independent judicial right to make a decision to manage the court. What we can do is say through our registry staff, 'Can you make the use of courtrooms as productive as possible through case-by-management terms?'. The way they do is that is to have multiple bookings and they understand the way of the court trigger. What we are looking for is a culture in the place of looking towards productivity on those lines. That can be done.

- 2.28 **Mr McRAE MLA** — Why do you need a PPP to do that?
- 2.29 **Mr CAVE** — I suppose all I was trying to say is that it did add the trigger, and it did work. If you can tell me of a court where it has happened in a conventional way, I am quite happy to acknowledge that, but it has been of benefit and it has been achieved through the commercial parameter of the budget....
- 2.30 **Ms THOMPSON MP** — One question I have is the feedback from the judiciary about the operation of the court under this process.
- 2.31 **Mr CAVE** — Yes. Can I say the that the County Court is a project I am extremely proud of. I was project director on it, and the client satisfaction in the building has been tremendous. At the start there was the normal trepidation you have with the private sector owning a court; you know, it was quite a difficult process. We were lucky to have a very enlightened chief judge of the County Court and a very enlightened Attorney-General. Between the two of them we were able to put together a court liaison group to manage back into the judges. Once they moved in they were very happy, both with their accommodation — and there was a certain amount of tension in their own chambers, if I might point that out — but also with the court accommodation they had.
- 2.32 There were a couple of design issues that arose but the contractor promptly fixed those. In a couple of the courtrooms you could hear murmurs coming out of the jury poolroom; you know, somebody might be sitting there with their life in the balance and if there was a loud laugh you could hear the sound coming through. That was promptly fixed. That happened in 5 out of the 46 courtrooms, and that was at the cost of the private sector, so that sort of design risk is transferred. The County Court was a successful project on those sorts of dimensions.

## **Session 2: Governance and Accountability Arising from Public-Private Partnership Projects**

Presenter: Prof Graeme Hodge Director of the Privatisation and Public Accountability Centre, Monash University (Abridged)

- 2.33 **Prof HODGE** —What I would like to cover is a couple of comments about what is behind PPPs and what is really new. ...I thought I should start with a non-provocative title like '**Has Parliament abdicated in the age of public-private partnerships?**', because I have noticed a few things over the last few years. If we are interested in this question of Parliament's role, how can we strengthen accountability and make some conclusions?
- 2.34 Where have PPPs come from? **Australia has been actually quite a radical privatiser in the last decade— we rank third in the OECD, or second, depending on which books you read, with about \$100 billion of sales.** Our radical role is in some ways much better appreciated outside the country than it is inside the country. We have also been very

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keen on the ethos of competition. We now understand that it is probably one of the prerequisites for having a strong economy, with things like our national electricity market — which we have done some work on — and competitive contracting and so on are all part of that, along with our competition laws.

- 2.35 **The third foundation is one of outsourcing.** We have been keen, and there have been some quite aggressive policies by governments to outsource service production. At a federal level the whole-of-government information technology outsourcing initiative is an example, and the defence commercial support program...
- 2.36 The last foundation that I see is what I have called the **service purchasing ethos**. If you look at governments over the perhaps three or four decades we have gone through this long history of trying to get more exact, more precise about the way we specify services: things we want done, what we want budgets to deliver. We have had everything from zero-based budgeting, programmed budgeting, performance-based budgeting, and outward-based budgeting, and there are another 25 acronyms, all of which promise to deliver better specified services. I guess the underlying belief is that if you better specify stuff, that leads to better performance. It is an ethos. Those four foundations have come together to give us this age of public-private partnerships.
- 2.37 **What is a public-private partnership?** ...it is a family of techniques, and there is lots of muscle flexing. It may be private finance initiative in the UK, it might be the renewal of urban downtown areas in the US, it might be the reconstruction post communism in Hungary. It is a civil society in the European Union, it is private sector investment in other areas; it is a whole bunch of things. So it is a family of techniques.
- 2.38 I was reading something from one of our state governments the other day that was saying our definition of public-private partnerships is not the global partnerships, it is not Private Finance Initiatives (PFI) in the UK, and there is no ideological preference for private-sector investment, but the whole initiative is to encourage private investment. It is a game, it is a language game. All governments are trying to define their niche for this policy.
- 2.39 What is the common ground? If you look around Australia, our version has really in many ways been attached to infrastructure. **The common ground, as I see it, is that governments have a business relationship with firms.** As long-term risks and returns are shared private businesses become involved with all of those activities that Tim was talking about: financing, designing, constructing, infrastructure, and so on, and providing the services. That is interesting. That is our kind of Australian public-private partnership definition.
- 2.40 **The real issue is, what is new?** Government has a business relationship with a firm. Governments have had business relationships with firms for thousands of years. When he defeated the Spanish Armada in 1588, 82 per cent of Drake's fleet were private contractors. Having a business relationship between government and private is not new....
- 2.41 What is new is the use of private finance, and this comes back in some ways to Tony's question. **The use of private finance is new.** The highly complex contractualisation of what I have called bundled infrastructure arrangements is new. Tim Cave had a consortium structure up before. I am glad to use that one because that was a simple one; they are usually more complex than that. That is new. And there are some new

altered governance and accountability assumptions. So rather than take the ideological stand that government is good and private is bad or vice versa, we have to focus on those last three things and talk about what is new here, and what Parliament might be looking at there....

- 2.42 **The big promise from PPPs for the last 10 years has been that they reduce pressure on public sector budgets. This is actually nonsense because what they do is convert a capital requirement into a kind of ongoing, recurrent requirement. There is no requirement for a smaller budget. You pay for it either immediately or in the long term,** except in the case where government signs up to a toll road, in which case I guess governments are signed up on your private credit and not their own government credit card because you pay tolls, so that is really nonsense.
- 2.43 **The other promise that is made is that they are better value for money.** I think that is a very worthwhile pursuit. It is a good objective and worthwhile evaluating. There has not been much Australian assessment done so far but there is a portfolio of international evidence. What I would have to say is that it is quite mixed. There is a continuum of evaluations varying from one extreme — quite positive — to another extreme. In one extreme, for instance — and this is international evidence, and I have picked out some UK evidence — early studies by Arthur Andersen and the London School of Economics talked about 17 per cent lower costs. Their national audit office backed that up. One of my colleagues, Michael Pollitt, looked at the Auditor-General's reports in the UK and suggested that in 10 out of 10 cases they get pretty good deals and get good value for money in 8 out of 10 cases. That is quite impressive and relatively independent. That is one extreme. Of course you get the merchant bankers and the private contractors and so on coming in quite positively as well.
- 2.44 At the other extreme we see things like George Monbiot in the UK who says, 'UK Treasury, you are failing to protect the public interest in your haste to sign up to these deals'. We have the two Walkers in New South Wales saying that private-public partnerships are about accounting trickery and eroding accountability. Locally, Ken Davidson says that partnerships have nothing to do with economics and everything to do with powerful vested interests. So there is a continuum, there is a bunch of evidence.
- 2.45 Turning back to the issue of accountability, one of the things that I have noticed in my research is that as this privatisation family has moved — and some people would say PPPs are the latest chapter in this — there has been a concern from citizens saying, **'What about public accountability? Where do citizens rank in this? In fact, where does Parliament rank in this?'** In many of the privatisation moves that in some ways have been quite successful— electricity reform in Victoria for example; although that is not necessarily occurring in every state — where there have been gains they have often been through strong protection through things like regulators, general essential services commissions or ACCCs. So there is a question of public accountability and how we can deal with that; whether we need to have some kind of improved or increased regulatory role. Accountability, in any event, has many dimensions to it, one of which is management; and there is contracting; one of which is political, through Parliament; but there are other elements as well that are important.
- 2.46 **Is there an accountability gap within public-private partnerships? I suspect there is,** and I suspect it has come from the rise of what I have called managerialism — the rise of

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the contract state, the rise of this concern that if we can only better specify things performance will be improved. **We have seen progressively bigger and bigger contracts to deliver policies and it has tested parliamentary committees.** ...

- 2.47 I would say there has been a rise and fall of parliamentary committees. I say that because if you look at the commentaries, the sorts of commentaries that have been made are **'overuse of commercial in confidence', 'breakdown in democracy as we know it', 'central departments refused parliamentary committees a look at their corporate plans'**. Why? Because it is commercial in confidence. And 'a culture of secrecy', 'an obedient administration' and in the words of one of the academics in Melbourne, 'in the background lay a crippled Parliament which had been left perilously close to irrelevance following several years of authoritarian rule'. That is not a comment about the last Premier versus the current Premier. That is a comment about a government that was voted in and reckoned it had a mandate, and it was going to solve the state's problems through contract. Like it or not, it had a very powerful tool.
- 2.48 How would I summarise that? One thing that occurred in this state was a major review, by Professor Bill Russell, of contracts that were entered into through the 1990s. He looked at six big projects, some of which we have talked about as being public-private partnerships. One had a public benefit-cost analysis, one had a partial benefit-cost analysis, the majority had none. **So the majority of these large projects had no economic evaluation. The interesting thing to me was not one was referred to a parliamentary committee — not one.** So perhaps they all went to Parliament; I am not sure. When I asked whether there were summaries made of these deals I was told by some bureaucrats, 'No we cannot make summaries of these deals because they are too complex'. To which the response is, 'If they are too complex to make a summary of, how did Parliament approve them?'. No answer to that question. I am still searching for one because I feel that is quite important. To my way of thinking the long-term contract has actually become the new governance mechanism. I could ask everyone in this room, all elected members, **'Who do you think governs your public-private partnerships in your states?'. The answer is not you, you are just the government that signs up for the next 12 or 13 governments.** What governs in your state is the long-term contract. That means we have to be a little bit careful about what we sign.
- 2.49 So Peter Fitzgerald did some work recently reviewing the Victorian PPPs. He looked I think at eight projects, and he had many conclusions, some of which were that there **was some real innovation and positive outcomes from partnerships, but there is also another side of the story. The other side of the story is sometimes these things are signed where the risks are really not known.** It is not a quantitative insurance database that is used to generate risks, it is a bunch of assessors and knowledgeable people sitting around the room thinking up probabilities and thinking up outcomes. We need a much stronger evidence base in this area of evaluation.
- 2.50 **We also need to be careful about the interest rate that we sign up on.** When I sign up on my home mortgage I will go an extra yard to get another quarter or half per cent off the interest rate, yet Peter Fitzgerald said that our government signed up at a rate of 8.6 per cent when it really should be a couple of per cent less than that. Maybe that does not matter or maybe it does. I suspect it does because in the \$2700 million of projects that Peter looked at we have probably paid \$300 million, \$400 million or \$500 million too much. Why? Because it was privately financed, and if we had done

something sensible like just release government bonds we could have got them much cheaper. By the way, if you use the lower discount rate instead of saving 9 per cent it costs you 6 per cent more, so we need to be a little bit careful. ...

- 2.51 One of the other observations I would make it is that I think the **values of public servants have changed or perhaps the kind of persuasion, perhaps the incentives, have changed. There has been a shift in ground from the old school, dull, boring, neutral stewardship where the accountant would sharpen a pencil over to policy advocacy. Treasuries are there now, and they sell PPP policies.** I always have a bit of difficulty about conflict of interest in those cases. I am never quite too sure which hats people are wearing when you speak to them.
- 2.52 So how do we fix this? **Parliamentary committees should play a much bigger role in strengthening public accountability but that requires real resources to parliamentary committees, liberal use of consultants because it is an extraordinarily complex area and it also requires some political strength.** When some of your most powerful departments are refusing to tell you things it is a bit of David versus Goliath fight and the parliamentary committee is the David not Goliath. So there is a far stronger role for independent evaluation of partnerships as well and that may well end up being an Auditor-General.
- 2.53 But let us think about it. **Legislative oversight — the governance of some of these partnerships is put down in legislation so perhaps parliamentary committees' role should be strengthened there. Planning oversight — I would suggest a stronger role for parliamentary committees likewise with policy development.** What about oversight in the contract? Someone asked a question before about the Auditor-General. I am always nervous about the Auditor-General getting too involved in the contract up front because you have to ask, 'Who is responsible for this work and this contract?'. It is not the responsibility of the Auditor-General's; it is the responsibility of the departments implementing the works, of the private contractors. But I think there is a stronger role there for regulators in the same way as they regulate electricity. There is a stronger role in regulation for the next decades. Some of these deals go for 50 years. It works well for the first 2; I just get a little concerned about the next 48. I think there is regulatory role needed. Likewise on consumer protection I think that project by project and systemically that auditors-general ought to have much stronger roles on the evaluation side. So there is a range of ways we can improve accountability as well as strengthening the role of committees.
- 2.54 What are six take-homes? Having said all that, PPPs are the latest chapter in our privatisation book **and they enable government to purchase infrastructure on what I have called the mega credit card** and what some people call the credit card on steroids. It is not necessarily a bad thing. I think credit cards are great; you have just got to watch the other side. You do pay for them eventually. Importantly it has helped them remain good fiscal managers to voters. I am not sure how many people saw Allan Fels's article in the Age on Saturday, but it was very interesting, asking the questions, '**Why do we have to go down the private finance route? Why are we not using public bonds, public debt?**'. I think it is critical question.
- 2.55 PPP performance has to date been mixed. There have been some fantastic gains and there have been some problems, not the least of which is transparency. If you have ever had to wade through several metres of CityLink contracts to read appendix W

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subsection 353 to find out that the state's payments can vary by a factor of four at the call of the private contractor and they only have to pay the state back if they have sufficient cash and if they have earned more than 10 per cent for their private investors, I can assure you there is a real transparency issue buried at the bottom of these contracts. The public should know and so should Parliament. It should be crystal clear

2.56 **The long-term contracts now govern, not Parliament.** It might sound provocative but that is what I think. More systemic accountability arrangements are needed to overcome those accountability gaps. It is something we need to spend a bit more time on. These conflicts of interest, whether it is the advocacy versus evaluation, whether it is planning versus promoter or regulator versus the manager, I think we ought to be acknowledging those conflicts and talking about fixing them rather than dumping it with one department that bureaucratically manages those conflicts or perhaps does not even acknowledge them. **Parliamentary committees should have stronger future oversight with PPPs along with regulatory bodies like the Essential Services Commission and the Auditor-General.** ...

2.57 In conclusion perhaps what I would say is that think we have organised, from what I have seen, many of the commercial risks in the last few years pretty well. I think we are getting much better at that. We have had some spectacular failures in the past, but I think we are much better at that. I think we are yet to get right the governance aspects of these PPPs.

#### **Comments and Questions from the Delegates**

2.58 **Mr VENNING MP** — What happens in default and also in transfer of ownership, because these companies are using listed companies and they can be sold or they can be taken over? Is that all quite explicit in the contract with the government in the first place, and has a government called later on to say, 'Hang on, we do not think you are a suitable owner, say, for our court buildings or whatever, because it is a business transaction and if it is not stacking up financially deliberately

2.59 **Prof. HODGE** — The answer to that question is if it is a good contract, yes, it is in there; all of those clauses are in there. ... There is usually a bond of some description. There was with our transport franchising arrangements, that is true. At the end of the day, sometimes the failure of that company — it sounds a bit crazy — can be a bonus for the state because the state can have saved a couple of hundred million dollars in its contractual arrangements with that company. At the end of the day they have not been able to deliver, so even though politically it is seen as a failure and citizens see it as some kind of problem, in terms of finance it can be a benefit for the state. If companies bid too low, they do wear the consequences, that is true.

2.60 **Mr VENNING MP** — The bottom line is if a company fails, the state has the first call rather than a creditor? It reverts to the state?

2.61 **Prof. HODGE** — That is my belief, yes.

2.62 **Mr CAVE** — I can add a little bit to that comment, if you like, Graeme. In terms of my personal experience with the contracts we do, there is what is called a change of ownership clause in a contract, and there are also probity clauses in the contract, both of which are designed to cover the risk of doing an arrangement with the private

sector. The change of ownership provides the state with the right to disallow a change of ownership, in effect, on the basis of that contract, or take redress if it proceeds. Businesses do get sold, and there is a recognition of that. They are long-term contracts, but I believe the clauses are quite sound in the contracts in that respect...

- 2.63 **Prof. HODGE** — The only other thing I would say is that at the very end of my paper I think I make a point that is important. At the end of the day this whole business is not about signing the perfect contract. At the end of the day the whole business of accountability is about clarity and transparency, and one of the biggest issues that has been faced in this state in the past is that things have not been clear and they have not been transparent. This business of being able to get summaries of contract arrangements understandable by citizens is an example.
- 2.64 **Mr McRAE MLA** — My question goes precisely to that point. Have you started to do some work or do you see some emerging trends that allow us to understand how to see through the fog of commercial in confidence. As far as I am concerned that is used as a screen to avoid public examination, whilst on the same basis I also accept that there are genuinely commercially sensitive matters that people want to protect. That might be their method of delivering profit.
- 2.65 **Prof. HODGE** — I think there are two aspects to that — no. 1, there has been a parliamentary committee look at commercial in confidence issues in Victoria, and I think that is fantastic.
- 2.66 **Mr McRAE MLA** — Was that a public accounts committee?
- 2.67 **Prof. HODGE** — What it says is instead of the onus being on government to prove they need that information, it should be a reverse onus where everything in contracts is available except where it is provable and documented that something ought to be kept a secret, and some of these commercial arrangements sensibly should remain commercially confidential. That is the first issue.
- 2.68 The second issue, however, is we have had instances where Victorians have known about a prison contract by going to the parent company in the state and looking on their web site so that they can find out what is going on in the block down the road. It is crazy. Even where you can get hold of contract information, that does not necessarily make arrangements clear, and that example I gave you of City Link having to employ a gaggle of lawyers to interpret something and come up with two or three pages that is understandable to John and Jane, I think is erroneous. I think we ought to decide up front that if we are going to go down this complex track one of the accountability parts of the equation is going to be clarity. So there is a role for an Auditor-General to take on, and I think it is quite a clear role. I understand that it is not the legal contract by definition, but I also understand that it makes clearer the deal that the state has done with business.
- 2.69 **Ms THOMPSON MP** — I wondered whether in your thoughts about the accountability and that involvement of parliamentary committees you have thought of any key points in the process at which you think parliamentary committees should be involved, because the Public Works Committee in South Australia examines many projects. It is slightly different from other committees in that way, and my experience on that committee, which I have now left, is that the project often came to us too late to have real influence on the process, so I would fear that the same thing would

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happen with PPPs. What would be the key points at which you think parliamentary committees should be involved, and which parliamentary committees?

- 2.70 **Prof. HODGE** — That is a double-barrelled question. I am not sure that there is an easy answer to that, for a couple of reasons. No. 1, the reason that I put up there a whole bunch of functions from planning right through to long-term regulation is that I think there is a hierarchy of interactions that are involved. I think parliamentary committees ought to have a greater role up front, up to the stage of perhaps the signing of contracts and perhaps not beyond that other than through Auditor-General.
- 2.71 There is also a sense of theory and practice in this, in that the theory is that in the Victorian case, for example, I think there are three points at which parliamentary committees are involved in checking public-private partnerships. I am never too sure what the practice is. Because of the complexity, because of the David versus Goliath comment that I made, and also because in one of my past lives I looked at outsourcing, and when the government was quite clearly doing huge outsourcing deals, the majority of which were not subject to economic analysis, at the same time that was happening, guidelines for guiding people in their outsourcing decisions came out — I think it was a three-quarters of a million dollar job for one of the local consultants — explaining that the outsourcing decisions involved many steps, and if you went through the documentation it is 540 steps.
- 2.72 The theory of how you did it was just comprehensive rationality. It was brilliant. It just had nothing to do with the reality of the way the state was operating. So I am always a little bit wary of adopting these processes that have arrows and diagrams saying, 'At this point it goes to the committee'. I am never too sure whether that really does explain what is really happening except where, as you say, the project is already made up. So I think it is worth while us having a much clearer think about it, but I suspect there are multiple answers to that question.

### **Session 3: Public-Private Partnerships in the Transport Sector**

Presenter : Mr Tony Jolly, Project Director, Spencer Street Station Authority

- 2.73 **Mr JOLLY** —. This morning I am here to talk about Spencer Street station. **Spencer Street was the first PPP project initiated in this state under the new government**, which brought in its Partnerships Victoria policy for the delivery of PPPs, so it is a prototype, landmark project. ...
- 2.74 The Spencer Street station is a key metropolitan railway station here in Melbourne and many of you would be familiar with it. It is the terminus for regional and interstate services. It is already a transport interchange in that it services the rail, bus, taxi, light rail, trams and even pedestrians transiting on the way from the CBD to Docklands. So it is very significant already in a sense that it is a key area in the city. On average over 50,000 people a day travel through Spencer Street. There are 1000 rail services a day and about three-quarters of those are metropolitan services; the rest are those regional and interstate services that I was referring to. So Spencer Street is a core piece of Melbourne's transport infrastructure...
- 2.75 **So what are the objectives of the project?** For a start, to provide an efficient and modern transport hub, with weather protection. **We wanted to provide an airport-style facility** rather than what it is now. We wanted a new and impressive gateway to Melbourne. So

the brief came out with the usual clichés— it had to be iconic, it had to be world class and so forth... We wanted the facility to act as a **commercial and retail catalyst** for that end of town. This end of Collins Street has for many years been known as the Paris end, perhaps a trifle optimistically, but nevertheless it is well developed and it is a very attractive end of Melbourne. The other end was known by some as the Beirut end, perhaps facetiously, but again the opportunities for improvement are there and are highly desirable for the benefit of the city as a whole.

- 2.76 **So what was the project comprised of?** Clearly the **transport interchange facility itself was what the government wanted out of this.** ...Commercial development: we were looking both to inspire new developments in the general area but within the precinct itself we put on the table the opportunity for bidders to propose their own **commercial developments and those came out in the form of retail, hotel, residential and commercial office proposals.**
- 2.77 Regarding value for money, Tim mentioned the public sector comparator. Standard practice for Partnerships Victoria projects is that you **develop a reference case.** We did a hypothetical design which was accepted as, at least in concept, adequate for the state to develop and put in as a new transport interchange down there should the private sector not be able to come up with something which was economically and functionally more advantageous....
- 2.78 Risk transfer is something I will talk about a little more in a minute, but one of the fundamentals of the PPP is the opportunity to transfer a range of risks in a holistic context so that you get a situation where the **private sector properly adopts and looks after the risks which it can best manage, such as the design of the overall facility and the construction. The state looks after areas such as planning, native title and so on, which it can best manage.** One of the areas of risk transfer that we really did benefit from was that commercial sector. By virtue of an integrated design the private sector bid, which was successful, produced a much better economic outcome than we had expected when we planned our own public sector comparator.
- 2.79 With respect to **the sale of air rights**, as I was referring to there we were looking at building in our public sector comparator, building from ground level various development opportunities, whereas in fact what has really arisen is that pretty well all of the ground area is used for transport purposes and it is the air rights which are of value in terms of our particular design outcome.
- 2.80 I also mentioned **key performance indicators in terms of value for money.** This is an area again in our project where we got a good result. The key performance indicators are often the subject of significant negotiation in PPP projects because they determine the quality of service that will be provided for the system during the operating phase. In our case the indicators are quite stringent. **The payment stream is fully abatable, so should performance not be up to standard the quarterly payment, which starts off at around the \$8 million a quarter mark, can be fully retained by the state if the performance: the cleaning, the building maintenance et cetera, are not up to standard. So that is a very powerful lever in the economic structure of the project.**
- 2.81 This is the deal we did. In this instance I point out that we used the 8.65 discount rate which Graeme quoted Peter Fitzgerald as having criticised. The matter is still one for debate; it is certainly an issue for debate. But the picture there looked very good.

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The payment stream, at the discount rate I just mentioned, works out in 2001 dollars at \$300 million. With respect to the air rights, in our case we had valued the commercial rights at \$40 million. We were paid \$66 million for those rights. I have used an average sort of a figure, and all this is in round figures anyway to make the point that the state pays something like \$350 million.

- 2.82 In terms of benefit, the cost of what is being built down there contractually is around \$350 million, the cost of operating it at the standards we require for 30 years is about \$100 million, so in simplistic terms the state pays \$350 million and gets about \$450 million worth of benefit out of this project. Not a bad deal, subject to the criticism of the discount rates used to achieve those figures; and subject also to the recent announcement by the builder, Leighton Contractors, that several tens of millions of that gap is being made up by their charity. They significantly underbid the contract — that is, part of the gap would be accounted for by the savings in the construction bid. Mind you, in a sense we are paying for that now because the delivery is very contractual and we need a strong management team on the government's side to make sure the building contractor gives us a fair deal and does not overstep his contract because he is trying to recoup his position at this stage.
- 2.83 **With respect to the whole-of-life situation, it is very simplistic. Reinforcing what Tim said, we were paid the \$66 million up front on the day the contracts were signed.** A nice fat cheque was presented to the state. We do not pay a cent until the project is complete, which certainly provides incentive for the bidding company, or the successful concessionaire, to get the job done as quickly as it can. **The payment of charges is split into two components: an availability charge for capital and a service charge for operations.** But as I said before, in total it is basically starting at \$8 million and is CPI inflated thereafter for 30 years. Incidentally, at the end of the project the contract calls for the 50 per cent life of all elements. If the roof lasts for 20 years it has to have a 10-year life on completion of the 30-year time frame. If an escalator lasts for 10 years it must have another 5 years of good life in it at the end of that 30-year period as well. In those terms the whole-of-life situation is fairly straightforward.
- 2.84 Key issues: **transfer of risk is transfer of control.** The state, and the people who work for me on this project, are used to control. There is, particularly in the rail environment which has to be controlled, a sort of a difficult balance between saying to the private sector, 'You have got to take all of the risks of delivering this thing and running it,' and the instinctive desire in the public interest to maintain direction. This concept of risk take-back is an issue indeed, and that is reflected.
- 2.85 How much detail should there be in the project brief? **The more you specify what you want the less opportunity there is for the innovation** Tim mentioned earlier as a general rule. I have already mentioned that we are working in an extremely complex rail environment here, and indeed the builder has been somewhat the victim of a situation — in a hospital, perhaps less so in judicial services, but certainly in schools and hospitals — where the state directly controls the core services. In our particular case the state has privatised the transport services so it makes an extra dimension of trickiness for delivering this project as a PPP.
- 2.86 **We have an issue with a phased handover. Clearly the station has to keep running during the delivery phase, so it is being handed over bit by bit. At the moment the state is still responsible for managing the project through to completion, so we are taking over new bits**

**that have been completed, and that creates issues of insurance and maintenance and so forth, and project delays. Leighton Contractors has indicated that it will not be able to finish the project on time.** Does it matter? In a sense it does not matter to the state because it is not costing us anything. In pure economic terms it is a good thing because we do not pay until it is finished, and discount wise our \$300 million is actually diminishing every month that it is handed back late. **Politically it is a slightly different story. It does not look good for the project if it is handed back late....**

2.87 What are the lessons? I stand here as a staunch advocate of PPP as a delivery mode, but the circumstances surrounding any project call for a different level of management, if you like. For a start, if you are on a greenfield site you will have a lot less complexity than we have working over the top of a railway station with 50 000 people a day going through it and 1000 trains. We need a high level of management and that is a cost to the project as well.

2.88 I turn to the key issues. First up, I think the good thing about **our project is that it presented a real opportunity for bidders to optimise the value that they could extract for their own purposes and therefore reduce the cost of the project to the state. We achieved very significant risk transfer. Some of that has come back to bite us because we transferred the risk of dealing with the private sector operators through to the concessionaire**, and he has struggled with that. I do not know whether we would have had a better outcome in some ways if we had retained that risk. We are working in a very complex operating environment, which as I was just saying makes it intrinsically more difficult to deliver a PPP. Finally, our syndicate leader is not there for the long term; he has in fact sold down 75 per cent of his equity before the job is finished. He will hold the rest through to completion, but he is a bank and his purpose is not to be there to run a railway station but to gain a financial environment where he benefits as a bank. So that is where we finish up.

### Comments and questions from the delegates

2.89 **Prof. HODGE** — ... I have a question on risks. There is a kind of a risk that is in the contract, I always call that risk 'theory', and the risk reality is what happens in real life. You have referred to risk take-back. I wonder whether you would like to expand on what happens when there is risk take-back? Do the dollars follow the risk take-back?

2.90 **Mr JOLLY** — They certainly do. For example, and this is a very simple little example, the project requires the concessionaire to provide a range of facilities at least equivalent to what was in certain areas, and in the area of rail track the operator in reconfiguring the rail has to maintain what was defined as the equivalent rail functionality. ...We began to go down the legal path as to what the interpretation really was and that became horribly expensive, so in the end we had to instruct a variation there. We took back part of that risk of rail functionality by saying, 'You must do it this way', so effectively it was instructing a variation. There are a few little idiosyncrasies like that in any contract. As you said, Graeme, no contract is perfect. But again, the public sector in looking after the public interest is drawn to getting involved and directing the way things should go in the public interest, and that is a big danger because as soon as you direct the concessionaire to do something you are inviting another little bill to arrive on your desk as a variation cost.

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#### **Session 4: Public Investment in Infrastructure - Justified and Effective**

Presenter: Mr Doug Jones, National President, Engineers Australia

- 2.91 **Mr JONES** —...I am delighted to be here, Chair and committee members, to represent the institution and give a bit of a point of view on an issue we feel pretty strongly about — that is, to do with the developments that followed the release in **2002 of our discussion paper Public Investment in Infrastructure — Justified and Effective. The paper was a significant publication, not because of its content but possibly more importantly because it was the first serious non-partisan evidence-based paper that questioned the dominant political paradigm regarding the vision of infrastructure** in Australia. At the time the views it advocated were unpalatable politically. However, they resonated with large sections of the business community principally because of the paper's pragmatic and rational approach to infrastructure provision rather than an ideological one....
- 2.92 **...Engineers Australia is the peak body representing engineers in Australia.** It has about 75 000 members. Since its formation in 1919, the institution has always had an interest in infrastructure issues and we are always seeking to consolidate our position as the trusted adviser to the Federal and State Governments on engineering issues. We have good access to people like the Hon Peter McGauran MP, the Minister for Science; and the Hon Dr David Kemp MP. We have a member on the Prime Minister's Science, Engineering and Innovation Council.
- 2.93 Every decade our interest has changed, and in the 1990s infrastructure issues of importance for us included privatisation and corporatisation and how these affected strategic planning and continuity of supply; competition policy and the power to ensure that investment levels matched business and community interests; downsizing and how it would affect future skills and availability. This has been a big thorn in our side. **We believe the de-engineering of the government institutions has been dramatic and has had a dramatic effect on our ability to perform in engineering; public-private partnerships and how government policy and community attitudes contributed to delivering the potential that PPPs can offer.**
- 2.94 All these things are affected by the way they have treated engineering over the last few years, so one way to bring all these issues together was to produce a national report card on the infrastructure. So in 1999, in conjunction with other organisations, we prepared a report card with a more vigorous and comprehensive version coming out in 2001. The company which helped us craft the report card was also the consulting firm Gutteridge, Haskins Davey, and they did a wonderful job of putting all this information together. **The 2001 report card was also supported by 20 industry and consumer associations like the Business Council of Australia and the Automobile Association of Australia, so it was not just our idea although we were the main driver.**
- 2.95 An outcome of the report was that sections of **national infrastructure were each given a rating and the results are as shown here** — nothing above a B and some as low as a D minus. If you look at irrigation, 17 per cent of our water is used in irrigation, and if you look at the D minus level of that, is it any wonder that we are in the state we are with water, and with stormwater and rail. The government has come out with this AusRAIL thing now. We think this has put a lot of pressure on the government to bring

that forward. That report card makes very interesting reading, and we are doing one for each state progressively. We have done about three states already.

- 2.96 It is worth mentioning what the ratings mean. **All ratings relate to the concept of fitness for purpose** — in other words, is the infrastructure fit for its current and anticipated purpose in terms of asset condition, availability and reliability; asset management including capital and maintenance investment; regulatory appropriateness in meeting the regulations; planning and approval processes and planning for future needs; and customer satisfaction.
- 2.97 **Planning is another big thing that I have a special interest in.** I do not think we take enough notice of our planning authorities and institutions. One of the recommendations of the report card was to increase the amount of investment in both new infrastructure and ongoing maintenance of existing infrastructure. The report card did not state how this was to be done. So that is the report card.
- 2.98 Consequently we commissioned the noted University of Canberra economist, Ian McAuley, to examine the potential ways of sourcing investment and particularly the role of public investment. The paper *Public Investment in Infrastructure — Justified and Effective* was the result. It was a 32-page economic analysis of the need to increase public investment in infrastructure, and it makes very interesting reading. It was a discussion paper and at the time Engineers Australia had no position on the arguments put forward. It was purely there to stimulate debate on the topic. It examined the **main arguments against public investment in infrastructure — we have heard a few of them this morning already — which were that if infrastructure were needed the market would provide it. These are the sorts of cop-outs we get: ‘the government cannot allocate investment wisely’, ‘all government debt is bad’, and ‘governments cannot get the timing right for the investment leading to worsening peaks in the business cycle’. These are the flaws we have seen in the past in public investment in infrastructure.**
- 2.99 After an examination of all these arguments **the paper concluded there was an increasing role for the public provision of infrastructure in addition to the important role of private investment.** It identified the following reasons for supporting increased public investment in infrastructure: the declining state of existing infrastructure is evidenced by the infrastructure report card, which noted that **private investment is much more attuned to new projects rather than maintaining existing infrastructure** because people like the glamour of a new project; much of the national investment in infrastructure is in local community assets and these are really attractive to the private sector because private investors generally look for short-term returns rather than long-term returns that infrastructure can provide; difficulties associated with revenue collection for the provision of some infrastructure, particularly at a local level for, say, cultural infrastructure such as parks or the maintenance of waterways, asking how you keep your money on that and whether you have charged people for the use of those things; and the need to correct social, environmental or economic imbalances in the marketplace. In other words, the paper concluded that public investment in infrastructure was both justified and effective. At that time, the paper attracted guarded interest but little support from political leaders.
- 2.100 So what has happened since then? Firstly, there has been a number of published papers which have reached the same conclusion as the Engineers Australia report. Examples of these are *A Better Way — Financing Regional Public Infrastructure in*

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*Urban Areas* (2002) by the Urban Development Institute of Australia, and *Funding Urban Public Infrastructure — Approaches Compared* (August 2003) for the Property Council of Australia. I have not read these reports, but they are quoted in this article. **This indicates a growing realisation of the need for a better balance between public and private investment and a more realistic assessment of the potential of PPPs.**

2.101 Secondly, there has been a growing body of work on the options available to deliver public sector infrastructure. Rather than **simple government debt, alternatives being canvassed include hypothecated taxes, which are more appealing to a tax-resistant public.** The public acceptance of hypothecated taxes, such as the East Timor and the Medicare levies, may provide an indication of the likely support for such an approach. Is that a good way to go? It is one way. **Infrastructure bonds, which were mentioned this morning, would provide a popular way by which Australians could invest in a nation-building activities and perhaps get the public behind the government in these infrastructure projects.**

2.102 Thirdly, there has been increasing interest by politicians in the fact that **infrastructure investment can deliver votes** — surprise, surprise, at last they are waking up! — and this is best illustrated in the recent commonwealth government initiative called AusLink. Finally the government has made a big thing of it — all of a sudden it thinks it has discovered infrastructure. AusLink is the land transport strategy announced last month with considerable fanfare. It sets out \$11.8 billion in land transport spending, including a massive upgrade of Australia's east coast road and rail systems.

2.103 **Mr McRAE MLA** — I was about to say, that went down like a lead balloon in Western Australia.

2.104 **Mr JONES** — And in Victoria too! The relevant minister went to great length to highlight its nation-building character. For example, he repeated frequently that AusLink is the equivalent of two Snowy Mountains schemes.

2.105 Another indicator of the growing political and community interest in infrastructure is reflected in the media. A search through an online database of all Australian newspapers found that the word 'infrastructure' appeared 11 265 times in 2004 compared with only 7500 times in 1999 — a jump of just over 50 percent. The government is getting interested in that and so is the media.

2.106 But what of the future? I believe that the **increased need for infrastructure investment will not go away. We all believe that. Tens of billions of dollars will be needed to address the backlog of work as well as meeting the changing needs caused by the ageing and growing population and its move to new housing estates and to the coastal fringe.** We heard a bit last night from John Thwaites about the fact that if our forefathers had not had the courage to invest in those big 40 or 50-year projects years ago, we would be in an even worse state with our infrastructure. The only way this will be addressed is by increasing investment in infrastructure from both the public and private sectors. Unfortunately this will not occur quickly because all major policy shifts move at a glacial speed as institution and cultural barriers must be overcome.

2.107 To accelerate the shift, **coalitions of like-minded groups are being formed. For example, the Australian Automobile Association is championing an informal alliance of like-minded groups. These include the Australian Council for Infrastructure Development (AusCID), National Farmers Federation and Property Council of Australia. Although this group has no**

**defined agenda**, its shared interests include getting infrastructure onto the political radar — something the institution of Australian Engineers has been trying to do for years and years — canvassing debt-financing options and exploring user-charge options. We will see more of these alliances in time, and slowly they will chip away at the political orthodoxy. We will know when the shift has occurred when politicians face the media stating that some debt is good. When we hear the government saying that we will know it is on and that we will get some infrastructure spending, notably that generated while creating productive assets like infrastructure. The government is going to save us!

- 2.108 We believe the *Public Investment in Infrastructure Report* was a significant milestone. It marked the beginning of the **opinion pendulum being swung back towards a more balanced role for the government investment in critical infrastructure**. Engineers Australia is pleased to have played its part and made a significant contribution towards influencing government to be more involved in providing Australia with the infrastructure necessary for future economic development.
- 2.109 Before I conclude I would like to make two important observations about public-private partnerships, and these have been canvassed this morning too. **Despite the benefits of PPPs they can still be derailed if they do not deliver better value, and that is one of the things we heard about this morning — the value-adding potential. Given that a PPP can run for 30 years and involve complex financial risk and performance arrangements it is essential that the public sector has commensurate skills to those of the private sector.** This does not mean that it has to have the same level of expertise as its industry partner, because it has already denuded itself of that by de-engineering the public sector for years and years so it has not got enough engineers in the government to make proper assessments.
- 2.110 ... The critical issue is not where the advice is located but how the government is guaranteed access to it when needed. To assist government agencies in this regard Engineers Australia has developed a model that enables agencies to obtain and maintain the most cost-effective level of technical expertise to be an informed buyer. This is available in our report *Government as an Informed Buyer*. Incidentally, we are about to start the second edition of that report, which has been very popular in 2000 as indicated by the three print runs of our publication. Defence uses it and the government has accepted it quite well too.
- 2.111 We strongly encourage all government agencies to **conduct a skills assessment before they embark on a PPP activity to ensure that they are as informed as their partner**. Can someone really assess those wiggly roofs that you are putting up down at the railway station?
- 2.112 My second observation is that **public support for PPPs will depend on transparency and accountability. If governments keep PPP contracts secret or use commercial in-confidence reasons to black out large chunks of the contracts — as we heard Graeme refer to — then community support for them will quickly turn into rejection and suspicion.** It is therefore in the best long-term interest of the private sector to push for a high degree of government openness. Let us all know what is going on in the major contracts. PPPs are not just partnerships between government and big business, they should be viewed as partnerships between government, business and the community. Only when all three are comfortable with them and the community, particularly, can see that the

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government is fully on board and under what terms will the PPP approach to our acquiring infrastructure be seen as a long-term solution rather than just another passing fad.

### Comments and questions from the delegates

- 2.113 **Mr CAVE** — Just in relation to the comments, in the very early days there were elements blacked out in early PPP-style contracts. For instance, the first three that were done were for the three private prisons. We were running one in a staged process and we wanted to release the contracts but not parts of them because we were still negotiating subsequent ones of a similar nature. But now as a matter of course all contracts are put on the government web site. There is no blacking out unless regulation requires it. For instance, on the prison ones we cannot release security details obviously because of the prisons. To my understanding now PPP contracts that blacking out is sort of like an historical reference rather than what is happening now.
- 2.114 **Mr JONES** — What about the complexity of finding things? Is that still there?
- 2.115 **Mr CAVE** — You still have to understand the contract.
- 2.116 **Prof. HODGE** — **My impression is that the arrangements for handling commercial in confidence differ from state to state and different states have different both commercial and political drivers.** At the federal level there are different drivers as well. It does not overcome the issue of complexity at all, and I think that is perhaps the second important issue....
- 2.117 **Mr VENNING MP** — To what degree do the engineers — because of working with our architects, particularly when they can hook into the PPP — have a preference for working with, say, the government as we have traditionally done or are you promoting through your Australian society the PPP arrangement — but we have a responsibility because these have to be long-term functional buildings not an architect's expression of today's design?
- 2.118 **Mr JONES** — Someone said something about turning loose an architect on the public, but we in engineering say that the success of all the projects will depend on the quality of engineering and the availability of the engineering to whoever is building them. Some of the engineers in the world today are first class, of course. We are getting some wonderful structures, and there is some wonderful innovation coming forward, but the ultimate success will depend on the quality and degree of the engineering put into it. Make sure there are good engineering resources available to oversee, if you like; to be able to assess the value, the competence and the ability of a system like the ones you are talking about to work. The Sydney Opera House was a case in point. We got into a huge problem because the engineering had not been thought through or assessed at the time the architect put the thing forward. We would advocate making sure that the quality and the accessibility is there for the government or whoever is building it....
- 2.119 As to practicality, Graeme used the word, and I used the word to him before: abdication. The government has abdicated a bit of its responsibility this way over the last 20 years. I was trying to say it is all outsourced, and we are not creating any training for young engineers, that sort of thing, now. **Depending on the private sector to create and train young engineers, to put them through, is almost an impossible task. It just**

**cannot be done. That is why we are facing a huge shortage of engineers in this country over the next 10 years — in the world, in fact...**

- 2.120 **Ms PALUZZANO MP** — My question is probably straying from the PPPS that your last flow of conversation was into: traineeships and apprenticeships and skilling your work force. This is probably a question to the other panel members also. Is there, in the PPPS, any work force or workplace contractual arrangements for whoever is the builder or the person who is engineering this to look into either traineeships or apprenticeships, or who is the work force?
- 2.121 **Mr JONES** — I do not know the answer to that.
- 2.122 **Mr CAVE** — Anything other than the design and construction element of it?
- 2.123 **Ms PALUZZANO MP** — Yes — in any phase.
- 2.124 **Mr JONES** — There is no clause saying you should be training so many engineers or providing some training?
- 2.125 **Mr CAVE** — No.
- 2.126 **Mr JONES** — It is a good idea though.
- 2.127 **Mr CAVE** — A very good idea.
- 2.128 **Ms PALUZZANO MP** — It jumped out of your discussion in the 1990s where your association was leading in dealing with the deskilling and the lack of apprenticeships in major organisations, whether they be state or private, and that got my interest. I thought, 'Is there an opportunity within PPPS to encourage that?'
- 2.129 **Mr McRAE MLA** — We do that in WA.
- 2.130 **Ms PALUZZANO MP** — In WA — anywhere else?
- 2.131 **CHAIR** — Certainly not in South Australia, to my knowledge.
- 2.132 **Ms CICCARELLO MP** — I am not sure if this is a question or a comment. One of the issues that politicians have at the moment is that most of our treasurers are obsessed with AAA ratings and not wanting to spend money. There are a lot of infrastructure projects that could get done. **You talked about good debt. How can we change attitudes to convince governments that it is appropriate to invest in infrastructure and then you can spread the debt across a lot of decades. It is not just people now who are paying for it. It will be of benefit to the community and the cost can be spread over a number of years.**
- 2.133 **Mr JONES** — I agree.
- 2.134 **Prof. HODGE** — Can I just add to that. The fact is that Standard and Poors has come out with a report saying that public debt is not bad. **Government has plenty of capacity to take out public debt. The issue, as Alan Fels said in the paper on Saturday, is that citizens do not like it. The reason they do not like it is because parliamentarians have been telling them for the last 15 years that public debt is bad. It is now time for a new story, and the new story needs to be: if you are interested in investing in the future of your children and your children's children, it is now time to get serious about infrastructure and give out some public bonds.** I think that is being partly addressed.

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- 2.135 **CHAIR** — And in South Australia our Economic Development Board came out with the exact thing: that public debt is not necessarily a bad thing. I am not quite sure they said it was a good thing. We are looking forward to that being a precursor to getting some major infrastructure projects undertaken.
- 2.136 **Prof. HODGE** — All I was going to say was that I think **there is an opportunity to use PPPs quite smartly, perhaps through public bonds**. With the contractualisation and the really sensible and innovative arrangements we have, we just need the pendulum to swing back to something that is a more sensible balance.
- 2.137 Doug has talked about engineering deskilling, or the need for engineering skills in government. When I hear comments like, 'We do not pay a cent until the end of the contract' — which I think was Tony's comment — it sounds a bit like a mobile phone ad where you can buy the phone for a cent but if you read the small print you find that you pay for it, buddy, and you pay for it over the long term. What is also needed in government, as well as the engineering skills, is the financial nous and the legal skills.
- 2.138 It really comes back to the question posed before that asked: **where are the watchdogs? We need to be a little bit clearer about the fact that we all need to take on those, perhaps, parliamentary-level watchdogs that clarify these various conflicts of interest that arise.**

## Chapter Three - Tuesday 13 July 2004

### DAY 2 – PUBLIC-PRIVATE PARTNERSHIPS

#### Session 5: Changing Nature Of Capital Works Programs and the Role of Public Works Committees — A Commonwealth Perspective

Presenter: Hon. Judi Moylan MP, Chair, Joint Standing Committee on Public Works, Commonwealth of Australia (Abridged).

- 3.1 **Ms MOYLAN MP** - ... I must say it has been a great pleasure to serve as Chair of the Federal Public Works Committee. It is always a challenge, especially as a member from Western Australia. It is great to be here today to share a few ideas on the changing nature of capital works programs and the role of the public works committees from a commonwealth perspective.
- 3.2 The Joint Standing Committee on Public Works is one of the oldest committees of the federal Parliament. It was established in 1913 with the purpose of ensuring transparency and accountability in the expenditure of public moneys. The specific impetus for the decision was a question raised in the House of Representatives in respect of moneys expended on the establishment of the federal capital works programs. It was Mr McWilliams, who was then the member for Franklin in Tasmania, who stated that it was not reasonable to expect the Parliament to commit to large works without having an opportunity to scrutinise the detail of the proposals and the associated costs. He suggested that the Parliament should consider the establishment of a public works committee. Such committees were only then established in New South Wales and Victoria — they were well ahead of the game.
- 3.3 On 11 September 1913, the then Prime Minister, Joseph Cook, concurred when he said in the house:

... some different method of dealing with our public works would, perforce, have to be adopted. The whole matter is in a more or less chaotic state today. Huge sums are being, and have been, spent for years past, without proper inquiries and without that information to which the house is entitled. No big public work ought to be undertaken until this house has passed judgment upon it. That is one of the prime functions of a legislative assembly anywhere and always; indeed, this proposition goes to the very root and basis of our system of responsible government and parliamentary control.
- 3.1 Thus the Commonwealth Public Works Committee Act 1913–14 was passed. It provided that **all public works estimated to cost 25 000 pounds** or more must be referred to the committee....
- 3.2 The history of the committee over the next three decades reveals repeated attempts to bring the act up to date to recognise contemporary issues and changes and to ensure that the Public Works Committee could do the work it was charged to do. In its 20th general report, dated 6 December 1946, the committee presented its case to the Parliament for some changes. The two most significant changes requested by the committee were reinstatement of the mandatory reference of all major works to the committee — this provision having been removed in 1936 — and the ability for works

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to be referred by the Governor-General when Parliament was not in session. The committee expressed the view that:

... the Act in its present form is most unsatisfactory to the committee —That the original purpose of the Act is largely nullified by the present provisions, inserted in 1936.

- 3.3 In reading of the frustrations of those committee members in 1946, one is reminded of the truism that the more things change, the more they stay the same.
- 3.4 The current committee operates under the provisions of **the Public Works Committee Act 1969. The committee is required by the Act to consider public works over \$6 million and report to the Parliament. There are five key issues on which we must report.** The first is the purpose of the work and its suitability for that purpose. The second is the need for, or the advisability of, carrying out the work. The third is whether the money that is being expended on the work is being spent in the most cost-effective manner. The fourth is the amount of the revenue the work will generate for the commonwealth, if it is of a revenue-generating manner, and the fifth is the present and prospective public value of the work. They are the five criteria on which our committee now has to assess public works over \$6 million. **A public work may not be commenced until the committee's report has been presented in both Houses of the Parliament and the Parliament has voted that it is expedient for the work to be carried out.** There are only a handful of very specific conditions under which eligible works can be exempted from the scrutiny. Historically, these provisions have been exercised relatively few times.
- 3.5 As in 1946, several decades have now elapsed since the act was passed, and the committee is of the view that amendments are required in order to bring the role and powers of the committee into alignment with modern commonwealth procurement practices. In 2001, the Honourable Peter Slipper, Parliamentary Secretary to the Minister for Finance and Administration, **stated before this forum that the Public Works Committee risked marginalisation and decreasing relevance in the face of changing government project delivery processes.** In his speech to the conference Mr Slipper made the following key points: that the **commonwealth no longer operates a large, centralised property and public works system; that the public works and property functions are now generally devolved into individual agencies or to contractors; that the participation of the private sector in public works projects has increased** — I am sure we have all seen that; public-private partnership arrangements and privately funded infrastructure will become increasingly common as the commonwealth moves towards a purchaser-provider model for major works; and finally there is a trend away from public ownership of property. The committee acknowledged and concurred with his observations and, as recorded in its past three annual reports to the Parliament, has given careful consideration to how best to adapt its role and functions to the changing environment.
- 3.6 In its current form, the Public Works Committee Act refers to the Minister for Housing and Construction as the minister responsible for the carriage of public works references in the House of Representatives. When the act was drafted, the commonwealth had a department specifically devoted to the execution of public housing and construction projects. That has been a big change. From 1945 this responsibility was vested successfully in the Department of Works and Housing, the Department of Works, and the Department of Housing and Construction. Since 1975,

however, the trend — as described by Mr Slipper — has been for individual departments to manage or, increasingly, to outsource their own construction projects.

- 3.7 The **committee also noted the increased participation of the private sector in the execution of commonwealth works, which goes to the heart of the subject we are discussing this morning.** This trend has presented a number of difficulties for the committee. For example, the act defines a public work as a work that is proposed to be carried out by or for the commonwealth or an authority of the commonwealth, either within or outside Australia, in respect of which moneys appropriated by the Parliament are to be expended by the commonwealth or its authority. On the face of it, this may exclude works funded by a private developer and subsequently leased back to the commonwealth, **despite the fact that such leases may indeed entail the expenditure of millions of dollars over the term of the project or the term of the lease,** if you like.
- 3.8 In March 2004, Senator Minchin wrote to the committee confirming that his department had received legal advice relating to private sector financing of government assets and infrastructure to the effect that:
- ... where the commonwealth or an authority of the commonwealth arranges for the provision and subsequently leasing of infrastructure to which it has set specific requirements that could not be met by the normal leasing of such facilities on the open market, it could be expected that the provisions of the act would apply — that is, the proposal would require referral to the committee.
- 3.9 The committee welcomed this information, which was timely in view of recent advice from the Department of Defence that many of its future works will be undertaken with private finance.
- 3.10 The **committee recently conducted its first inquiry into a completely privately financed project** — namely, the construction of Headquarters Joint Operations Command for the Department of Defence near Bungendore, New South Wales. This is a massive project, exceeding \$300 million in total. **While welcoming the opportunity to review this privately funded project, the inquiry processes highlighted the shortcomings of the existing Act with respect to these types of works.** In the case of the joint operations command centre, Defence required committee approval before proceeding to the project tender stage. This puts the committee in a very difficult situation, as you can understand, because, in effect, the committee has examined the project and costs only at a conceptual level as the detailed design, construction and financing of the project will be developed by the successful private tenderer.
- 3.11 **Effectively the committee is being asked to sign off on the project before the detailed design specification costs have been determined.** This stands in contradiction to the terms of the act, which stipulates that the project should be referred to the committee when all matters substantially affecting the costs have been determined. The joint headquarters example encapsulates some of the challenges facing the Public Works Committee in the changing environment. **While the committee may consider and report on the work based on evidence presented to it, the final specification and financing details of the completed project may ultimately be very different to what the committee has approved.**
- 3.12 What is the solution to the dilemma? The existing act does not easily accommodate privately financed works and **perhaps the Act needs to be examined to consider a**

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**two-stage consideration and approval process where the committee approves the development concept and then reviews detailed plans and costs once they have been developed by the successful private tenderer.** Although we have an estimates process that scrutinises these kinds of arrangements at a later date, it is too late once the documentation is signed and you are locked into a legally binding agreement.

3.13 In addition to the problems associated with the **Act's failure to fully reflect modern procurement and financing practices**, difficulties have also arisen due to the sometimes vague wording of the legislation. On several occasions during the past few years the committee has noted the omission from project estimates of specific budget items which the referring agency did not believe constituted a work under section 5 of the Act. During 2002, two agencies were asked to appear before the committee to explain their reasons for disaggregating project costs in this matter. Upon re-examination of the costs, one of the projects was the subject of a referral to the committee. The committee wrote to agencies expressing that it would take a dim view of the disaggregation of projects to avoid scrutiny by public works committees.

3.14 Under section 5 of the Act, a work is defined as an architectural or engineering work which includes:

- (a) the construction, alteration, repair, refurbishment or fitting out of buildings and other structures;
- (b) the installation, alteration or repair of plant and equipment designed to be used in, or in relation to, the provision of services for buildings and other structures;
- (c) the undertaking, construction, alteration or repair of landscaping and earthworks (whether or not in relation to buildings and other structures);
- (d) the demolition, destruction, dismantling or removal of:
- (e) buildings and other structures;
- (f) plant and equipment falling ...;
- (g) earthworks;
- (h) the clearing of land and the development of land for use as urban land or otherwise; and
- (i) any other matter declared by the regulations to be a work.

3.15 However, the act states that work does not include:

... the production of, or anything done in relation to, intangible things;

3.16 It goes on to outline some of those intangibles but not in great detail, I might say, and it leaves a bit to the imagination. Committee members are unanimous in their view that the act leaves a wide margin for interpretation as to what constitutes a work.

3.17 Interviews with commonwealth agencies in respect of the erroneous disaggregation of project costs have revealed that the imprecise wording of the act constitutes a major source of confusion amongst agencies ... and prompted the committee to approach the Minister for Finance and Administration requesting that changes be made to the act to clarify these particular issues. Specifically, the committee sought to mitigate the confusion by proposing that section 5 of the act be amended, and it was.

- 3.18 In February 2003 the committee wrote to the minister regarding the decision by one agency to omit demountable buildings to the value of \$21.5 million from its reported project costs. The agency had presented its project to the committee as a medium work under \$5 million and therefore below the statutory limit for referral to the committee, but there were major works of demountable buildings. Those demountable buildings were solidly attached to the earth by way of concrete slabs and plumbing and other works to make them habitable, and this amounted to in excess of \$20 million, so the committee took a dim view of this. That gave rise to these changes to the act which have made it very clear that this kind of work in future cannot be disaggregated from the project on the basis that the structures are demountable and therefore do not fall within the terms of the act.
- 3.19 In April 2003, Peter Slipper, the parliamentary secretary to the minister, advised the committee that on the basis of the example described it was appropriate for large construction projects making extensive use of demountable buildings to be referred to the committee and proposed to change regulation of the act. Early in 2004 a draft of the regulation was forwarded to the committee and has since been enacted so that there can now be no doubt by referring agencies what a work constitutes in terms of demountable structures.
- 3.20 Despite some of the successful outcomes, it remains the case that the **act in its current form does not give the committee power to scrutinise general commonwealth property leases**. This has been another bone of contention for us now over several years that I have been the chair. This frequently results in the committee being required to scrutinise the fit-out of a property for the commonwealth, but it has already pre-signed a lease agreement. **If I can give you one example, in Canberra recently the committee approved a fit-out to the value of \$18.5 million, but the lease that had been pre-entered into before public works scrutiny was of the value of \$44.5 million over 10 years, so you can see the dilemma with commonwealth moving less to ownership of buildings and more to leasing and, as I say, they do come before estimates**. That has been an argument that is put, but our counterargument to that is it is too late. When these deals come before estimates, it is too late. There is a legal agreement entered into, and usually the agency is well established in the premises. To turn that back would be a very costly exercise. We would much prefer to see these projects come before public works and ensure that the commonwealth is getting value for money in its major leasing projects.
- 3.21 Before closing, though, I would like to add, because I know you are going to be running close for time today, that it is not only the nature of the government procurement practices that has changed in the nature of capital works, but in recent years the **focus of the commonwealth's Public Works Committee has expanded to include considerations of energy efficiency, minimisation of greenhouse gases and other environmental issues as they relate to public buildings and infrastructure**. I know many of you at the conference are interested in the environmental issues. The committee seeks to ensure that the present and prospective public value of proposed works in the broadest possible sense meets those criteria. **An example of this is the committee's recent inquiry into the remediation of a site in Sydney which had been contaminated in the past with, amongst other substances, asbestos**.
- 3.22 The inquiry generated a great deal of public interest. **While the committee was satisfied that the site could be remediated to a level fit for residential purposes, members were concerned to learn of the existence of a regulatory gap between the role of the site auditor**

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**who signed off on the work on completion and the role of the local council and state Environment Protection Authority that controls what works will be undertaken at the site, making sure, as the material was sifted and cleansed, that that contamination was not then filtering into the air causing a human health problem and/or seeping into the water system below the ground.**

- 3.23 So there was considerable public concern about this, and from our perspective there certainly is a gap in the system where the auditor comes only at the end of the process to say, 'Yes, this site is now fit for human habitation', but there was no-one oversighting. The EPA gives the approval for the work to be done, but nobody is oversighting that the process is being done in accordance with the rules that the EPA has laid down, so once the EPA has given the approval, the person carrying out the works can do whatever they like. I am not saying that it did in this case, but it could result in air contamination, water contamination and contamination of other adjoining sites, and there is no-one who checks up to see that the process is being carried out as set down by the EPA. So the federal public works committee undertook to write to all state ministers about this and to our commonwealth ministers to ensure that it is a matter that is put on the agenda for one of the joint meetings to ensure appropriate monitoring of remediation works as they proceed. So we turn up these odd issues sometimes in our role. **We are very mindful these days of the environmental issues as we complete federal public works.**
- 3.24 That concludes essentially the overview of major issues faced by the commonwealth Joint Standing Committee on Public Works. It is a bit of a potted version, but in conclusion I would also like to add that, in general, members of our committee are very proud of their participation in what is not only one of the oldest committees in the Parliament, if not the oldest, but undoubtedly also one of the busiest. I must say we are a cross-party committee, but we also take great pride in the fact that we generally work in a bipartisan way to ensure that commonwealth projects provide the best value for money for the Australian taxpayer and produce the best possible outcomes in terms of providing buildings that serve the purpose the public would want them to. We take our work quite seriously. Scrutiny is of government expenditure, and we seek at all times to ensure that the commonwealth and its citizens receive the very best value they can in the broadest sense of the term. We obviously hope our committee will continue to perform its valuable role well into the future.

## **Session 6: The Changing Nature of Capital Works Programs and the Role of Public Works Committees — A State Perspective**

Presenter: Mr Kevin Greene, Chairman, Standing Committee on Public Works, New South Wales (Abridged)

- 3.25 **Mr GREENE** — Thank you very much. I have been asked to present a state perspective on the changing nature of capital works programs and the role of the New South Wales public works committee. Before I begin I would like to point out that I have been chair of the New South Wales committee for just over 12 months, so a large portion of the work that I will highlight is that of my preceding chairs Diane Beamer and Paul Crittenden, who many of you may know from previous conferences.

- 3.26 I will start with a bit of history which will give you an idea of the changing approach taken by the New South Wales public works committee from its creation early last century to its reconstitution in the 1990s. The New South Wales committee was originally established as a joint committee in 1888 and re-established under new legislation in 1912. The 1912 act is still in operation today although the committee's activities have changed considerably. The 1912 act set out a threshold assessment approach which is common to many capital works committees. This is where the committee reviews and reports on all proposed capital works projects above a set value.
- 3.27 Originally the committee was required to report on all proposed capital works greater than £20,000 and the committee reported back to the Parliament on the merits of these works. The Parliament then accepted or rejected the committee's report. The committee was not given the power to veto capital works projects. In the 1930s the public works committees ceased to function although the 1912 act remains in force. It is not entirely clear why the committee's activities ceased, but it appears to relate to lack of funding for the committee. As such, no members were appointed to the committee for 65 years. In the intervening period substantial exclusions to the original definition of public works and what could be scrutinised by the committee were made through amendments. These exclusions included public works relating to water, sewerage or drainage works as well as hospital, education and other public works exceeding \$1 million. In fact, in practice the current committee does not have any works referred for scrutiny through the act. However, the act still retains a reference option that ministers can still utilise.
- 3.28 The threshold assessment approach in the committee's founding legislation still operates in a number of jurisdictions. As delegates are aware, the threshold approach has its advantages and disadvantages. It allows committees to examine a wide range of projects across portfolios. The disadvantage in some instances is the rubber stamping or indiscriminate automatic assessment of projects. For example, if the New South Wales committee were to actively consider all capital works projects above say, \$5 million, it would be assessing literally hundreds of projects each year. This leaves less committee resources to examine strategic issues or interaction of capital works programs to outcomes and systems like total asset management.
- 3.29 That brings us to the reconstitution of the New South Wales committee in 1995 with a new charter and approach to evaluation of public works. After being dormant for 65 years the new Public Works Committee differs from its 1912 predecessor in many ways. It is a Legislative Assembly committee rather than a joint committee. It was established under standing orders and by resolution of the house rather than by legislation, and it subsumes the standing committee on the environmental impact of public works, which had been established in 1994.
- 3.30 I point out a couple of things to give context to these changes. The committee's new role was shaped by two factors. Firstly, the committee's role was shaped by the activities of other committees that had emerged. In particular, in the absence of the public works committee the public accounts committee established in 1902 had occasionally examined capital works expenditure. Secondly, the committee was created along with a number of new committees in the 50th Parliament. Specifically in 1995 an upper house standing committee on state development was also created which was seen as the vehicle for assessment of large capital works projects. For

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example, that committee is currently examining port infrastructure in New South Wales.

- 3.31 The creation of the Standing Committee on State Development was also the reason that the public works committee became limited to the Legislative Assembly. The burden of a further joint public works committee was seen as unnecessarily duplicative. **The new Public Works Committee fills a gap not covered by the other committees. It reflects the contemporary capital works activities of government by highlighting scrutiny of state-owned corporations and joint ventures with the private sector. It also introduced environmental awareness into the assessment criteria, directing the committee to find savings in capital works programs while achieving a net reduction in environmental impacts. Finally, it proposes more scrutiny of cost-benefit analysis and more emphasis on the least cost planning approaches.** The committee's terms of reference capture these elements. It allows the committee freedom to examine future capital works as well as specific projects or infrastructure needs. Through this reference, the committee interest has shifted to a far more strategic viewpoint.
- 3.32 I would briefly like to canvass the inquiry themes that the committee has examined. I think this will clearly show how the committee's interests have evolved in the last decade. Although the committee can take references from the Legislative Assembly or the minister, most of its inquiries have been self-referencing. The same arrangements have continued through to today. In its first term, the 51st Parliament from 1995 to 1998, the committee examined a number of issues. These included state infrastructure requirements for Sydney airport which looked at infrastructure needs for the proposed Badgerys Creek airport in 1995. You would also be aware of the current status of this issue.
- 3.33 Development and approval processes for capital works — this report examined the procedural and accountability issues tied to development and assessment of individual capital works projects. The report recommended improvements to the existing funds-driven capital works program of agencies, and then Treasury assessment.
- 3.34 The Lake Illawarra authority — this looked at the merits of the authority's public works program which was a new seawall and dredging program. It also looked at the authority's management structure, community representation and environmental outcomes.
- 3.35 The Wyong station interchange — this was the first specific project assessment by the committee looking at a proposed new interchange and it found potential savings of \$1 million.
- 3.36 New school facilities — this inquiry looked at the entire capital works systems in New South Wales schools from planning to construction. It recommended better systems for planning and post-occupancy review of school building provision.
- 3.37 **In effect, these inquiries show the different ways to oversight capital works from specific project assessment — the Wyong station interchange — to whole agency processes — school facilities inquiry — and whole-of-government strategic management systems such as Treasury funding approaches.**

- 3.38 In its second term the committee continued with a wide range of inquiries including the follow-up inquiry into Lake Illawarra and New South Wales school facilities. Obviously this report examined the option of the committee's recommendations from these preceding inquiries. The committee also engaged in a series of reports grouped under the title 'Infrastructure Delivery and Maintenance'. This series of reports covered different aspects of whole-of-government provision including government office accommodation — that is, office leasing practices of government agencies; land fleet management, which is the ownership and coordination of heavy machinery, light trucks, graders, bulldozers and so on, shared by various agencies; and government building maintenance, which looked at potential savings from sharing maintenance contracts for government buildings across localities rather than by agencies groupings. This was particularly relevant for regional areas where economies of scale could be generated by single-area contracts.
- 3.39 **The government response to these management-focused inquiries has been significant with many of the committee's recommendations adopted by the government's asset management committee. Further inquiries in this period reveal a strong environmental influence that continues in the committee's activities today.** The government energy reduction targets report examined the government's failure to meet its own targets for the reduction of energy use in its operations. The report noted that a consequence of this failure, along with the private sector's activities, is the continued need to build further energy producing infrastructure, a big cost to the taxpayer and to the environment where coal-fired power technology is utilised.
- 3.40 Another recent inquiry has been into open water infrastructure where the committee examined the ramifications of Sydney's ageing water infrastructure valued at \$29 billion and the merits of replacing such infrastructure — that is, the water supply, sewerage and storm water systems — in an integrated system to make them less wasteful and improve efficiency. The committee report served as a discussion paper on these issues, as it was followed by the dissolution of the last Parliament.
- 3.41 This brings me finally to inquiries under my chairmanship. I would like to highlight our most recent report and our current inquiry. I will briefly go through this, because I gave to those of you who were here yesterday a detailed report on those two. I will not reiterate that. I will just say that in March 2004 the committee tabled a report on energy consumption and residential buildings, which we detailed yesterday. I will not go through that again. Currently the committee is taking submissions on the joint use and co-location of state and local government public buildings. Again I covered that in some detail yesterday, so I do not intend to waste too much time by going over that again, if that is okay.
- 3.42 **These two recent inquiries reflect the broadened charter of the New South Wales committee, which looks at the drivers of infrastructure demand and how well the government manages them. The New South Wales committee is primarily focused on sustainable infrastructure planning. The key issue is whether the government is effectively identifying what infrastructure is needed and how it can be provided in an environmentally and economically sustainable way. The committee believes in a proactive approach. If planning and assessment of needs are done well with due consideration to the environment, to the future needs of the community and with comprehensive consideration of technology and alternative options, then the need for specific reactive project assessment is lessened.**

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- 3.43 I would like to point out that while much of yesterday's discussion focused on public-private partnerships of capital works, this is not the particular emphasis in the activities of the New South Wales Public Works Committee to date. The Public Accounts Committee has examined the various aspects of public-private partnerships in New South Wales. **The Public Works Committee sees public-private partnerships as one of a range of mechanisms for infrastructure delivery which may be appropriate on a case-by-case basis. Irrespective of individual projects the government still retains the responsibility for identification and management of the community's infrastructure needs.**
- 3.44 I will finish by noting that the integrated treatment of infrastructure provision is also reflected in recent changes by the New South Wales government. Many of you would be aware that the New South Wales government has formed a new Department of Planning, Infrastructure and Natural Resources. From the combination of these portfolios the department recognises the integrated nature of infrastructure demand and provision. The role of the committee is to see that the new department and the New South Wales government deliver on this promise of an integrated and sustainable approach to infrastructure.

### **Session 7: Governance and Accountability Issues Arising from Public-Private Partnership Projects**

Presenter: Mr Russell Walker, Assistant Auditor-General, Auditor-General's Office Victoria (Abridged).

- 3.45 **Mr WALKER** — My address today will touch on **governance and accountability issues relating to PPP arrangements**. At the outset I thought I would provide some background on their involvement in Victoria.
- 3.46 Public-private partnerships evolved as new developments in Victoria in the late 1980s and early 1990s. The aim of the early public-private partnership arrangements was to establish new lines of financing for much-needed infrastructure and to overcome limitations placed on borrowings under interjurisdictional loan council agreements.
- 3.47 Our office examined all major PPP arrangements with a view to assessing and **reporting to Parliament on the integrity of the processes followed in relation to project evaluation, approval, contract selection, engagement and management, identification of the key risks associated with the arrangements and the impact of such arrangements on the state's financial obligations and future financial commitments.**
- 3.48 The nature of these arrangements, including the risk allocation between the public and private sectors, has substantially evolved over the past decade. This has resulted from the advancement of private sector involvement in the provision of public infrastructure world wide, the increasing development and maturity of private investors and their willingness to accept more risk. **The first generation of PPPS involved the allocation of substantially less risk to the private sector than the latter arrangements. This was reflected in governments providing substantial guarantees and indemnities to the private sector which had the substantial effect of reverting the major financial risks back to the government.**
- 3.49 A major challenge of these arrangements is to establish appropriate risk allocation, effective management, and adequate oversight, which ensure that the public interest

is protected. In the establishment of such models it needs to be recognised that irrespective of the mode of infrastructure provision in funding, **certain risks associated with public infrastructure are difficult, and in some cases inappropriate, to transfer to the private sector, such as the government's duty of care. This reflects the public sector's underlying responsibilities associated with public sector service provision.**

- 3.50 The key features of good PPP contracts include the identification, quantification and allocation of risks to the parties best able to manage them, the specification for the services required, and allowing the private sector to decide how best to provide the services. Payments should be contingent on performance standards being met. To the extent that there is some public financing to complement or replace user fees, there is an explicit element of output-based aid to these contracts with a direct link between public funds and the actual delivery of services. There should be continuous monitoring over the life of the contract which should ensure ongoing provision of efficient services.
- 3.51 The most important benefits of PPPS, relative to conventional procurement, arise from the efficiency gains associated with private management of relevant risk and enhanced government accountability rather than from the access to private finance. The current framework for the private sector provision of public infrastructure in Victoria is set out in the government's Partnerships Victoria policy, which was established in June 2000. The Victorian framework is similar to that adopted in the United Kingdom.
- 3.52 Key elements of the framework include **conduct of cost-benefit analysis** of all proposals; **public interest assessments**, taking into account issues such as consumer rights, affected individuals, and security privacy; the development of a **public sector comparator** which facilitates comparison of private sector bids with public sector provision, including associated operating costs and cash flow; and **risk allocation based on value-for-money considerations** and the principle that risks should be assigned by those who are best able to manage them. The adequacy of these assessments and risk allocations are key determinants of the outcomes ultimately received from these arrangements.
- 3.53 Based on our discussions with our counterparts in the United Kingdom where public sector comparator is also utilised in PPP assessments, caution needs to be exercised from a number of perspectives, including that the comparator analysis should not be seen only as a means of supporting decisions on whether to proceed or not proceed with these arrangements. Rather, they could be used to drive better value from money from private sector bids by focusing on individual elements of bids that could be improved.
- 3.54 Data and assumptions incorporated into the comparator analysis are subject to substantial uncertainties and volatility. Therefore care needs to be taken when assessing the results from these comparators. **A single comparator can provide a narrow view compared with the termination of multiple comparator values, based on various scenarios.** There are limitations associated with certain costing systems within the public sector which may restrict the availability of suitable data and therefore the results of the analysis.

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- 3.55 Our office is of the view that the framework established in Victoria, known as Partnerships Victoria, provides a sound platform for the development of PPPs. However, given our assessment of these arrangements over the past decade, they have shown that key elements of the effective project evaluation have not been followed. Optimal outcomes from new arrangements will not be achieved unless all elements of the framework are observed. **Our reports to the Victorian Parliament on PPPs have identified that in a number of cases comprehensive, cost-benefit analyses were not completed to support decisions to proceed with the selected PPP models.**
- 3.56 Some of the major issues in public accountability are centred around whether PPP arrangements are in the public interest and offer better value for money or net benefit when compared to best public sector delivery models; the adequate transfer of risk, and associated control, to the private sector entity while reserving the capacity to protect the public interest and achieve government policy objectives; and whether there is adequate disclosure of the arrangements entered into. **It is important that the decision to proceed with this arrangement is driven by value-for-money considerations and not whether the arrangement will be recognised off balance sheet.**
- 3.57 To maximise the chance of real value-for-money outcomes it is necessary to ensure that there is a sufficient degree of competition in the market. **The present size and structure of the PPP market in Australia may not always be diverse and active enough to be fully competitive.** In such cases governments need to provide incentives to ensure that there is an adequate market and perhaps also to ensure that **if there are, for example, only two bidders, the losing bidder may be compensated for some of the large costs in putting up a case as part of the tender process.**
- 3.58 The essence of PPPs is risk sharing. From the viewpoint of risk transfer, the fundamental aim is to arrive at a risk-sharing arrangement that assigns risks to the party best able to manage the risk at the lowest cost. It is now generally accepted that the transfer of risk to the private sector is generally only cost effective where the private sector is better able to manage these risks. Seeking to transfer inappropriate forms of risk on to the private sector merely adds unnecessary cost to the PPP agreement and will also undermine the value for money obtained from the deal. This is because it will result in the private sector entities trying to price that risk into payments they seek to obtain from government or they simply fail to manage the risks assigned to them.
- 3.59 **There remains a clear pattern of underestimating of costs and overestimating the benefits when preparing large infrastructure projects.** Such problems have been particularly acute in the case of transport projects, because so many conditions and assumptions can change in the time between an idea's conception and its completion. It is not easy to find the right financial structure for projects that must use future revenue streams to pay off huge constructions costs over many decades.
- 3.60 An important aspect of assessments of value for money is consideration of the sustainability of the private sector bid, having regard to the risks it is willing to accept for the bid price offered. **Even when the risk has been transferred there remains a residual risk that the government may have to step-in in the event that the private sector contractor experiences difficulty in meeting its obligations.** Examples of this in Victoria have been in relation to Latrobe public hospital and the metropolitan women's correctional centre.

- 3.61 Subsequent **financial difficulties by the private sector operators forced the return of the service provision and the associated infrastructure to the public sector.** The original arrangements placed considerable risk with the private sector and allowed the government to walk away from the arrangement in the case of poor performance by the private sector provider. However, in each case the government decided to take over the facility, principally due to the underlying obligation to provide the public service — that is, its duty of care. **This highlights the need for public sector entities to ensure that PPP arrangements include adequate step-in provisions and appropriate governance arrangements that give the public sector entity sufficient capacity to monitor the private sector entities' ongoing financial viability and plan for the orderly takeover to ensure continuous service to the public.**
- 3.62 There are a number of latter PPPs in Victoria that incorporate greater risk allocation to the private sector and overall appear to be operating successfully such as the Melbourne CityLink. Nevertheless it needs to be understood that given the long-term nature of these arrangements the overall benefits to the community may not become clear for some time. In addition even though there may be changing technology and community needs and expectations, such arrangements can commit governments to specific delivery models over a long period and restrict future policy options.
- 3.63 **The question about accountability is fundamentally about who is accountable to whom and for what result.** The matter is further complicated when agencies are held accountable for performance for services that are primarily being delivered by the private sector. It is important to know what results are expected and how they are to be achieved. **The public sector environment requires different governance approaches to those used in the private sector.** If private sector participants are to operate effectively and successfully in the public sector they must understand and accommodate such differences in their own governance arrangements. In increasingly complex PPP arrangements there needs to be a clear understanding and appreciation of the roles and responsibility of the relevant parties. The absence of clear designated roles weakens accountability and has potential to impact on the achievement of organisational objectives. Any uncertainty experienced by the public and/or private participants in this respect can create confusion both as to who is accountable for what and the various relationships with stakeholders.
- 3.64 **Public access to reliable information is necessary for government accountability.** As the result of increase in private sector involvement in activities traditionally undertaken by the public sector, the flow of information available to assess performance and satisfy accountability requirements are arguably on the whole being reduced. This situation has arisen where performance data is held exclusively by the private sector or data in agency hands is limited or excluded from wider public or parliamentary scrutiny by claims of commercial confidentiality. **Thus accountability can be impaired where the involvement of private sector parties and the delivery of public sector outcomes reduces openness and transparency in public administration.** Most confidentiality claims regarding contracts are claims about commercial sensitivity of the material. While there is a broad understanding of the kinds of information private sector providers might regard as commercial/confidential the question is how to ensure adequate accountability for the use of public funds while dealing with any justifiable confidentiality concerns.

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- 3.65 With the increased convergence of the public and private sectors government needs to take a proactive and consistent approach to the scrutiny of contracts involving public funds otherwise a demonstration of transparency, accountability and the ethical use of resources has the potential to become clouded. The effective management and monitoring of PPP arrangements once established is critical to the outcome achieved. Typically, as the larger PPPs are being developed, specific purpose project teams are established drawing on internal and external expertise to work through the emerging issues associated with the effective creation of the arrangements. However, once the arrangements are established and operating these teams are generally disbursed with the resultant loss of detailed knowledge of the arrangements. This represents a major issue impacting on the effective and ongoing oversight of the arrangements. This is a similar problem to that experienced in other jurisdictions such as the United Kingdom.
- 3.66 A further issue that emerges from these **long-term outsourcing arrangements is that over time there is a loss of expertise in the effective oversight of these arrangements**, given that governments may no longer be involved in areas similar to those subject to PPPs and therefore individuals responsible for oversight functions may not fully appreciate the associated management issues. **Therefore it is important that effective strategies are developed by the public sector to mitigate these risks. This is particularly important given the public sector's ongoing duty of care associated with key aspects of public sector service delivery.**
- 3.67 Another important accountability issue is the consideration of **how PPP arrangements should be accounted for and disclosed in public sector financial statements and budgets. Currently there is no Australian accounting standards** that deal specifically with this issue. Earlier arrangements were similar to finance leases and were required to be recognised as part of the government's assets and liabilities under tests outlined in the accounting standards relating to leases. However, later arrangements have been developed so that they do not meet the characteristics of finance leases. The Australian accounting standards predate the emergence of PPP models and do not specifically deal with these arrangements, particularly the more complex risk transfers on many PPP service delivery models. **These arrangements have been criticised by claims that governments can understate debt by recording their obligations off balance sheets.** For evaluation purposes most service contracts with the private sector either fall somewhere between the strict definition of operating and finance leases in the accounting standards.
- 3.68 However, **the standards require that all transactions be recorded in accordance with their substance and not their legal form.** In addition, the concept statements that underlie the Australian accounting standards provide the broad framework for assessing whether assets or liabilities may be created under these arrangements. Due to the complexity of the arrangements, it is the view of our offices that the substance of the individual components of the arrangements needs to be individually assessed — that is, using a component approach where you separate the supply element of the arrangements from the financing element to determine whether they meet the definition of an asset and liability. This should be carried out with reference to the underlying rights and obligations of the respective parties.
- 3.69 Consideration needs to be given to issues including **demand risk, residual risk, obsolescence and penalties for underperformance or non-availability.** The adoption of this

approach by our office has resulted in the recognition of a number of Victorian PPPs on the state's balance sheet. This approach has also contributed to the provision of additional disclosures within the whole-of-government financial statements on the level of financial commitments associated with off-balance sheet arrangements, which last year totalled \$13 billion.

- 3.70 If PPP arrangements are to work effectively it is important that risks are assigned to those best placed to manage the risks and that access to assets and services is obtained in the most cost effective manner irrespective of whether debts sit on balance sheets. Ultimately, the decision to proceed with such arrangements must be based on a cost-benefit analysis which could result in access to assets or services provided by the private sector or the public sector or a combination of both.

### Questions and comments from delegates

- 3.71 **Ms THOMPSON MP** — Your paper covered a number of the risks of PPPs and mentioned the different expectations by government of private companies. One of the factors I have come across is different community expectations in terms of consultation. How do you build that into the process? Have you seen anything that might be useful in that regard?
- 3.72 **Mr WALKER** — Probably at the front end before the decision is taken in relation to the service, the critical issue as I see it is to ensure that there is consultation with the wider community in relation to the provision of the service or the asset. But once that decision is taken I think then it is the decision of what is the most cost effective way of providing that service. That is where you then look at the various options associated with service delivery or asset acquisition.
- 3.73 **Ms THOMPSON MP** — I will give you an example, and that is the southern expressway in South Australia. While there was consultation on the general concept of the road, along the construction phase there were many, many issues that arose in relation to its impact on residents, both during the construction phase and the long-term operation of the road. People were generally extremely dissatisfied with the consultation being undertaken by the private sector. I am interested in anybody's views — yours in particular — on whether the community responds better to consultation being undertaken by the private sector partners or the public sector purchasers.
- 3.74 **Mr WALKER** — I would have thought it would be with the public sector purchaser, because it is the purchaser who decides what services are required by the community and then determines the most appropriate mechanism for providing that service which, as I said in my paper, is based on cost-benefit analysis. It could be private sector; it could be public sector or it could be a combination of both. My view would be that any consultation in relation to the service to be provided should be at the front end and should involve the government prior to deciding how it is going to require the service.
- 3.75 **Ms JAMES** — I was just going to ask you about risk assessment. Has there been any post-analysis of whether particular PPPs get the risk assessments right in terms of picking the frequency and magnitude of risks and whether the risk transfer was appropriate? Do we have any post-analysis of the risk profiles that are done in these things?

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- 3.76 **Mr WALKER** — My understanding is that there has not been a lot of post project evaluation. It is pretty low on all capital works projects. It should occur. It gives the opportunity to gather that information in relation to risk allocations and develop a memory of the different types of projects and where risks best sit.
- 3.77 **Ms JAMES** — You certainly said before that people overestimate the benefits and underestimate the cost. I think that risk allocation and assessment are also prone to that kind of derivation. I was hoping that we might have some sort of body of knowledge so we could start to have a look at that area.
- 3.78 **Mr WALKER** — That is really the next phase where governments need to head in my view across jurisdictions to share that information so they can enter into these arrangements in the future and are in a better position to know where certain risks can be better managed, whether it is in the private or public sector and the associated costs.
- 3.79 **Ms JAMES** — Presumably, for example in road transport, with maintenance risk allocation and things like that, there will be a repetition of the process so we can get a certain risk allocation that is used in this project versus another project. There are enough road transport projects to look at a comparison of all those risk assessments. Are they often covered by commercial in confidence?
- 3.80 **Mr WALKER** — No, I would not have thought so. I would have thought that jurisdictions have their various road authorities, and they are the ones that should be obtaining that information so that when they enter into new arrangements they are making those decisions based on more complete information.
- 3.81 **Mr SEITZ MP** — My question is: since up until recent times the public servants have developed and built the assets that we have, how much influence does the World Bank have on the PPP system? As you pointed out, with the corporate memory loss in the public sector how much influence will the public service as we know it have in the years ahead about managing the assets that we still have in public hands?
- 3.82 **Mr WALKER** — I suppose that is one of the risks with the move from public sector provision to private sector provision. As I outlined in my speech, it is important that expertise is maintained and perhaps governments have to start thinking a little bit outside the square in relation to effectively doing that. Maybe by having more centralised knowledge instead of having it dispersed across a number of agencies so that therefore that knowledge is retained more centrally than it is presently to facilitate more effective oversight of the arrangements going forward.
- 3.83 **Prof. HODGE** — I just want to explore the area of the return on public funds invested. In the old days we used to have benefit-cost analysis in which the public could see the percentage return they got on their funds as distinct from the 20 per cent or 30 per cent that private investors might get on a risky investment. Are there any instances in Victoria where we have seen a return on public funds put out clearly for the public?
- 3.84 **Mr WALKER** — Not as far as I am aware. It may be the case in some of these arrangements that because they are long term, the benefit and costs associated with the arrangements have not materialised and therefore when you are comparing actual

performance with that predicted, enough water has not gone under the bridge, so to speak, so that that can be clearly determined.

- 3.85 **Prof. HODGE** — I am wondering if that might be an area that the Auditor-General might look at in the future, because I think that is a clear area where we need to do better in terms of accountability.
- 3.86 **Mr WALKER** — There are numerous areas that we could look at, and seeing that I am in charge of strategic audit planning in our office I will take that on board as an issue to consider going forward.
- 3.87 **Mr HILTON MLC** — As I understand it, one of the rationales of the PPPs is to transfer risk to the private sector from the public sector but at the end of the day the government is still acting as a safety net with these major projects like the Latrobe hospital. I wonder whether that in any way compromises the thinking behind the PPPs.
- 3.88 **Mr WALKER** — As I said in my speech, whether it is a PPP arrangement or whatever, it ensures that risks are allocated to those people who are best placed to manage the risk. So it is no good entering into a private-public partnership arrangement which pushes all the risks to the private sector when we know quite well up the front end that the government, as an example, has the duty of care in relation to the provision of service. So it is not that we enter PPPs because you can push the risk to the private sector, it is ensuring through the identification of the project and determining who is in the best position to manage the various risks associated with the project, that some of them should quite clearly rest with government where others can be pushed to the private sector. But you do not enter into the arrangement so you can push all the risk to the private sector and therefore government does not have a risk. Government has a risk, because it has that duty of care in relation to service provision to the public and to the community.
- 3.89 Then there are certain other uninsurable risks that perhaps may sit better with the public sector than the private sector. Or otherwise you may pay a huge premium by pushing them out or they may be allocated to the private sector but may not actually be effectively managed and therefore ultimately rest back with the government.



## Chapter Four - Wednesday 14 July 2004

### DAY 3 – PLENARY SESSION

**Chair: Ms Jenny Lindell, Chair, Environment and Natural Resources Committee, Victoria**

#### **Presentation 1: Synopsis of Day 1**

Presenter: Mr Paul Caica MP, Presiding Member, Public Works Committee, South Australia (Abridged)

- 4.1 **The CHAIR** — Our first speaker is Mr Paul Caica MP, who chaired the session on the public works stream — public–private partnerships (PPPs).
- 4.2 **Mr CAICA MP** — **The four speakers made us think a little more deeply about the value and cost of PPPs.** Two speakers have helped deliver substantial PPP projects — Mr Cave worked on the Victorian County Court project and Mr Jolly with the Spencer Street Station Authority. They reminded us that PPPs carry risks and need experienced project management and consultant advice. PPPs also carry heavy transaction costs for government and costs to the private sector in forming a consortium and preparing bids. These costs mean that projects in excess of \$100 million are realistic candidates for PPP delivery. Despite this, Mr Jolly and Mr Cave are strong supporters of PPPs. They believe PPPs offer significant benefits in delivery cost, innovation, risk allocation, whole–of–life management benefits, budget certainty and commercial synergies; and they also avoid the traditional procurement model’s neglect of maintenance funding.
- 4.3 Mr Jolly echoed Mr Cave’s points. He supported this by telling us that the public sector comparator for the Spencer Street Station Project was slightly more expensive, much less innovative, provided less land for transport purposes. The PPP also transferred the financial risk.
- 4.4 Mr Jones is the National President of Engineers Australia, and he sounded some practical warning notes. His organisation has examined the country’s infrastructure and in key areas such as rail and irrigation, has given grades of D and D minus, and has argued that this will cost tens of billions of dollars to fix. Mr Jones warned that the market cannot and will not fix this problem and that the government has hamstrung its ability to do so by telling the public for so long that public sector debt is bad. He stressed that **politicians need to sell the alternative message — that is, some debt is good and is essential to provide vital infrastructure.** He strongly urges the use of alternative funding methods such as hypothecated taxes and infrastructure bonds. Doug also emphasised that governments have deskilled themselves. Therefore a key problem is how governments can be informed buyers. He urges a thorough skills assessment before beginning negotiations with the private sector about any project.
- 4.5 Finally, Mr Jones highlighted that **transparency between government, big business and the community is essential. Too often, PPPs exclude the community by commercial in confidence clauses or complicated legal documents that are impossible to understand.**
- 4.6 Prof. Hodge of Monash University challenged us to consider and seriously worry about the fundamental assumptions and costs of PPPs. He claimed that many key players

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accept as an article of faith that PPPs provide better efficiency, improved services and strengthened monitoring and accountability. This faith creates an unacknowledged conflict of interest within Treasury departments, which commonly act as policy advocate, project promoter, in-house manager, financial steward, regulator and trusted ministerial adviser. We were told that serious evidence on cost and quality gains for PPPs is lacking, and I think that was somewhat reinforced by the representative from the Auditor-General's department the following day.

- 4.7 Mr Cave used the Victorian County Court project to argue the benefits of PPPs, but Graeme Hodge used the same project to note the absence of any real life benchmarks for cost comparisons. He also questioned the degree to which any real demand risks existed when government was the client.
- 4.8 Prof. Hodge also argued that the promise by PPPs to reduce pressure on government budgets is false. They have simply changed short-term pressure for capital funding to longer term recurrent pressure to pay off the mega-credit card. PPPs assume that the positive elements of self-interest will drive the private sector to use capital efficiently. But Prof. Hodge warned that self-interest's negative side — corruption, conflicts of interest and fraudulent behaviour — has not been examined. **Of particular interest was Prof. Hodge's contention that PPPs have increased managerial accountability but at the cost of parliamentary control accountability, quasi-judicial accountability and access to information. Once a government signs up to a long-term PPP arrangement it is not future elected governments who govern but the long-term legal contract. A worrying accountability gap exists.**
- 4.9 Professor Hodge believes that a parliamentary committee ought to oversee PPP legislation and planning at an early stage, and it should also have a role in evaluating projects and PPP policy. He pointed out that his views are not just nice theory. The Treasury's discount rate of 8.65 per cent may be too high and the claims for PPP success depend upon this discount rate. A 9 per cent saving becomes a 6 per cent cost if a discount rate of 5.7 per cent is used. Therefore, if Professor Hodge is correct, several Victorian PPPs may have cost as much as \$500 million more than the alternative method.
- 4.10 We were left with questions and conundrums. **PPPs must have experienced project management, but there is a lack of qualified people left within the public sector so how can governments be wise buyers?** We have a shortage of engineers in Australia, but the traditional public sector placements for new graduates no longer exist. Where will the new generation of engineers learn their trade? PPP transaction costs mean that only 7 per cent of projects by value are delivered this way. But if the benefits are real, how do we change public sector culture? The other 93 per cent is being tackled there!
- 4.11 If the benefits are illusory, as Prof. Hodge suggests, hundreds of millions of scarce taxpayer dollars are at risk. How can we find out if proper analyses are not being conducted and our key advisers have ideological conflicts of interest? Can we be more imaginative and fund capital works in other ways? If so, how do we sell the U-turn in the message about public sector debt that the public has been hearing for many years? How can governments be kept accountable if PPPs are kept commercial in confidence or are too complex to be readily understood? And how can the parliamentary committee system play its proper part?

- 4.12 Fellow delegates, it is unrealistic to come to a conference of this sort and expect to leave with all the answers. But if it can give us a better appreciation of the key questions that we as public policy-makers need to address, it has been a good conference. On that basis we have had an excellent conference. On behalf of the South Australian public works delegation I thank our host committee and their hardworking staff and their choice in speakers and their efforts in bringing us together. We look forward to seeing you all again in 2005.

## **Presentation 2: Synopsis of Day 2**

Presenter: Hon. Kevin Lingard, Deputy Chair, Public Works Committee, Queensland (Abridged)

- 4.13 **The CHAIR** — Our second speaker is the Honourable Kevin Lingard from the Public Works Committee in Queensland, who chaired yesterday's public works stream.
- 4.14 **Mr LINGARD** — Thank you. Some of the papers in this session you should read. The Hon Judi Moylan MP gave the first one. She is the chair of the commonwealth group and she outlined some of the changes that are necessary and told us that in 2001, this forum was advised that the Public Works Committee risked decreasing relevance in the face of changing government delivery processes. We all had to admit that all of our legislation was written a long time ago. None of us has been game to change it. So with things like demountables, things like PPPs and things like costs, we have not changed them. Many of the committees are sitting out there not investigating many of the things that they should be investigating.
- 4.15 In Queensland we do not look at any government corporate bodies. They are the ones who run transport, who run electricity and who run water. You are not allowed to touch them, yet we are the ones who decide our committees, as long as the government wants to do it. If I wanted to put up something like investigating a bridge in north Queensland that was built two years ago it might accept that. It would be a great thing to have a look at but it would have absolutely no relevance. The Tasmanian committee said that it has to investigate everything over \$2 million, but it has not investigated anything in the last 12 months. That is the ludicrous situation that many of these committees find themselves in. Quite honestly, unless someone at the top — and maybe it has to be the commonwealth — sits down and looks at all of the states and formalises them and gets them all into a similar situation, it is a mockery.
- 4.16 New South Wales outlined that it has had a public works act since 1912. The commonwealth has had one since 1913, but it has had to change completely and now its current committee does not take a threshold approach but rather tends to look at broader issues relating to capital works projects. Examples of the types of inquiries are infrastructure delivery and maintenance, government energy reduction targets, and joint use and co-location of public buildings. That is a completely different concept to what we have in Queensland and how we investigate things. I have no doubt that other states have similar, but I mention that one because that shows that there are different thoughts.
- 4.17 Mr Walker's paper was excellent. I am sure that it will be issued. He was the assistant Auditor-General in Victoria. His paper was excellent on PPPs saying how the work of his office is looked at; the integrity of processes followed regarding project evaluations

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and approval; the selection, engagement and management of contractors; the risks associated with these arrangements; and the impact of PPPs on the state's financial obligations and future financial commitments. **But he was specific on some issues, and he was saying that there was a need for a sufficient degree of competition in the PPP market. How do we as work committees regulate that? How do we as committees look at the need to ensure that risks are transferred to the parties best able to manage them? The problems with overestimating benefits in these PPPs and underestimating the cost. How do we as parliamentarians make judgments on those things? The residual risk to government if a private sector contractor experiences difficulties — what do we then do as governments?** He went out to outline these and you will see that in his particular paper.

- 4.18 There was an excellent report also by The Hon Christine Campbell MLC from Victoria, who has had personal experience in PPPs and went right through all the difficulties they had faced.
- 4.19 Once again, they will be issuing a paper. This was an excellent session. I recommend that you have a look at some of the papers.
- 4.20 **The CHAIR** — Thanks very much, Kevin. I think there will be a few people thinking some of those issues through in preparation for our discussion after morning tea as well, I suppose, on the future of this conference overall.

### **Presentation 3: Discussion of paper 'Some Questions to Consider'**

Presenter: Mr Ian Dundas, committee secretary, House of Representatives Standing Committee on Environment and Heritage, Commonwealth of Australia. Discussion paper on formalising the annual conference and international parliamentary committee involvement

- 4.21 **The CHAIR** — This brings us to the final session for the conference. This came out of the last national conference, in Western Australia, where the view of the conference was we should at least have a review of how this national assembly is being put together and its ongoing function. I will hand over to Mr Ian Dundas, secretary of the commonwealth committee. After we have resolved some of those future issues, we need to resolve where our 2005 conference will be.
- 4.22 **Mr DUNDAS** — Thank you, Chair. The committee's paper is subtitled 'Some questions to consider'. The first question I have is not in the paper but is what the hell am I doing here? I can only repeat the words of Harry Jenkins, the federal member for Scullin, at the environment stream meeting on Monday morning where he apologised on behalf of the committee chair and other members who have not been able to participate in this conference to the extent they would otherwise have liked. The 'e' word has arisen in the federal sphere and the members have found it difficult to get to the conference this year. I present the paper on behalf of the committee.
- 4.23 That sort of leads to a second question: why is the federal committee — the House of Representatives committee — presenting this paper? As has been referred to, it arose out of the discussion at the end of the conference in Karratha. I did not go to the conference in Western Australia last year — I was preoccupied with a select committee that was doing an urgent inquiry — but the secretariat was represented by my colleague Anna Dacre.

- 4.24 I gave her some advice before she went off to the west — I think it was her first conference. I said, ‘Keep your head down, do not volunteer for anything and in particular make sure the Chair does not commit any departmental resources.’. When Anna came back and said gleefully, ‘Guess what — we are setting up a web site’, I was a bit surprised. Anna is a good officer, she kept her job and she is here at this conference. I spoke to Bruce about this, and it has emerged that the question is a bit bigger than simply setting up a web site. The paper has been circulated. It is a matter for you to look at it and have whatever discussion you want to have: I do not want to lead that discussion in any way. I will keep this presentation as brief as I can — I am not going to read the paper. I will then step aside and let you guys have the argy-bargy that was alluded to; I will go and sit safely down at the back where I belong.
- 4.25 The committee is not looking to take the lead in this. It is not the commonwealth’s role to tell state committees what to do. The committee is simply looking to put some options on the table for the whole of the conference to consider. There are three questions that the paper addresses. The first one can be categorised as: should the conference arrangements be formalised? That seems to have come down to a question of should there be some form of constitution, perhaps along the lines of the public accounts crowd, which has a constitution. There is a question about what arrangements we can put in place to better share information. This goes to the idea of a web site which was being kicked around in Karratha. The third question is: can we make some arrangements to facilitate or encourage participation from the Pacific region?
- 4.26 These three questions are intertwined. I think how you respond to one will determine how you might respond to the other questions. There are also a couple of threshold questions which I think ought to be looked at or considered before too much progress can be made on any of those three questions. The first one is fundamental: why do we have these conferences? Why are we here? What are we looking to get out of them? It is interesting that from what I have heard this morning the public works and the environment streams are doing somewhat different things. It has been suggested that perhaps the two streams should be separated as separate conferences, or kept together is the other option. I do not have a view on that, but I think these questions are a starting point. The committee is not proposing that you consider these questions, come up with some conclusions and set them in stone and then go off and answer the other questions. I am sure that any debate on whether we need a constitution or not will throw up some other ideas which would lead you back to review the purpose of the conference.
- 4.27 For the first question about formalising the arrangements, the committee has put up four options. While its preference is clear, I think it is worth quickly referring you to those four options. Option A is the no-change option — to continue pretty much as we are going. Option B is to look at the possibility of a formalised constitution of some sort. The third option was to go the ultimate step and have some sort of formalised, centralised conference secretariat to support and organise what is happening. The fourth option was perhaps not to do very much by way of formalising arrangements but to have a go at perhaps trying to get better information dissemination.
- 4.28 In relation to this, the committee favours the no change option. At this stage it is not interested in committing to anything much more than what is already in place. The committee looked at some of the different constitutions and in particular the

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ACPAC — the public accounts — one. It seems to be a body most similar to this, particularly if you consider the public works aspects perhaps. However, the committee could find no compelling reason to adopt a constitution. In fact, it found a number of reasons not to do so. The committee was concerned that a constitution might limit the range or the scope of future conferences by prescribing membership in some way and have the effect of limiting the participation and the range of committees that might be involved in these discussions at future conferences. It was also concerned that the constitution might make requirements or lock in certain standards of each of the jurisdictions, and they might become untenable for some of the future hosts.

- 4.29 The committee takes the view that the lack of formal arrangements has not in any way hampered the development of the conference. It has grown in scope and sophistication. It is becoming, in my view, more interesting, informative and useful, and things have proceeded well, without any formal arrangements.
- 4.30 The committee would like to see the capacity to be broad and open and innovative in terms of the scope of the conference and who gets invited, and it would like to see that initiative be retained by individual hosts so that they can pretty much determine for themselves what to do with future conferences.
- 4.31 I do not want to go into details at this stage, but should the conference go down the path of, 'Yes, let's have a constitution', there are at least 20 questions to be addressed. I did not count them, but there could be more. I do not think it would be an easy matter. I think if you were to review those questions you would see that this would take quite a bit of work to come up with a constitution that we would all be comfortable with.
- 4.32 In relation to the information question, my recollection — and this has come up at a number of conferences and conference delegates have called for other committees to circulate copies of remarks and things like that — is that it has not really happened very much. Following some conferences I have received copies of reports and thought, 'What do I do with these?' But this has not been a routine matter.
- 4.33 There was this question that arose at the Karratha conference of setting up a web site. We had a look at that with a view to the House of Representatives Environment Committee, which is financing a web site. There is not much we can do there. The parliamentary computing network, which is owned by another department, not us, for security reasons is configured in such a way that external access other than through a public URL site is not feasible.
- 4.34 I cannot set up an intranet or extranet site that you could access yourselves and log onto, we cannot have a bulletin board or discussion group or anything like that. The best that could happen would be if you were to send my staff information they would put it on a web site on the Parliament network. I do not think that that is particularly necessary. Certainly when I need information about what you are up to I go to your web sites, and I find all that I need. And if you people are keeping your web sites up to date then perhaps all that needs to be done in terms of the host at the next conference, six months out and at the time of the conference, might be to ensure that a list of web sites is circulated; and that may be all we can do as long as web sites are kept up to date. That may overcome the problem we have had about getting information out in the past.

- 4.35 In relation to the participation from the Pacific region, this is an interesting question. It can obviously happen already. The committee received a very interesting paper from the Pacific region, not from a parliamentary committee as such but nevertheless a useful paper, and one of the things that came out of that was that those guys cannot go it alone. They are looking for advice and assistance, and they are looking for us to be engaged with them. This has come about without any formal arrangement, but if we look at doing this in a more regular way, there is a lot we would need to know. We would need some infrastructure in place, a lot more information, and we would have to address the question of costs. The committee's thought was, 'Let us try and use the infrastructure that is out there.'
- 4.36 Let us draw on the knowledge of people like the CPA and tap into processes that are already going on. The CPA has a facility for seminars and conferences. I understand money is available in London for these sorts of things; the Australian regions have certainly hosted some. I had a yarn to the guys from the CPA Australian regional secretariat and their starting point was, if possible, to find out whether the potential Pacific delegations would be self-funding. I think it is perhaps fortunate that we have the Kiwis involved because they provide the secretariat for the Pacific region, and my committee would suggest that working through those sorts of structures would lead us most quickly to a more regular involvement of people from the Pacific.
- 4.37 I certainly do not want to lead this discussion, particularly if as foreshadowed there might be some argy-bargy, but there might now be an opportunity for delegates to discuss the question of why we have these conferences. What are we looking to get out of them and indeed given that, do the current arrangements deliver? If we need to change things, do we have to do it formally? Do we need a constitution? If we are going to go down that path, how do we address the questions that have to be answered? How do we set up a constitution? I have not checked this idea with my committee, but maybe a way would be to have a constitutional convention. That might mean a mid-term conference with committee chairs and committee secretaries putting together a proposal to bring back to the conference next year.
- 4.38 For example, under its constitution, the PAC meets every two years for a full conference and every other year it has an executive meeting of committee chairs and committee secretaries. That is a business meeting, and it is done because it has a constitution and it needs to sort out its business and agenda to bring to the full conference. My understanding is that the next PAC conference will review that. It is looking to have smaller annual conferences; that is the proposal before it. I do not know how it will go with that. If we are going to go down the constitution line, we may need to have something like a special meeting or a constitutional convention and get the chairs together with the secretaries to hammer that out.
- 4.39 Having said all that, I know from 20 years of circulating briefing papers to committee members that you are already on top of them. The committee's idea of what might be some aims and objectives and why we do these things is set out following the options. It really goes to the matter of opportunities to discuss and to be informed, to foster interjurisdictional understanding — which is important. I know the commonwealth sometimes feels it gets beaten up by the states, and I guess you guys think you get a bit ignored, so if we can overcome some of those barriers it might be helpful. Maybe a third possibility is to discuss on occasions some procedural practice matters, and indeed what Mr Lingard was saying in that regard this morning was interesting. We

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have not taken that up very much, but it remains as a possibility for one of the reasons we might get together.

4.40 Chair, I am happy to leave it at that. The papers are on the table, and I will leave it to you to run any further discussion.

4.41 **The CHAIR** — Thanks, Ian. I do not know that there will be argy-bargy but it is the only way I know. The promise of a fight is always one way of getting MPs to get to a place on time. Can I have people to start off with some comments?

4.42 **Mr McRAE MLA** — Thanks very much for the paper. I thought it was a useful start, and I thought it adopted the basic premise that if it is not broke don't fix it, or don't try and adjust it, which is always a kind of reality check that you must do. I

4.43 There are couple of points that I drew from it: firstly, the establishment of aims of conference. I am not sure that we need a constitutional forum to do that. I think that if we adopt by consensus the idea — nothing more than the idea — that this is a conference of like-minded and-like interested committees throughout Australia, then simply by adoption of aims of conference, resolution of this gathering and no obligation on any of the member states or jurisdictions those aims serve a useful purpose in describing why we come together. I quite like the ones that you have written out, so if there was a resolution of conference for those to be adopted as aims of conference not as aims of the constitution or not suggesting any formal establishment of constitution then I think that would be a useful expression of the view of people here.

4.44 Most importantly, and just on that, to be informed and to inform is something that parliamentarians too rarely have as an opportunity amongst each other to do in a way that allows them to share their experiences, test out ideas, do comparative analysis and evaluation of approaches without the glare of the Parliament or the press and in a way that allows us to go back and do our work in the best way that is possible. We were talking during the morning tea break that some of what we do is in fact debating and arguing shades of grey. That is hardly a riveting matter for the press and for public debate, but it is the essential work of much of parliamentary work. So this is a roundabout way of saying that the adoption or establishment of aims of the conference in my view would be a useful outcome — a useful first step from this paper.

4.45 There are three other points that I want to make. I notice the paper makes reference to the inclusion of Pacific jurisdictions. If it is true as we have heard earlier that Victoria is a long way from the Pacific I can tell you Western Australia is on the other side of the world. This partly came up, this emerged in part, because in preparing to be hosts in 2003 the economics and industry standing committee of the Legislative Assembly had — a bit late in the day and as it turned out; contra-flow to an election cycle in that jurisdiction — had invited our sister state in Indonesia, East Java, to come as an observer. So there is a jurisdiction which is important to Western Australia, has no relationship to CPA networks and forums or funding and yet is certainly with our sphere of network need.

4.46 Here is our next-door neighbour with something like 200 million people which has very little knowledge of our parliamentary processes and which is going through a process now of devolution away from the centre out to the provincial jurisdictions. I would argue that we do need to retain a capacity for this conference to have other

attendees outside of Australia's jurisdictions. New Zealand gets here by virtue of history and being in the constitution, unlike Western Australia, and I think it makes sense to include Pacific states that are CPA members. I would suggest to you though that we could probably resolve this again just by adoption of conference ideals or aims and say that the host be given the authority to invite additional participants because the interests of the host will vary from conference to conference. So I will leave that as an idea.

- 4.47 The third point that I want to make concerns the information sharing. I absolutely agree that formalising it is just too hard and maybe not necessary. I think like many conferences that are available it is the engagement in the presentation and the discussion and then the taking away of papers and all the base research that has gone into informing those that makes this folder so valuable as a working document. I do think it is up to the host jurisdiction to put those papers together and make them as useful and as interesting as possible.
- 4.48 And finally about the environment and public works streams, I know we kind of struggle a little bit to see what the interrelationships are.
- 4.49 Those of you who came to Western Australia would know that we had kind of built on our experience in South Australia. This is the third conference I have attended — my first experience was in South Australia and then we were hosts. South Australia made I thought a really good attempt at drawing together those two streams, showing their connection and then allowing breakouts at particular points, but there was overwhelmingly a central core to the whole conference. I strongly urge future conference hosts to try and adopt a similar kind of core conference approach with breakouts on particular areas of interest. I think that that is the most successful format, and in that sense I would argue that the environmental resource management and public works that the draft aims statement talks about is probably a nice way of talking about this conference, and it should be retained as a single conference. Those are my first comments.
- 4.50 **Mr CAICA MP** — Ian, I too would like to thank you very much for your role in preparing the paper for consideration of this conference. I agree very much with what Tony has said, and we in South Australia did attempt — I do not need to go through the history because there are a lot of people here that have been around a lot longer than I with respect to how the conferences have been conducted in the past — to amalgamate the conference as best we could. I think that it should be. I do not agree that there should be necessarily a constitution. I support the views that there ought to be aims and objectives, and I think that we could probably take it one step further — that is, not only is there a relevance between the discussion topics between public works and the environmental streams, we can also include in there the public accounts and economic and finance committees as well. My suggestion would be, and I guess in a nutshell that it will be up to individual hosts to determine how they believe a conference should best work, but I would think that we could give consideration, or those hosts could give consideration, to inviting and incorporating into future conferences those public accounts and economics and finance committees.
- 4.51 But if I could just take a leaf out of the book of John Thwaites, the Deputy Premier, who in his speech last night said environmental issues are also about economics and

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making sure that we put in place the public infrastructure, and that we ensure that the impacts of those environmental initiatives do not have adverse effects on the communities that we all represent. So I think we could go one step further — that is, to integrate other committees into the structure and then probably meet on the first day with issues that are sensibly linked to all those specific committees and perhaps consider having separate streams as we did on this occasion and come back together for those areas that may be of mutual interest between one or two or even the three committees. So I think that it is an evolutionary process. I think that from what I have seen in the three years, although I did not go to Western Australia, that the conferences have been particularly useful from South Australia perspective, and I assume from other jurisdictions' perspective as well.

- 4.52 The hosts should take control of how it will be constructed and structured, and indeed they should be the determining factor as to who it is they invite from outside the Australian jurisdiction. So I think we can give thought to expanding it to integrate other committees. I know that Gay from South Australia, who is the chair of the economics and finance committee over there, finds particular relevance in either of the streams here from a financial perspective as well, so we could give consideration to even going one step further.
- 4.53 **Ms LAWRIE MLA** — I just want to thank Ian for his paper. It was practical and informative. I support Western Australia. I think the aims and objectives as laid down under the 'some possible conclusions' heading suit the conference. I support that the streams be kept together.
- 4.54 I want to say that the Northern Territory will never host a conference if you put all of ACPAC — Australasian Council of Public Accounts Committees — in there as well. It is just far too unwieldy. I went to ACPAC two years ago. It is huge. But if we keep it informal there is nothing stopping members of the PACs and economic committees from attending this one as well.
- 4.55 I sit on the PAC in the territory, for example. I think all of us, as parliamentarians, always have an eye on the economics, costs and the triple bottom line in anything we do, so I would urge that we keep it a practical size, which I think this one is, and stick with the description, 'related to environmental resource management and public works', because they are all impacted on by economics.
- 4.56 I think the no-constitution approach is a practical way of going about it. We do not have to be prescriptive, because it is working as it is. Certainly the NT supports the no-change option. The conference organisation that is quite appropriately suggested by the commonwealth Standing Committee on Environment and Heritage is, I think, a practical way of approaching it. Certainly linking into the CPA in terms of our Pacific nations coming along, I would like to see a continuation of Australia's support to those nations that have critical environmental issues, as we have heard, in terms of the region. So using the CPA process to find any support we can provide to our neighbours to get here would be good, but I just urge that we do not become too unwieldy and too costly, because you will see the smaller jurisdictions refusing to host such conferences if that is the case. In short, the territory supports the no-change option. We do support keeping the environment and public works stream together, and the no-constitution approach.

- 4.57 **Ms PRATT MLC** — This is my first conference, and I have had a terrific experience. Reflecting on that, what I would say is that a large amount of the discussion and debate we have had is broadly relevant to a wide range of my parliamentary work, but actually only narrowly relevant to any of the work I have done on my environment committee. The conclusion that leads me to is, I suppose, that the content of this invitation base for this conference is widely relevant to MPs broadly.
- 4.58 Following up on what Delia said, we could possibly make invitation to this conference open to other committees, but perhaps it could also be framed that it could be the parliamentarians environment and public works conference, organised by Australia's environment and public works committees. So perhaps we could consider widening the invitation base for participation, because the content I have been experiencing this week has been highly consumable as an MP. We go out to a range of different fora on environmental issues, and it is fantastic to be able to come along to something like this, where the information is kind of packaged in a way, because we are used to talking to other MPs and government departments and the like, where you can really get to the nub of the information you are trying to get to. I think that is an incredibly useful thing — that when we are trying to communicate to parliamentarians generally about environmental and public works issues, that is something that we could be sharing more broadly.
- 4.59 **Mr HARGREAVES MLA** — I want to make a couple of points, if I may. Firstly, I thank Ian very much for a challenging paper. I was going to thank him very much for offering to host all the other conferences from now until the end of the millennium, but I will not! One of the things we need to recognise about these conferences is that this is all about the continuity, really, of our commitment to good and best practice in public works and environmental issues across the country. It has been said before that it is all about information sharing and updating each other. Sometimes it has been said that some states are a bit insular.
- 4.60 Some people have said like the territory that we come from, for example, is an island in New South Wales. We often do not get the updated information about how other people are experiencing similar things to us. For example, our bushfire management and the disasters that struck the ACT are very similar to those that have struck Tasmania and Victoria over the years. We need to have vehicles for those sorts of sharings. Of course, the conferences are brilliant in terms of creating networks and creating contacts, and these often go way past our involvement in these issues. I know, for example, that I have got colleagues here at this conference whom I have actually met on other parliamentary conferences in the past. I wanted to also make the point that committee memberships are often limited — we do tend to lose elections every now and again — and the life of thought on these issues is embedded deeply in these sorts of conferences. What comes out of these conferences and what is ongoing about these conferences is often a lot longer than the life of a politician. I think that is where its value is, and I do support and suggest that we have a set of aims and objectives about what we hope to achieve out of these conferences. I do believe that we should leave it to the host jurisdictions to determine the flavour of the conference consistent with those aims.
- 4.61 We have some ideas for a future conference, and I have to say it is really nice to see that you open your show bag and you get a bit of a surprise. We had a lot of fun in Karratha and we had a lot of fun at the Otway Fly, but it was a learning experience in

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both instances, so I thank the people who put those on for us. Can I also underscore the value of these conferences to the committee staff and the support staff? I think this is an important point. I have made the point in our Assembly a couple of times that the Assembly support staff and the chamber support committee staff have been there a lot longer than our members and will be there a lot longer than the members will, and it is important that if you want continuity of thought then you put it into those people who are going to be there the longest. I think that that is a point we need to note. Another thing that these conferences are excellent for is where a jurisdiction has had an issue and has dealt with it through legislative change and polities can pick up the success or failure of those attempts and take it home with us.

4.62 Now when we were talking about the involvement of other jurisdictions, I think that I agreed with the idea that the host's jurisdiction ought to be given licence to invite others. Tony was talking about Java. I would be delighted to hear from the people of Indonesia on how they are experiencing things. We have had the benefit of the Swedish delegation at this conference, which has been brilliant. There were people babbling away on the bus all about the Swedish experience, and that was incredibly valuable.

4.63 We talked about the cost for South Pacific nations and all that sort of stuff, which is a real issue for them. I would just like to chuck a grenade in the middle now and suggest that people give some thought to inviting high paying members of the corporate sector to actually come to these conferences, to either selected sessions or to the whole thing. They would pay through the nose for that opportunity to see politicians at play, and we could then use those funds to offset the costs of the South Pacific nations. Of course they can also provide the grog. I leave it there, Chair.

4.64 **The CHAIR** — If I could perhaps put the New South Wales comments at this stage. The New South Wales contingent has left already to catch early planes from Melbourne. They have given me a four-point document, three points of which relate to this discussion. The first one is that New South Wales is not in favour of a formal constitution as they see that it reduces flexibility in the arrangements; they are not in favour of a permanent secretariat dedicated to the interstate committee group. New South Wales is unable to provide resources to such a secretariat.

4.65 The other point is that New South Wales is not in favour of Pacific island inclusion. The scale and size of the Pacific island public works and environmental issues are not compatible with Australia. There are better mechanisms, such as parliamentary conferences, to accommodate Pacific island issues. When I was discussing these points there was a view, notwithstanding that comment, that the invitation list should certainly be up to the host of the conference, and if they saw that there was a benefit in inviting a wider range of people then that was fine by them. But in a formalised sense they did not see that the Pacific islands would ever consider, or be in a position to host a conference, so in the sense of formally bringing them into the rotation of where we go for conferences it would just be an ask that is not possible for the Pacific islands.

4.66 **Mr PARKINSON MLC** — I just want to say, firstly, thanks to those who organised this conference, it has been terrific. I went to the Western Australian one and this has been my second. It has been very informative, very beneficial, the papers have been great, and it has been very well organised. Thank you to Victoria for that.

- 4.67 On the theme of what we are talking about now, I tend to agree with the comments from Western Australia, from Tony and Louise. We are going well in the current format. I think we should keep it broadly along those lines. There is one point that I just want to add, and Louise's comments reminded me of it. There is, already, an Asia-Pacific parliamentarians conference on environment and development. It has been operating for quite a number of years. I first found out about it in 1996 when I went to a conference put on in New Zealand, which was very good. As far as I know the secretariat is still based in South Korea, and they hold conferences every year throughout the Asia-Pacific region. They are having one in August this year in Fiji, which and my colleague Paul Harriss will be attending.
- 4.68 Australians generally have not patronised that conference very well, and I think it is largely because they tend to hold them when Australian Parliaments are sitting. It has been one of the problems in the past, and it has certainly been the reason why I have not attended other conferences organised by them since 1996, the current one coming up being the first opportunity. All I am saying is that there is an opportunity to link into that organisation which already exists and has for some considerable time. It takes in Louise's comment that there is some merit in making this a broader parliamentarians conference on environment and developmental issues rather than confining it to the committees themselves, and I think that was a good point that she made. Thank you.
- 4.69 **Ms THOMPSON MP** — I would like to go back to what Tony was saying in terms of summarising the value of this conference for professional development. That makes me have different thoughts from the previous speaker about the corporate involvement. I think the idea of having corporate involvement as sponsors of Pacific visitors might be very useful, but for me one of the terrific things about this conference is the ability to interact informally as well as formally with colleagues in a non-threatening, non-scrutinised environment. We spend so much of our lives under scrutiny. You all know as well as I do that you cannot go down to the local supermarket to buy a packet of biscuits without being stopped, so being able to get away to somewhere where you feel a little bit cocooned from that and can interact with people who are facing the same issues as you are on a daily basis, professionally and personally, is very invigorating for me, and I think we would lose that aspect of it if we were charging corporate delegates a mint. I think we would lose that aspect of it if we were charging corporate delegates. We should try to find a way of persuading corporate delegates that it would be very good for their image if their logo was on the bottom of all our letterheads or something.
- 4.70 **Mr PETERS MP** — Just quickly, we looked at the paper and our belief is that this is a matter for the Australian states and federal bodies to look at. We are thankful that we have been able to make a response and come, and we hope on these matters that we can be there in the future. But it is really in the hands of the hosts, as we see it, and their wish for us to be part.
- 4.71 On the second matter, we have the Pacific secretariat with us and we will pass on to it the thoughts on the last part of the paper. Probably our response is that these are matters for Pacific island nations to decide and that would be the basis of the discussions between our secretariat and their members.

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- 4.72 Again, our thanks for being here; it has been extremely useful. The strands of public works and the environment do run together in the end result for the taxpayer and the citizen. That matter which was touched on has some strong validity to be part of future discussions. Thank you again for being here.
- 4.73 **Mr LINGARD** — Just a quick comment because Queensland supports the present concept. We do not support a central secretariat. I have seen central secretariats which are lovely when they are nice people and you love the person who is in charge there, but if it is a person you are not really happy with so far as their organisational ability or their manner, it can get very touchy.
- 4.74 Western Australia was excellent last year, but when Tony or Western Australia organise something like that, which is quite extensive away from Perth, then obviously they just give us the costs and say, 'Well, if you want to come you pay the cost'. If you start to organise things like that — and Queensland would be an example if we went to Cairns — and if you start to bring the secretariat in and you have to provide another four or five lots of fares and costs, it becomes extremely costly. That is why it is probably better to have a general organisation with our own people in charge and let the host area take the cost. I honestly believe if we want to go to those Pacific areas that we should say to them, 'You are invited but you should cover your own costs', and most of them can cover their own costs for one person to come.
- 4.75 I do not think there is a necessity to have a central constitution, but we need to have a set of aims because obviously when we have to go back to our own Parliaments and say, 'This is why we want to go away; this is what the conference is all about', that there should be a general aim that you can refer back to your own Parliament.
- 4.76 **Mr VENNING MP** — I am pretty pleased at the way this conference has actually grown, because this is my 10th one — and I have been to the lot. I would not like to see it grow much bigger because if we involve too many of the other committees we will not only lose the exact focus on what we are here for, but we might lose that control of knowing what is going on.
- 4.77 I find it particularly valuable that we come here and look at other reports, but more importantly that we meet and talk to the speakers who have been chosen by the host. It is most important, as has been said by Tony and others, that we leave it to the host state to arrange the itinerary and everything else. After all, if we did not enjoy them, even if they are central, then we would not come. That is the bottom line. We are all pretty busy people and we have all got good things we need to do with our time.
- 4.78 I do not think we challenge each other enough. At every conference I have been to I have raised an issue and none of you have taken it up — and that is the container deposit legislation. We come here every year and South Australia raises this matter — and it is usually me. Even though I am not involved any more I will still raise it. In South Australia we have been pushing the container deposit legislation. In fact we have now gone further and no other state through this venue has come along and challenged us. So who is out of step? Is it us or is it you? Are you doing enough for the environment? Why don't you ask us when you come here, 'How are you going? What is it costing? What do your corporate people think about this?' I know you have all been strongly lobbied by your corporate people not to do it. We must challenge each other more at these conferences because that is what it is all about. We go back to our individual states and think of the issues. We have our papers, we have very good

contacts with speakers, and I very much appreciate the speakers at this particular conference; they were very good. But I say no change because it is working well. I think things like this evolve. When we try to put things in place and make things formal we will lose our uniqueness. I look forward to the next one.

- 4.79 **Mr MASTERS MLA** — Ladies and gentlemen, I congratulate the organisers of this conference. I will throw in a few random thoughts. I do not think we need a constitution. The aims, however, need to be put forward because we had a little bit of trouble in Western Australia getting the support we wanted from the Speaker of the Legislative Assembly for all of us to come over here this time. To have some really useful and broad ranging aims and goals is highly desirable.
- 4.80 Personally I like the idea of us sponsoring Pacific island nations to send one or two delegates over here. It can be done a number of ways. Corporate sponsorship is a good one, but I do not want to see those corporate sponsors involved here except may be at the Government House function or the opening night function.
- 4.81 Alternatively we could, say, donate an extra \$100 per registration, and if we get enough money for one air fare and one set of accommodation then we can afford to sponsor one person who might come from a Pacific nation. Alternatively each of the nine Australian jurisdictions could donate \$1000, for the sake of the argument; \$9000 might sponsor three or four people from the Pacific islands. That might be another way of doing it.
- 4.82 Can I also say, mainly for the benefit of future conference organisers, that when I looked at this program in Western Australia a few weeks ago I thought, 'This is really good. We have two streams; I will go to the environment one and the other members of our committee can go to the public works stream'. I have to say in hindsight that after listening to the summaries presented from the public works speakers I am really sorry that I was not there, and I am sorry all the people in the environmental stream were not listening to the public works speakers. I have a personal view of one stream and one stream only. We need this crosspollination of ideas to make sure we are as fully informed parliamentarians as we can possibly be. That is not intended to be a criticism, but is something I think I have learned as a result of this conference.
- 4.83 A final point: would it be possible to have a feedback form of some sort so that we can say to the organisers of this conference, 'Yes, fantastic job here; a little bit of improvement needed somewhere else', and then that information can be passed on to next year's organisers?
- 4.84 **Ms BREUER MP** — A number of South Australians have spoken but we have quite a big contingent at this conference. I hope we continue to do so. Just a couple of brief points. There was a comment made earlier — and thank you for that great report, Ian — about whether we should split the conference. I think somebody suggested that to keep an environment conference and public works, but I think this number is ideal when you are arranging excursions, like we did yesterday. What we did in Western Australia — I will never forget the absolutely wonderful trip we had when we flew over Barrow Island. It is one of those things that people who went there would remember for the rest of their lives. I remember that Tony said at the time that they had to have a certain number to make it worth while doing the trip. We got more than that and it worked out very well; they were able to charter a jet, so I think this number

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of people is just about satisfactory. It is not too many, we only needed two buses to cart people around, and I think this is a satisfactory number.

4.85 I agree with some of the other comments about corporate sponsors. I agree with Gay Thompson from South Australia. It is nice to be able to relax in an environment like this and not worry too much about who is there. I think that is important as well.

4.86 One other suggestion that came to me from the secretary of one of our committees was that the Swedish report, the environmental conference, came up with a sort of report card with 15 objectives. I thought it might be an interesting point for our environmental committees. We could go back and have a think about this in our own states and maybe bring a report to our next conference about how we match up on some of those issues so that we can go away and think about it and come back with a purpose next time to say, 'This is what we are doing, but this is probably what we need to do'.

4.87 **The CHAIR** — Any other comments? If not, I might put a Victorian perspective. I wholly agree that some aims, particularly, would make the arguments that we all face with respect to budgets for the conference and budgets for air fares et cetera easier through our own jurisdictions, so I think that some aims would be fabulous. I do not see any really compelling reason to formalise any arrangements. I would possibly like to think that we could organise, in a non-mandatory sense, the conferences for the next couple of years, wherever they may be. We now have the list of the rotation. We know that elections will interfere with that rotation on occasions, but if we agree that we would roughly follow that rotation, then people would know when it is their turn. Perhaps that is something that we could agree upon today.

4.88 As I said, I certainly do not see any need for a formal constitution. The first conference I went to was the one in the Northern Territory, and the conferences are evolving. The South Australian conference on water was brilliant. I did not get to the Western Australian one, but the South Australian water conference was fabulous. They took a risk with a couple of things: the hypothetical was a fabulous afternoon. I think the host of the conference are the ones that know their own strengths; they know what they want to get out of the conference, and that is most important. They should have the latitude to both be free to invite whomever they think will gain from the conference or be interested in it, the people they wish to speak to. Obviously we took advantage of that, unashamedly, by inviting the Swedish delegation and the South Pacific delegation. I think that is entirely appropriate. I would probably agree pretty much with the status quo, with just a couple of minor tweaks at the edges.

4.89 I like Lyn's suggestion that environment committees could pick up on some of the objectives the Swedish government has in place and perhaps look at how we would report on those. It provides a mechanism of feedback without tainting or predetermining the next conference theme. Perhaps in that there could be a 1-hour session just of people reporting back on some of those objectives from each state. That is something we can talk about informally later on.

4.90 **Mr McRAE MLA** — I was just going to ask whether you, as conference host Chair, are going to move a conference declaration of resolution.

4.91 **The CHAIR** — We could do that. I move:

That our principle aims should be:

- to discuss and be informed on matters related to environmental and resource management and public works, to further the knowledge and understanding of these issues by parliamentary committee members and to thereby enhance their effectiveness as parliamentarians in general and committee members in particular;
- to foster interjurisdictional understanding and cooperation; and
- to provide a forum for committee members from different jurisdictions to periodically consider the purpose and role of committees and ways to facilitate and enhance the work that they do.

4.92 **Mr McRAE MLA** — I second that.

4.93 **Ms LINDELL** — Do we have any further discussion on that proposal? Then I declare that this conference so determines.

4.94 **Mr HARGREAVES MLA** — That was by acclamation, Chair?

4.95 **Ms LINDELL** — By acclamation. Are there any other formal motions that people from the floor would like to move? Then I think we should move on to determining the place where we next gather in 2005.

### **Discussion: Future conferences**

4.96 **The CHAIR** — I have two messages to deliver about the future conference. One is the fourth point of the New South Wales document, and that is that:

New South Wales is proposed conference host for 2007.

4.97 I also have a letter from the Office of the Clerk of the House of Representatives from New Zealand, which I will read:

National Conference of Parliamentary Environment and Public Works Committees —  
Future hosts for conference.

The New Zealand Parliament is pleased to be able to send delegates to this conference and will be represented by Mr Jim Peters MP and Beth Watson, Clerk of the Local Government and Environment Committee.

In the 2003 report written by the New Zealand delegates attending the National Conference of Parliamentary Public Works and Environment Committees, it was noted that New Zealand had been asked to host a conference in the near future.

The opportunity to host this conference has been given serious consideration. However, the New Zealand Parliament is already scheduled to host a number of conferences between now and 2007; furthermore, in 2005 there is likely to be a general election. In 2006 New Zealand will host the CPA Regional Conference, and in 2007 we have tentatively committed to hosting the Asia-Pacific Parliamentary Forum.

Having recently taken up the responsibility for the Pacific region of the Commonwealth Parliamentary Association, our resources are fully extended in supporting Pacific region activities. Unfortunately New Zealand is not able to assist with hosting a conference of parliamentary environment and public works committees before 2008.

We wish you all the best for a successful conference.

4.98 That is signed by David McGee, the Clerk of the House. Those messages firmly place the New South Wales and New Zealand positions.

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- 4.99 **Ms DUNDAS** — I am Chair of the current Standing Committee on Planning and Environment. The Australian Capital Territory would be most delighted to invite the National Conference of Parliamentary Environment and Public Works Committees to the territory in 2005. We have had preliminary discussions of a spring setting in the capital, when Canberra is at one of its most delightful periods. Based on the discussions we have had just now and the discussions that have been taking place in this conference forum for at least the last two years, we are quite excited to look at how we can capitalise on the skills and knowledge the environment and public works committees bring together when we sit here and discuss issues.
- 4.100 As you would all know, the ACT went through a great natural disaster in 2003, at a time when most of Australia was under great stress. The country is mostly in a drought situation and has been for a number of years, and there could be ample discussions about opportunities for change that spring out of our disasters, about how there are public work and environmental imperatives underpinning where we go forward and about challenges and opportunities that we need to look at and discuss as our environment continues to shift around us.
- 4.101 Of course they are just preliminary thoughts that I am having, although I would like to note that it is quite likely that in 2005 the Planning and Environment Committee will look quite different as the ACT goes into elections at the end of this year. But without a doubt, Mr Hargreaves and I will be willing participants at such a conference, as we have enjoyed the opportunity to have spoken to you all at this conference. So unless anybody else wants to rain on my parade, we look forward to welcoming you to Canberra next year.
- 4.102 **The CHAIR** — Thanks very much, Roslyn. Is any other committee in a position to challenge the ACT for 2005? No? Excellent! In the spirit of what I was talking of earlier, which was about having a bit more of a forward agenda, are there indications of where we may go to in 2006, or are there general indications that loosely following the rotation we have established in the first nine conferences is the way to go?
- 4.103 **Mr POOLE** — My name is Robert Poole. I am a member of the Queensland Parliament and Public Works Committee. I would like to take this opportunity to follow on from 2005 and invite the conference to Queensland in 2006 .
- 4.104 **The CHAIR** — Thank you very much. That would set 2005, 2006 and 2007 — not in concrete, but at least in an indicative sense. We have done very well.
- 4.105 Conference concluded.

# Appendix One – Conference Delegates and Speakers

## DELEGATES

### Victoria

#### **Environment and Natural Resources Committee**

Ms Jenny Lindell, MP, Chair  
Hon Andrea Coote, MLC, Deputy Chair  
Hon Damian Drum, MLC  
Ms Joanne Duncan, MP  
Hon Geoff Hilton, MLC  
Hon Wendy Lovell, MLC  
Mr George Seitz, MP  
Dr Caroline Williams, Executive Officer  
Mr David Fairbridge, Research Officer  
Ms Dene Elsegood, (Acting) Office Manager  
Ms Andrea Agosta, Office Manager, Economic Development Committee

#### **Outer Suburban Interface Services & Development Committee**

Ms Rosy Buchanan, MP  
Mr Sean Coley, Executive Officer  
Ms Chantel Churchus, Research Officer

#### **Public Accounts and Estimates Committee**

Hon Christine Campbell, MLC Chair

### Australian Capital Territory

#### **Standing Committee on Planning and Environment**

Ms Roslyn Dundas, MLA, Chair  
Mr John Hargreaves, MLA  
Ms Robina Jaffray, Manager of Committees  
Ms Stephanie Mikac, Committee Secretary

### Commonwealth

#### **House of Representatives Standing Committee on Environment and Heritage**

Mr Bruce Billson, MP, Chair  
Mr Phillip Barresi, MP  
Mr Harry Jenkins, MP  
Mr Stewart McArthur, MP  
Mr Ian Dundas, Committee Secretary  
Dr Anna Dacre, Inquiry Secretary

**Joint Standing Committee on Public Works**

Hon Judi Moylan, MP, Chair  
Mr Brendan O'Connor, MP, Deputy Chair  
Ms Vivienne Courto, Inquiry Secretary

**New South Wales**

**Standing Committee on Natural Resource Management**

Hon Pam Allan, MP, Chair  
Mr Gerard Martin, MP  
Mr Tony McGrane, MP  
Ms Cassandra Adams, Assistant Committee Officer

**Standing Committee on Public Works**

Mr Kevin Greene, MP, Chairman  
Ms Angela D'Amore, MP  
Mrs Karyn Paluzzano, MP  
Ms Carolynne James, Committee Manager

**Northern Territory**

**Environment and Sustainable Development Committee**

Ms Delia Lawrie, MLA, Chair

**Queensland**

**Public Works Committee**

Hon Kev Lingard, MP, Deputy Chairman  
Mr Robert Poole, MP  
Mr Rob McBride, Research Director

**South Australia**

**Environment, Resources and Development Committee**

Ms Lyn Breuer, MP, Chair  
Hon David Ridgway, MLC  
Mr Philip Frensham, Secretary

**Economic and Finance Committee**

Ms Gay Thompson, MP, Presiding Member  
Dr Paul Lobban, Secretary

**Natural Resources Committee**

Mrs Karlene Maywald, MP, Chairperson  
Ms Vincenzia Ciccarello, MP  
Mr Mitch Williams, MP  
Mr Knut Cudarans, Secretary

### **Public Works Committee**

Mr Paul Caica, Presiding Member  
Mr Ivan Venning, MP  
Mr Keith Barrie, Secretary

### **Tasmania**

#### **Joint Standing Committee on Environment, Resources and Development**

Hon Doug Parkinson, MLC, Chair  
Hon Sue Smith, MLC  
Mrs Sue McLeod, Clerk of Committees

#### **Joint Standing Committee on Public Works**

Hon Paul Harriss, MLC, Chairman  
Hon Greg Hall, MLC  
Mr Charles Casimaty, (Acting) Committee Secretary

### **Western Australia**

#### **Standing Committee on Environment and Public Affairs**

Hon Dr Christine Sharp, MLC, Chair  
Hon Louise Pratt, MLC  
Miss Lisa Hanna, Advisory Officer, Legislative Council Committee Office

#### **Economics and Industry Standing Committee**

Mr Tony McRae, MLA, Chair  
Mr Bernie Masters, MLA  
Mr Mick Murray, MLA  
Ms Jovita Hogan, Research Officer

### **New Zealand**

#### **Local Government and Environment Select Committee**

Mr Jim Peters, MP  
Ms Beth Watson, Clerk of Committee

### **SPEAKERS AND GUESTS**

Hon John Thwaites, MP, Deputy Premier of Victoria  
Judy Maddigan, MP, Speaker of the Legislative Assembly  
Hon Monica Gould, MLC President of the Legislative Council  
Ms Doreen Garvey Wandin, Wurundjeri Elder  
Mr Tim Cave, Director, Major Projects Delivery Services, Department of Justice  
Prof Graeme Hodge, Director of the Privatisation and Public Accountability Centre, Monash University  
Mr Tony Jolly, Project Director, Spencer Street Station Authority  
Mr Doug Jones, National President, Engineers Australia  
Dr Ian McPhail, Victorian Commissioner for Environmental Sustainability

**SPEAKERS AND GUESTS continued**

Ms Christine Forster, Chairperson, Victorian Catchment Management

Dr Richard Price, Managing Director, Kiri-ganai Research

Ms Maria Atkinson, Executive Director, Green Building Council of Australia

Hon Judi Moylan, MP, Chair, Commonwealth Joint Standing Committee on Public Works

Mr Kevin Greene, MP, Chair, NSW Public Works Committee

Mr Russell Walker, Assistant Auditor-General, Victorian Auditor-General's Office

Hon Christine Campbell, MP, Chair, Public Accounts and Estimates Committee

Dr Kevin Tolhurst, Fire Ecologist, Melbourne University

Mr Amena Yauvoli, Senior Policy Adviser, South Pacific Regional Environment Program

Mr Jan Bergquist, Chairman, Swedish Environmental Objectives Council

Ms Ingrid Oikari, Principal Administrative Officer, Swedish Environmental Objectives Council

## Appendix Two – Report from the NSW Standing Committee on Public Works

### **UPDATE ON DEVELOPMENTS 2003/04 SPEECH by Mr Kevin Greene MP, Chair**

**Monday 12 July, 11:15 am**

Good Morning Delegates

I am pleased to outline the key activities of the NSW Standing Committee on Public Works over the last 12 months. As Chair of the Committee I would also like to outline the new inquiry we have just begun.

Firstly there is the **Report on Energy Consumption in Residential Buildings**.

In June 2003, the Committee started an inquiry into energy consumption in residential buildings.

The inquiry ran for nine months and was triggered by various factors. As most of you know, the Public Works Committee's role is to ensure that capital works programs are appropriately and responsibly directed, as well as minimising the negative environmental impacts of these programs.

The reason for the Committee's concern about energy consumption was the startling estimate that NSW faces an electricity infrastructure investment of more than \$8 billion in the next 10 years to keep up with its energy needs. To a degree, the demand for new infrastructure is explained by the State's increasing population and economic growth. But the more disturbing issue is that per capita energy consumption is also growing.

People are using more energy on average in their homes today than a decade ago. This is despite the technology and efficiency improvements in energy infrastructure. Moreover, the bulk of new infrastructure proposed is coal fired, greenhouse gas polluting power stations.

This is not ideal. We should be aiming for lower energy consumption per capita. The best solution is one that improves environmental outcomes, particularly greenhouse gas reduction, and improves economic outcomes by getting better value from our energy infrastructure.

The Government has various roles that can affect energy consumption in residential buildings. They include guiding planning and home building activities; providing energy infrastructure; and supporting new industries and technologies. Other factors influencing energy use relate to changing house design, lifestyle and appliance use. The Committee tried to determine why energy consumption habits in homes were changing, and why energy efficiency initiatives were slow to impact in the residential sector.

The Committee's report made recommendations about policies and practices relating to new and existing housing. Critical strain on energy infrastructure is being created by new development areas where large "McMansion" style homes, as some people call them, rely on power hungry air conditioning. But that is not the whole story, new homes only account for less than 2 per cent of housing stock. The total impact of energy consumption is shared across 2.3 million existing homes. Therefore the Committee felt that changes were needed in both old and new housing to make a real impact.

While the Committee has recommended more action in certain areas, it is also aware that a balance must be struck between influencing change to improve energy management and energy efficient behaviour without imposing unnecessary restrictions on individual choice and amenity or industry activity.

The recommendation highlights include:

- a proposal to have “point of sale” disclosure of the energy efficiency ratings of homes for both new homes and, in time, to apply to existing homes. This proposal is based on the energy rating disclosure scheme already operating in the ACT for all homes
- particular controls on air conditioning systems which are identified as key contributors to peak demand for energy in summer;
- more investment in alternative energy solutions including consumer incentives and discounts for adoption of green energy solutions, and lastly,
- the Committee supported the introduction of design controls through the NSW BASIX development application tool. This will force new homes to be more energy and water efficient in design, and stop the proliferation of “McMansion” homes in new developments.

The report was tabled in March 2004 and the Committee is awaiting a government response. However the BASIX tool commenced application in NSW on 1 July this year. The Committee has undertaken a watching brief to monitor its success.

#### **New Inquiry into Joint Use and Co-location of Public Buildings – June 2004**

To finish up, I would just like to mention the Committee’s current inquiry which has advertised for submissions. The inquiry will look at mechanisms to enhance the joint use and co-location of public buildings. The Committee is looking into the design, regulatory arrangements, and cost implications of the joint use and co-location of state and local government public buildings.

As delegates are aware State and local governments are responsible for the provision of many public buildings, from schools, police stations, and hospitals at a state level; and childcare centres, to libraries and sporting facilities at a council level.

In some circumstances, combined facilities may be a viable option to save on construction and operating expenses. Cost savings result because spaces such as conference rooms, lobby areas, restrooms and parking areas can be shared. Economies of scale can pay off - often larger facilities have lower average running costs.

Joint use or co-location can be successful, but proper planning is crucial. Understanding the needs and functions of each building and how they might intertwine is important. Co-location of buildings often requires larger parcels of land and can take a long time to implement because of financing and co-ordination issues of multiple projects. A further issue is the development of regulatory arrangements and management systems across different government agencies to enable joint use or co-location of facilities.

There are various ad hoc examples of joint or co –location initiatives in the NSW sector. For example, councils are collaborating with State Government agencies and the private sector in various civic precinct developments.

In addition, councils are often involved in facilitating public building development. For example, Blaxland High School, at the foot of the Blue Mountains, shares a sports centre on its premises with a community sporting organisation. The project included financial and technical support from the local council. It was collaboratively funded and constructed and is managed through a joint agreement.

As the NSW population grows, particularly in metropolitan and coastal areas, there will be new demands for state and local public buildings. Rather than responding to change with new infrastructure, we should be exploring the potential for retrofitting or adaptive reuse of buildings.

Where new buildings are needed, design and construction innovation may help a building have a variety of functions or conversion from one function to another over time. This in turn can produce public buildings that are better aligned to the life cycle of the community. For example, as communities age, the demand for facilities will change - from education facilities, to recreation facilities, and then community health/aged care facilities.

A further option is the co-location of public and private buildings. NSW already has many instances of co-location of public/ private buildings, such as new civic complexes. A key issue is balancing these public and private spaces for community's benefit.

These are some of the issues we hope to examine in the inquiry. I'd like to thank delegates for the opportunity to outline these issues and would be happy to discuss the details of this inquiry with you.

Thank you

### **Inquiry into Energy Consumption in Residential Buildings – Terms of Reference**

The NSW Standing Committee on Public Works is to inquire into and report on energy consumption in residential buildings in New South Wales, in particular:

To examine:

1. Changes in annual energy consumption patterns of electricity, gas and solar;
2. Implications for capital works programs of energy providers of any increases or projected increases in energy consumption;
3. Factors contributing to any increase in energy use (such as, take up of appliances, such as air conditioners; current design practices; growth in size of houses; subdivision design);
4. The application of current government and industry policies and initiatives (such as, the operation of rating tools, energy efficient appliances).

And to consider:

1. Strategies to address increasing energy consumption and to improve the sustainability of residential buildings, such as
  - improving design, construction or operational practices for residential housing;
  - development of targets or other quantifiable outcomes for residential housing;
  - product research;
  - new technologies;
  - retrofitting;
  - consumer awareness and education;
  - any other strategies
2. Implementation of such strategies;
3. Any other related matter.

## Appendix Three – Conference Program

**Monday 12 July 2004**

**Public Works stream – Parliament House, Spring Street**

8:30 – 9:00

### **Conference opening – Legislative Council**

Welcome to country by Doreen Garvey Wandin, Wurundjeri Elder

Opening speeches by Judy Maddigan, MP (Speaker of the Legislative Assembly) and Monica Gould, MLC (President of the Legislative Council); and

Jenny Lindell, MP, Chair, Environment and Natural Resources Committee (ENRC)

9:00 – 11:00

### **Session A – Public private partnerships (PPPs)**

Session chaired by Mr Paul Caica, MP (Chair of Public Works Committee, South Australia) in Legislative Council

- **Mr Tim Cave – Director, Major Projects Delivery Services, Department of Justice**

PPPs in the justice sector

- **Prof. Graeme Hodge, Director of the Privatisation and Public Accountability Centre, Monash University** Governance and accountability challenges arising from PPP projects

- **Mr Tony Jolly, Project Director, Spencer Street Station Authority**

PPPs in the transport sector – a case study

- **Mr Doug Jones, National President, Engineers Australia**

Subsequent developments to the release of the discussion paper - *Public investment in infrastructure: justified and effective*

11:00 – 11:15

### **Morning Tea**

11:15 – noon

### **Session B – Committee reports from NSW, South Australia (x2) and Queensland**

Noon – 12:30

Conference photo on the steps of Parliament

12:30 – 1:30

### **Lunch at Parliament House**

1:45 – 4:00

Tour of Docklands hosted by VicUrban

4:00 – 6:00

Drive to Lorne

7:30 pm

### **Dinner at Kostas Taverna – optional, 48 Mountjoy Parade**

## Monday 12 July 2004

### Environment stream — Parliament House, Spring Street

8:30 – 9:00

#### Conference Opening – Legislative Council

Welcome to country by Doreen Garvey Wandin, Wurundjeri Elder

Opening speeches by Judy Maddigan, MP (Speaker of the Legislative Assembly) and Monica Gould, MLC (President of the Legislative Council); and

Jenny Lindell, MP, Chair, Environment and Natural Resources Committee (ENRC)

9.00 – 11.00

**Session A – Adopting new approaches to natural resource management and sustainability – visions for the future**, session chaired by Ms Jenny Lindell, MP in Legislative Assembly:

- **Dr Ian McPhail, Victorian Commissioner for Environmental Sustainability** – Progress towards achieving sustainability goals and future challenges in reaching these goals. The role of Commissioner for Environmental Sustainability and links with Parliament
- **Ms Christine Forster, Chairperson, Victorian Catchment Management Council** – The catchment condition report process, a vision for the Victorian rural landscape of 2020 and the opportunities presented by an ecosystem services approach
- **Dr Richard Price, Managing Director, Kiri-ganai Research** – A new agricultural landscape in Australia – is land use change the answer to environmental degradation?
- **Ms Maria Atkinson, Executive Director, Green Building Council of Australia** – A vision for a sustainable property industry and the challenges of improving the performance of buildings whilst reducing their environmental impact

11:00 – 11:15

**Morning tea**

11:15 – noon

**Session B – Committee reports from Victoria, Commonwealth, South Australia (x 2) and Tasmania**

Noon – 12:30

Conference photo on the steps of Parliament

12:30 – 1:30

**Lunch at Parliament House**

1:30 – 3.30

Drive to Lorne

3.30 – 5.30

Visit to Angahook – Otways region hosted by the Victorian Environmental Assessment Council

7:30 pm

**Dinner at Kostas Taverna – optional, 48 Mountjoy Parade**

## Tuesday 13 July 2004

### Public Works stream – Cumberland Resort

#### 8:30 – 10:30 **Session C – Public private partnerships (continued)**

session chaired by Hon Kev Lingard, MP (Deputy Chair of Public Works Committee, Queensland)

- **Hon Judi Moylan, MP, Chair, Commonwealth Joint Standing Committee on Public Works** Changing nature of capital works programs and the role of Public Works Committees – a Commonwealth perspective
- **Mr Kevin Greene, MP, Chair, NSW Public Works Committee** Changing nature of capital works programs and the role of Public Works Committees – a State perspective
- **Mr Russell Walker, Assistant Auditor-General, Victorian Auditor-General's Office** Governance and accountability issues arising from PPP projects
- **Hon Christine Campbell, MP, Chair, Public Accounts and Estimates Committee (Victoria)** – Key findings of PAEC Inquiry into Private Investment in Public Infrastructure

10:30 – 10:45 **Morning tea**

10:45 – 11:30 **Session D – Committee reports from Tasmania, Commonwealth and Western Australia**

11:45 – 1:00 Bus to Otway Fly

1:00 – 2:45 **Lunch and guided walk at Otway Fly**

2:45 – 3:30 Bus to Twelve Apostles

3:30 – 4:30 Tour of Twelve Apostles hosted by Parks Victoria

4:30 – 6:00 Drive back to Cumberland Resort

7:30 – 8:00 **Pre-dinner drinks at Aqua restaurant (Cumberland Resort)**

8:00 – 11:00 **Conference dinner at Aqua** – address by the Deputy Premier – A vision for sustainability in the Asia Pacific region

## Tuesday 13 July 2004

### Environment stream – Cumberland Resort

- 8:30 – 10:30     **Session C – Adopting new approaches to natural resource management and sustainability** – visions for the future (cont.)  
chaired by Hon Andrea Coote, MLC (Deputy Chair ENRC):
- **Dr Kevin Tolhurst, Fire Ecologist, Melbourne University** – Changing our perception of fire in the environment: the future impact of climate change on fire regimes and how to effectively adapt to this change
  - **Mr Amena Yauvoli, Senior Policy Adviser, South Pacific Regional Environment Program** – Addressing environmental challenges in the Pacific region – emerging environmental issues in the region and SPREP’s vision for sustainability
  - **Achieving Sustainability – how well are we doing?**  
**Mr Jan Bergquist, Chairman and former MP and Ms Ingrid Oikari, Principal Administrative Officer, Swedish Environmental Objectives Council** – Sweden’s progress toward meeting its environmental targets and the role of the Special Parliamentary Committee on Environmental Goals and the Environmental Objectives Council
- 10:30 – 10:45     **Morning tea**
- 10:45 – 11:30     **Session D – Committee reports from NSW, Northern Territory, New Zealand, WA and ACT**
- 11:45 – 1:00     Bus to Otway Fly
- 1:00 – 2:45     **Lunch and guided walk at Otway Fly**
- 2:45 – 3:30     Bus to Twelve Apostles
- 3:30 – 4:30     Tour of Twelve Apostles hosted by Parks Victoria
- 4:30 – 6:00     Drive back to Cumberland Resort
- 7:30 – 8:00     **Pre-dinner drinks at Aqua restaurant (Cumberland Resort)**
- 8:00 – 11:00     **Conference dinner at Aqua** – address by the Deputy Premier – A vision for sustainability in the Asia Pacific region

**Wednesday 14th July 2004**

**Plenary – Cumberland Resort**

9:00 – 10:00 Chairs of sessions A and C of public works and environment streams to report back on key issues and points of discussion

10:00 – 10:30 **Morning tea**

- 10:30 – noon
- Presentation and discussion of paper by Commonwealth House of Representatives Standing Committee on Environment and Heritage on formalising the annual conference and international Parliamentary Committee involvement
  - 2005 conference

Noon – 1:30 **Lunch at Cumberland Resort**

1:30 – 4:00 Drive back to Melbourne via the airport