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INQUIRY INTO PUBLIC PRIVATE PARTNERSHIPS

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Charter of the Committee

The Public Accounts Committee has responsibilities under Part 4 of the *Public Finance and Audit Act 1983* to inquire into and report on activities of Government that are reported in the Total State Sector Accounts and the accounts of the State's authorities.

The Committee, which was first established in 1902, scrutinises the actions of the Executive Branch of Government on behalf of the Legislative Assembly.

The Committee recommends improvements to the efficiency and effectiveness of government activities. A key part of committee activity is following up aspects of the Auditor-General's reports to Parliament. The Committee may also receive referrals from Ministers to undertake inquiries. Evidence is gathered primarily through public hearings and submissions. As the Committee is an extension of the Legislative Assembly, its proceedings and reports are subject to Parliamentary privilege.

Terms of Reference

On 4 May 2005, the Committee resolved to conduct an inquiry and report on private sector investment in public infrastructure, considering the following matters:

(a) New South Wales, Australian and international legislative and policy frameworks and practices regarding private sector investment in public infrastructure;

(b) Government models for evaluating and monitoring private investment in public infrastructure;

(c) The framework for risk allocation between the public and private sectors and its application, especially how well risk is assessed, allocated and managed;

(d) The extent of opportunities to share knowledge across and between agencies;

(e) The extent to which agencies are managing Intellectual Property issues; and

(f) Any other relevant matters.

Chair's Foreword

I am pleased to table this Report of the Public Accounts Committee's inquiry into the use of Public Private Partnerships (PPPs) to deliver infrastructure in New South Wales.

The Committee recognises that PPPs arrangements are here to stay as an essential but minor part of the State Government's asset acquisition program. The purpose of this inquiry was to assess whether PPPs are being managed efficiently and effectively, not whether or not they should be used. We note that less than ten per cent of assets are provided through these arrangements. However, because they tend to be large, complex projects that can affect people's lives for a very long time, PPPs arouse a great deal of interest and passion.

The Committee has a longstanding interest in this use of private sector investment in public infrastructure. Between 1992 and 2002, previous Public Accounts Committees published 13 reports and discussion papers on the accountability arrangements and financing of PPPs. In 2005, the Committee felt that it was timely to conduct another review and compare Australian institutional arrangements with national and international best practice.

We framed terms of reference that focussed on the models of evaluating and monitoring these projects and how risks were assessed and allocated between the public and private partners. Other key questions were the extent of opportunities to share knowledge across and between agencies and the management of intellectual property issues.

In the course of the inquiry, the Committee received submissions and took evidence from central Government and line agencies, private sector investors, law firms, project managers and constructors, unions, academics and peak community bodies.

The inquiry found that Government guidelines for PPPs are open to interpretation and are not being applied consistently. We felt that, because the guidelines are not mandatory, a degree of 'casualness' may be evident in the way they are applied by agencies. To remedy this situation, the Committee has recommended that the guidelines be mandatory.

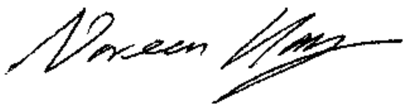
The Committee was also concerned at conditions which led to PPP arrangements being seen as less than transparent. This leads to a low level of community trust about PPP projects and a poor understanding, generally, of the 'workings' of PPPs. The Committee considered that the Government could improve disclosure and clarify the PPP process and it has made recommendations in this regard.

We also thought that there needs to be more of a focus on the ongoing evaluation and monitoring of projects over their whole life. Community confidence in PPPs would be greatly improved if evaluation and monitoring was better tied to checking whether key performance measures were met.

We examined ways in which knowledge sharing about the development and operation of PPPs can be improved, to increase the level of PPP management expertise across the public sector and thus increase value for money. Pleasingly, no one considered that intellectual property was not managed well.

Concurrent with this inquiry were a number of other inquiry or review processes relating to PPPs. I would particularly like to note the Infrastructure Implementation Group's *Review of Future Provision of Motorways in NSW,* of December 2005 and the reports of the Joint Select Committee on the Cross City Tunnel, tabled in February and May 2006. These processes were complementary to the Public Accounts Committee's inquiry and the Committee agrees with most of their general recommendations in relation to managing PPP projects. The Committee also notes the recommendations of the recent review of specific arrangements relating to the Cross-City Tunnel undertaken by the NSW Auditor-General.

I would like to thank the representatives of organisations and agencies in other states, the United Kingdom and the United States of America who provided valuable information in the course of this inquiry about the management of public private partnerships in their own jurisdictions. I would also like to express my appreciation to the Secretariat for its assistance in the conduct of the inquiry and the preparation of the Report.



Noreen Hay MP
<u>Chair</u>

List of Recommendations

RECOMMENDATION 1: That the framework for considering PPPs in NSW be strengthened, to include:

- a clearly defined PPP policy, principles and objectives;
- governance and public disclosure arrangements; and
- refined process guidelines addressing identified deficiencies.

RECOMMENDATION 2: That the Government implement the recommendation of the Auditor-General in relation to the publication of contract summaries, by making the Working With Government Guidelines mandatory.

RECOMMENDATION 3: That the practice of specifying procurement of PPPs at no cost to Government should be abandoned.

RECOMMENDATION 4: That NSW Treasury publish guidance on selection of a discount rate and other information about the PSC as part of improving guidelines for PPP projects.

RECOMMENDATION 5: As the Committee found there was strong public interest in increased disclosure of the PSC, it recommends that NSW Treasury review the policy on disclosure of the PSC in consideration of the public interest in knowing that such projects achieved greater value for money than would be possible under traditional methods of procurement.

RECOMMENDATION 6: That NSW Treasury should develop material for public consumption about the current accounting treatment for PPPs.

RECOMMENDATION 7: Where the public pays commercial fees or tolls to private sector partners in a PPP, the public sector partner provide information in their reports about how the public can find information about the amount of revenue raised by private sector partners.

RECOMMENDATION 8: That the completion of contract summaries relating to PPPs should become mandatory for all agencies through the introduction of legislation, Premier's Memorandum or a Treasurer's Direction.

RECOMMENDATION 9: That the process of reporting contract summaries should be clarified through the inclusion in the Guidelines of specific steps and mandatory reporting deadlines, including,

- Reporting deadlines for providing the contract summary to the Audit Office and tabling in Parliament following the Audit Office's 'approval':
- requiring tabling of contract summaries within 30 days of the Audit Office report being signed;

- clarifying the process by which Ministers can table contract summaries when Parliament is not sitting; and
- requiring Ministers to table revised contract summaries in Parliament in the event of any significant changes to the original document.

RECOMMENDATION 10: That the *Working With Government* Guidelines should include a standard template outlining requirements for content and presentation of contract summaries.

RECOMMENDATION 11: That NSW Treasury strengthen the *Working With Government* Guidelines in light of lessons learned from the management of previous or current PPPs and clearly outline the form and standard by which it expects agencies to report on compliance with the guidelines.

RECOMMENDATION 12: That the public interest test be given greater prominence in PPP assessment, including:

- Refining criteria to better reflect public concerns;
- Strengthening links between public interest criteria more closely to Government policy; and
- Outlining processes by which public interest criteria can be given full and appropriate consideration at the assessment stage and throughout the life of a project.

RECOMMENDATION 13: In addition to contract summaries, all contracts relating to PPPs should be available in their entirety to the public in due course. The Auditor-General should recommend the timing of releasing sensitive documents and agencies should endeavour to meet this timeframe and explain any variations. Details of significant variations by either side to the contracts must be publicly available.

RECOMMENDATION 14: That NSW Treasury continue to review the process by which project risks are currently formulated to ensure the Government maximises value for money.

RECOMMENDATION 15: That the NSW Government take account of the experience of the UK Government and optimise the expertise currently available for PPP management in the NSW Treasury and other key agencies by incorporating elements of project planning and facilitation expertise into a NSW PPP framework.

RECOMMENDATION 16: That knowledge sharing between agencies is more effectively supported by senior management in agencies as a means of increasing level of skill regarding PPP management, including:

- library resources (including on-line resources)
- periodic workshops to discuss good practice and shared learning, and
- programs of secondment from other agencies and/or the private sector.

RECOMMENDATION 17: That the Government consider adoption of a support structure for PPPs managed by Local Government along the lines of that developed and operated by 4Ps in the United Kingdom, which incorporates peer support, systems support and sharing of expertise.

RECOMMENDATION 18: That the Government discuss processes for implementing a more systematic approach to post period evaluation for PPPs to allowing for comparison across projects and administrative jurisdictions and to assist in practical application of 'lessons learned', thereby adding to 'value for money'.

RECOMMENDATION 19: That in the process of costing a project to be delivered as a PPP, agencies and NSW Treasury should give adequate attention to ensuring that transaction costs, particularly the costs of monitoring and evaluating delivery arrangements are accounted for, over the full life of the project.

RECOMMENDATION 20: That NSW Treasury expedite the use of standard forms and contracts for PPPs.

RECOMMENDATION 21: That, in the consideration of procurement options, Government agencies and NSW Treasury explore and assess the advantages offered by a full range of models which can deliver optimum value for money and community benefit, including project alliancing.

RECOMMENDATION 22: That NSW Treasury consider ways of reducing the need for bid bonds for PPPs.

RECOMMENDATION 23: That NSW Treasury consider the social impact of PPP tolls and fees and consider using a process similar to that followed by IPART to set tolls and fees for PPPs in a monopoly situation.

RECOMMENDATION 24: That the amended *WWG* Guidelines take into account the impact on apprentice and trade positions during the term of a contract; designate ratios of apprentice-tradespersons within contracts and define 'local content' to include local labour content.

RECOMMENDATION 25: That in instances where hospital car parks are constructed through a PPP process, a public interest test should be applied to take into consideration the needs of parties such as hospital employees, visitors and outpatients in the setting of car park fees.

RECOMMENDATION 26: That NSW Treasury, agencies and private sector partners in PPP bids be required to address social and environmental considerations more fully in project objectives at the commencement of PPP contracts and reflect these considerations in project specifications and monitoring of outcomes.

Executive Summary

This Report is a contribution to the process of better understanding how PPPs undertaken by the NSW Government are managed and how that process could be improved. It examines the origins of PPP legal and policy framework, deriving largely from the United Kingdom.

It describes governance and accountability arrangements in NSW and other jurisdictions, and it recommends a stronger focus on these arrangements for NSW in a PPP framework.
The Report examines the decision-making processes used to determine whether to invest in an infrastructure project and the type of procurement method. It notes the distinction between these two decisions.

It discusses the use of the Public Sector Comparator (PSC) which calculates what a project would cost if the public sector were to provide the infrastructure and associated services rather than go to market. It discusses how the PSC is calculated and the controversy over its cost. It also explores issues relating to the level of a 'discount rate' which reflects the relative level of risks for projects. Improved guidance and disclosure about the PSC and discount rate are recommended. The cost of capital and accounting processes for PPPs are also discussed.

The Report examines the adequacy of current guidance provided for agencies seeking to establish and manage PPPs. Key areas in which improvements could be made have been identified. They include use of standard terms and contracts, project management improvements, addressing public interest considerations and improved public disclosure and reporting to Parliament.

The Report defines risk management for PPPs and discusses processes of risk analysis and allocation. It examines how well the process of risk-sharing is understood and negotiated by parties.

The Report examines the extent of opportunities currently available to share knowledge about PPPs across and between agencies to improve public sector skills and add to value for money. It discusses ways of applying the lessons learned from the PartnershipsUK model into a NSW PPP framework and other means of supporting knowledge-sharing within State Government agencies and local government.

The Report identifies that while there was intense scrutiny in the period leading up to the decision to procure a project, there was insufficient attention given to monitoring and evaluation over the life of a PPP project. It recommends a more systematic approach to post-period evaluation to allow for comparisons across projects and jurisdictions.

The Report examines a variety of ways in which the public administration could be improved, including better understanding of the 'culture' of the PPP market, improving dialogue between parties and drawing 'lessons learned' from alternate partnership models. The effect of bid bonds lodged as surety by project bidders and the refinancing of PPPs are also addressed.

The Report discusses ways in which social and environmental concerns about the use and outcomes of PPPs could be better addressed. Issues include: ensuring equity for those on low incomes affected by PPPs, protection for public sector employees and skills retention. It recommends a more robust approach to ensuring these considerations are paramount in the public interest.

Finally, the Report discusses how intellectual property issues are managed in relation to PPPs and notes agency innovation in this regard.

Chapter One - Introduction

1.1 Public Private Partnerships (PPPs) refer to a range of arrangements in which the private sector is involved in the provision of government infrastructure or services. These arrangements are regarded as one of the major recent innovations in recent public policy.

1.2 PPPs have been used in New South Wales for delivering projects such major toll roads, hospitals and new schools.

1.3 Previous Public Accounts Committees have commented repeatedly on the appropriate accountability and financing arrangements for projects. Between 1992 and 2002, the Committee published 13 reports and discussion papers addressing these matters. Over this period, there has also been comprehensive guidance established, in the form of *Working With Government* (WWG) Guidelines, for use by government agencies. PPP guidelines for Local Government were also issued in September 2005. The Committee believes it is timely to investigate how well the Government is managing its PPP commitments.

1.4 The Committee's consideration of PPPs is one which recognises their growth, development and evolution to acceptable practice, largely through generally acknowledged success in the United Kingdom. The experience of PPPs, as the Committee heard, is one that encompasses this success, but also massive failures.

1.5 Professor Graeme Hodge told the Committee:

> I would have to say that there is a wealth of evidence. The evidence varies from one extreme to another. It varies from this extreme where Steve Savas in the US, a huge advocate of public private partnership contracts, … says there are no dramas with them, you have just got to get on with it and it is all good news …….It varies from that end to the other end of someone like Jean Shaoul, who put out a report in the UK last year and Jean advised that in the first road projects in the UK, the government paid 400 million pounds compared to conventionally acquiring those road projects at 300 million pounds.[1]

1.6 The Committee heard from commentators that, in the United Kingdom, PPPs had achieved on-time and on or under-budget delivery, transfer of construction risk and incorporation of design innovation that resulted in better value for money compared to projects undertaken through conventional procurement.

1.7 HM Treasury's (the UK Government Treasury) research in a sample of 61 completed major capital Privately Financed Initiative (PFI) projects showed that:

> 88 per cent [are] coming in on time or early, and with no cost overruns on construction borne by the public sector.[2]

1.8 The HM Treasury report indicated that this:

> strong track record of PFI is borne out by a comparison… with those of the National Audit Office [which] found that of a sample of 37 projects, only 8 percent of PFI schemes were delayed by more than two months.[3]

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[1] Professor Graeme Hodge, Transcript of Evidence, 2 December 2005, p 13
[2] HM Treasury, *PFI: meeting the investment challenge,* July 2003, p 43
[3] *ibid*, p 46

1.9 Greve and Hodge also comment on Pollitt's finding of the benefits of on-time, on-budget delivery, with successful transfer of construction risks and considerable design innovation by saying:

> Importantly, whilst he acknowledges that it is possible many of the assumed benefits of PFI projects are hypothetically available through conventional procurement, the reality is that these would not be achieved without the learning and leverage provided through the PFI initiative.[4]

1.10 Grimsey and Lewis report on a range of studies in the United Kingdom and Australia, including those cited above, which indicate substantial on-time, on-budget savings through the use of PPPs, as well as calculating expected overall gains from PPPs.[5]

1.11 In its submission, the Australian Council for Infrastructure Development (AusCID) also cited the UK's National Audit Office and UK Treasury research, particularly regarding 'relatively small' cost overruns in instances where PPPs had run over budget.[6]

1.12 However, the Committee also heard evidence indicating the performance of PPPs is 'mixed'. Professor Hodge noted 'stinging attacks' by commentators including Monbiot, Walker and Walker and Davidson, who see PPP deals as tricky, failing the public interest or enabling vested interests.[7]

1.13 In his submission, Professor John Quiggin, Federation Fellow at the University of Queensland, cited research undertaken by the UK Institute for Public Policy Research, which concluded:

> that the expected benefits of PFI [Privately Financed Initiatives] are mixed. Prisons and road schemes have tended to demonstrate value for money. But schools and hospitals are much less impressive.[8]

1.14 Indeed, it is the high profile 'failures' that focus attention on the deal-making, the legacy for the community and the lessons that need to be learned from PPPs 'going wrong'. Within New South Wales, the failures most often mentioned were the Port Macquarie hospital, Airport Link and the current issues with the Cross-City Tunnel. Various witnesses throughout the inquiry commented on these to the Committee, including:

- Mr Gary Sturgess, Executive Director, Serco Institute;
- Mr Mario (Morrie) Mifsud, State President, Combined Pensioner and Superannuation Association;
- Mr Gary Moore, Director, Council of Social Service of New South Wales (NCOSS);
- Mr Nicholas Lewocki, Secretary, Rail Tram and Bus Union;
- Professor Graeme Hodge, Director, Centre for Regulatory Studies, Faculty of Law, Monash University;

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[4] Hodge, G and Carsten Greve (eds), 'Public-private partnerships: a policy for all seasons?' in *The Challenge of Public-Private Partnerships: Learning from International Experience*, Edward Elgar, 2005, p 341

[5] Grimsey, D and Mervyn K Lewis, 'Are Public Private Partnerships value for money? Evaluating alternative approaches and comparing academic and practitioner views', *Accounting Forum* 29, 2005 pp 372, 373

[6] AusCID submission, p 8

[7] Hodge, G and Carsten Greve (eds), *The Challenge of Public-Private Partnerships: Learning from International Experience*, Edward Elgar, 2005, p 9

[8] Professor John Quiggin submission No 16, p 12

- Mr Robert McGregor, Deputy Director-General, NSW Department of Health; and
- Ms Linda English, Senior Lecturer, Faculty of Economics and Business, University of Sydney.

1.15 In submissions, too, organisations such as Maddocks Lawyers[9] and the United Services Union[10] referred to the need to learn from the Oasis experience involving Liverpool City Council, which resulted in a report by Emeritus Professor Maurice Daly and ultimately in the recent issue of Local Government PPP guidelines.

1.16 Unions NSW was critical of arrangements for government underwriting of returns or guaranteeing borrowings for projects such as the Airport Link and M2 freeway in New South Wales and the construction and operation of private prisons and hospitals in Victoria.[11] In its submission, NCOSS criticises the failure of earlier PPPs to enable the development of 'competing infrastructure' (such as public transport routes), thus limiting the capacity for a social return. Despite the argument that risk is better managed by the private sector when it invests in public infrastructure, NCOSS notes that:

> the experience in NSW and elsewhere is that governments ultimately hold the risk. Two early PPP experiments in NSW did not adequately minimise risk to government. Port Macquarie Hospital, initially developed and operated by the private sector, was effectively 'nationalised' by the NSW Government. The Airport Rail Link, which was supposed to be totally privately financed, has cost the NSW Government around $800 million.[12]

1.17 Another issue of concern for the Committee was where changes to the design of a project delivered through a PPP distort the pattern of use of other public facilities, for example through the closure of roads. The Committee received evidence about this concern throughout the inquiry, such as the Combined Pensioners and Superannuants Association, which noted:

> Perhaps ironically, PPPs used in transport development can have a deleterious impact on the transport using public.[13]

1.18 The Committee notes that this concern was also addressed in the *Second Report* of the Joint Select Committee on the Cross City Tunnel, and in the Auditor-General's recent Performance Audit Report, *The Cross City Tunnel Project*.

1.19 In the international literature, 'high profile failures' include the Boston Transportation Centre (known as the 'Big Dig'), described by the US National Council for Public-Private Partnerships as the most expensive PPP ever, at 500% over-budget.[14] The project to construct a central arterial tunnel took 14 years to complete and comprises 161 lane miles of motorway. Problems adding significantly to costs included landfill and subway lines, glacial debris and foundations of buried houses and ships in the construction zone. In response to criticisms, constructors Bechtel and Parsons Brinckerhoff indicated that cost overruns were due to the project being:

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[9] Maddocks Lawyers, submission No 9, p 4
[10] United Services Union submission No 10, p 4
[11] Unions NSW submission No 13, pp 21,22
[12] NCOSS Submission No 15, p 6
[13] Combined Pensioners and Superannuants Association of NSW, submission No 5, p 3
[14] Appendix Three, p 131

> enlarged, redefined and portions even put on hold by state officials to meet the many often-conflicting concerns of Boston's downtown business community, neighborhood and environment groups, adjacent landowners, taxpayer groups and federal agencies.[15]

1.20 Of considerable concern is the aspect of PPP failure where, despite risk acceptance by the private sector at the outset of a project, and in the face of poor performance by the private sector, governments have been forced to step in and run facilities. This has been attributed to the underlying obligation, or duty of care, of governments to continue public services. This was the case for the Victorian Government in relation to the Latrobe Public Hospital and the Metropolitan Women's Correctional Centre. Assistant Auditor-General for Victoria, Russell Walker, says that this indicates the need for adequate 'step-in' provisions as well as appropriate governance arrangements to monitor the viability and plan of the private sector entity for facilities.[16]

1.21 Many commentators have observed that PPPs involve complex and long-term outcomes, some of which cannot be anticipated. Professor Quiggin notes:

> With a long term contract of the kind usual in PPP arrangements, the government not only forgoes any benefit that might arise from the entry of new competitors, but loses any capacity to alter the contract terms to meet changing needs and circumstances, except insofar as these can be negotiated with the private partner … Unless the government thinks it can predict in detail, the way in which individual schools and hospitals will be operating in twenty or thirty years time, it should not be signing contracts with such long durations.[17]

1.22 In the case of the 407ETR toll road in Ontario, the length of the contract has been a challenge, both for the private sector operators and the Ontario Government. In April 2006, the private sector company, Macquarie Infrastructure Group, announced that settlement had been reached with the Government over disputes about the terms for the remaining 92 year concession on the toll road.[18]

1.23 The Committee also heard evidence about PPPs that have been both demonised and praised in media. The Spencer Street Station redevelopment in Melbourne is one such example. It was widely criticised in the media for delay and cost escalation, and was also acknowledged by the private sector as a project exhibiting 'lack of partnership'.[19] Mr Dennis O'Neill, Chief Executive Officer of the Australian Council for Infrastructure Development, indicated to the Committee that, in this instance, the private sector contractor was 'heroic' for its acceptance of what could be regarded as an inappropriate risk transfer.[20] The Station is also now regarded as a 'fantastic' piece of infrastructure, in spite of its commercial failure. Mr Peter Hicks, Leighton Contractors, told the Committee:

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[15] Bechtel/Parsons Brinckerhoff, *The Big Dig: Key Facts About Cost, Scope, Schedule, Management and Quality,* (undated) p 2

[16] Walker, Russell A, *Public Private Partnerships: Governance and Accountability Issues,* presentation to National Conference of Parliamentary Environment and Public Works Committees, 13 July 2004, pp 6,7

[17] Professor John Quiggin, submission No 16, p 17

[18] The Australian Financial Review, *MIG cleared to raise road tolls*, 3 April 2006, p 15

[19] Australian Constructors Association, *Public Private Partnerships: Putting Guidance into Action,* case study, p 19

[20] Mr Dennis O'Neill, Transcript of Evidence, 18 November 2005, p 27

> It is the best railway station in Australia and we have stayed there, stood behind it, spent the money and done the work. It is not a disaster. From a Government point of view it is fantastic. They have achieved the best railway station in Australia.[21]

1.24 In terms of learning from adverse experiences, Mr Gary Sturgess told the Committee:

> I would suggest that New South Wales or Australia not beat itself up over those early days. I mean, you have just produced a report on private prisons - that is a PPP - and it was a great outcome. So there is a very strong history here: some have gone well and there has been difficulties with others and I think it is inevitable in the early stages of developing new techniques that lessons have to be learned.[22]

1.25 Commenting upon projects that should be excluded from a PPP, Mr Gary Moore indicated that, in view of the failed Port Macquarie hospital experience, there was concern about PPP arrangements in the health area, and that in relation to the private prison:

> … there is absolutely no evidence at all that the contracting out through a PPP arrangement to build and operate has delivered any benefits certainly of rehabilitation or in terms of reduced recidivism rates.[23]

1.26 It must be said that the Committee completed an inquiry into NSW Correctional Centres in September 2005, and found that the privately managed operation of Junee Correctional Centre did in fact offer value for money for the State.[24]

1.27 To an extent, PPP failures colour both the experiences and perceptions of this method of procurement more extensively than do successes. Mr Michael Gerrard, Deputy Chief Executive of PartnershipsUK told a delegation of the Committee that the organisation believed public scepticism about PPPs was almost insoluble and media messages about PPPs, for example about PPP financing, were almost too subtle to be conveyed simply.[25]

1.28 In establishing this inquiry, the Committee recognised that the State of NSW has existing PPPs. The Committee therefore felt that its critical focus should be one of understanding how effectively and efficiently PPPs are currently managed, what can be done to improve management and how to better plan for the management of future PPPs. The context described above serves to illustrate the difficulty highlighted so eloquently by Professor Hodge in evidence to the Committee, when he indicated concern that the survey methodology used to measure apparent successes for PPPs demanded more scrutiny:

> The real trick is to sort the wheat from the chaff and to sort out the rhetoric and advertising from the cold facts.[26]

1.29 In establishing the Terms of Reference for the inquiry, the Committee agreed:

- to discuss the kind of frameworks and practices necessary to ensure the best outcomes from PPPs for the Government and the community;

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[21] Mr Peter Hicks, Corporate Manager, Infrastructure and Investment, Leighton Contractors, Transcript of Evidence, 16 February 2006, p 6
[22] Mr Gary Sturgess, Transcript of Evidence, 19 October 2005, p 2
[23] Mr Gary Moore, Transcript of Evidence, 18 November 2005, p 13
[24] NSW Public Accounts Committee, *Value for Money from NSW Correctional Centres,* September 2005
[25] Appendix Three, p 129
[26] Professor Hodge, Transcript of Evidence, 2 December 2005, p 14

- to closely examine Government processes by which PPPs are monitored (looking not only the investment decision but at the value for money delivered through PPPs in the longer term);
- to better understand and advise on risk assessment, allocation and management; and
- to investigate issues for intellectual property management.

1.30 The inquiry did not set out to examine whether or not PPPs should be used, regarding this as a policy matter.

1.31 The Committee is aware of other recent or current review or inquiry processes, including the Richmond Review of the *Future Provision of Motorways in NSW* and the Joint Select Committee on the Cross-City Tunnel. It does not wish to overlap with these processes.

The Inquiry

1.32 The Committee adopted Terms of Reference for the inquiry on 4 May 2005 but, due to the need to complete other inquiries, did not commence the inquiry by calling for submissions until 3 September 2005.

1.33 Twenty-seven submissions were subsequently received.

1.34 The Committee conducted public hearings on:

- 19 October 2005
- 18 November 2005
- 2 December 2005
- 16 February 2006
- 17 February 2006.

1.35 Transcripts of the evidence are available from the Committee's website and Appendix Two has a list of witnesses.

1.36 In August 2005, a delegation of the Committee undertook a study tour of international jurisdictions to examine issues relating to management of public-private partnerships. A summary report of the study tour is at Appendix Three.

The Structure of this Report

1.37 Chapter Two provides definitions and descriptions of PPPs.

1.38 Chapter Three outlines the legal and policy framework of PPPs.

1.39 Chapter Four describes the decision-making process followed in determining whether PPP will be the chosen method of procurement. It also examines how value for money is demonstrated.

1.40 Chapter Five discusses the adequacy of current guidance for the establishment and management of a PPP.

1.41 Chapter Six explores the assessment, allocation and management of risk in a PPP process.

1.42 Chapter Seven discusses the rules of disclosure which are essential for public confidence in PPPs.

1.43 Chapter Eight addresses the manner in which knowledge about PPP management is shared across and between agencies and jurisdictions.

1.44 Chapter Nine discusses the critically important role of evaluation and monitoring in understanding the effectiveness and efficiency of the PPP process, as well as understanding the performance of PPP projects over their long terms.

1.45 Chapter Ten examines ways in which the public administration of PPPs could be improved.

1.46 Chapter Eleven addresses those social and environmental impacts of PPPs brought to the attention of the Committee in the course of the inquiry.

1.47 Chapter Twelve discusses the management of intellectual property in a PPP environment.

1.48 Appendix One lists the submissions received.

1.49 Appendix Two lists witnesses who gave evidence to the inquiry.

1.50 Appendix Three reports on an International Study Tour undertaken as part of the inquiry.

1.51 Appendix Four lists key documents received on the study tour.

Chapter Two - Definitions and Description of PPPs

2.1 One thing the literature agrees upon is that there is not a great deal of agreement on what a PPP actually is. Variously described as a new governance tool to replace traditional contracting out, a new language in public management, or a new way to handle infrastructure projects[27], PPPs are, in reality, some or all of these.

2.2 Commentators, including English and Hodge, trace the origins of PPPs from governments' interest in New Public Management (NPM), which included contracting out, compulsory competitive tendering and competition. English says that the drivers of PPPs include the NPM reform agenda, the interplay of our federated system and a desire for good services without higher taxes or increased public debt. She states:

> Policy documentation indicates a process of iterative and evolutionary change about the use of PPPs to deliver infrastructure-based services.[28]

2.3 Hodge considers:

> privatisation and competition … joined neatly both with the philosophy of outsourcing government services and the idea of purchasing defined services as part of the increasing managerialization of government.[29]

2.4 He suggests that the evolution to PPPs, described as 'a new, warmer partnership ethos':

> came almost as a welcome relief to the abrasive and cut-throat era of competition.[30]

2.5 NSW Treasury also described the notion of PPPs on a path between Government service delivery and Private service delivery, while indicating the ongoing availability of various forms of procurement options, such as:

- Conventional procurement (including traditional design and construct, design construct and maintain, supply contracts)
- Privately financed projects (BOOT, BOT, BOO, DBFM[31], Concession(s) leasing)
- Outsourcing
- Privatisation
- Divestiture by licence.[32]

[27] Hodge, Graeme and Carsten Greve, *The Challenge of Public-Private Partnerships*, Edward Elgar Publishing, 2005, p 1

[28] English, Linda M, 'Using public-private partnerships to deliver social infrastructure: the Australian experience', in *The Challenge of Public-Private Partnerships*, Edward Elgar Publishing, p 291

[29] Hodge, Graeme, 'Public-private partnerships: the Australian experience with physical infrastructure', in Hodge, Graeme and Carsten Greve, *The Challenge of Public-Private Partnerships*, Edward Elgar Publishing, 2005, p 307

[30] *ibid,* p 310

[31] These terms are: Build-Own-Operate-Transfer; Build-Operate-Transfer, Build-Own-Operate, Design-Build-Finance-Maintain

[32] NSW Treasury presentation to the Committee, 5 July 2005, p 4

2.6 Hodge's description of PPPs at a point on a continuum from privatisation offers the tantalising prospect that PPPs will continue to evolve. In their recent analysis of the state of PPPs, Greve and Hodge speculate about possible changes to public governance as a result of PPPs:

> PPPs could potentially alter the way both the public sector and the private sector are organized internally. If cooperation between the two sectors is extended, then the public sector will have to stop thinking about itself as 'purchaser' and the private sector will not only be 'provider' but instead be a 'partner' and share organizational attributes, responsibilities and citizen expectations.[33]

2.7 Authors Grimsey and Lewis suggest an alternative view:

> … in our view PPPs are not privatisation, because with privatisation the government no longer has a direct role in ongoing operations, whereas with a PPP the government retains ultimate responsibility.[34]

2.8 In the Australian context, partly because of our federated system of government and with PPPs undertaken by all three levels of government, there is, as English suggests, the potential for many different types of PPP initiatives.[35]

2.9 In its submission to the inquiry, NSW Treasury described different forms of PPPs, including the general term 'PPP', which it indicated:

> can refer to any contracted relationship between the public and private sector to produce an asset or deliver a service

and referring to 'PFP' as:

> a very specific form of PPP which involves the creation of an asset through private sector financing and ownership control for a concession period (usually long term).[36]

2.10 Hodge suggests that:

> The common ground amongst recent definitions appears to be that government has a business relationship with the private sector, it is long term, with risks and returns being shared, and that private business becomes involved in financing, designing, constructing, owning or operating public facilities or services.[37]

2.11 The NSW Treasury submission shares this view, noting that:

> PFPs are generally complex and involve high capital costs, lengthy contract periods that create long term obligations and a sharing of risk between the private and public sector. They therefore require careful consideration and approval by Government.[38]

2.12 NSW Treasury also noted that a 'PFP' includes both economic or social infrastructure projects but it distinguishes between these two types in significant ways. It says that revenues for 'economic' infrastructure projects are predominantly derived from third parties (for example, toll road users); in 'economic' infrastructure projects, the provider faces a genuine market risk (for example, traffic risk); and revenue risks are a

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[33] Hodge, Graeme and Carsten Greve, 'Public-private partnerships: a policy for all seasons?' in *The Challenge of Public-Private Partnerships*, Edward Elgar Publishing, 2005, p 345

[34] Grimsey D and MK Lewis, 'Are Public Private Partnerships value for money? Evaluating alternative approaches and comparing academic and practitioner views', in *Accounting Forum* 29, 2005, p 346

[35] English, Linda M, 'Using public-private partnerships to deliver social infrastructure: the Australian experience' in *The Challenge of Public-Private Partnerships*, Edward Elgar Publishing, 2005, p 291

[36] NSW Treasury submission No 24, pp 9,10

[37] English, Linda M., *op cit,* p 310

[38] NSW Treasury, *op cit,* pp 9,10

key driver of financial outcomes. 'Social' infrastructure projects, on the other hand, are usually paid for out of public money; there is no 'market risk' to the provider of infrastructure, as payment streams are subject to long-term contracts with Government; and cost risks are a key driver of financial outcomes.[39]

2.13 The NSW Treasury submission also described other project delivery structures, which it distinguished from PFPs. These were listed in the submission as:

- Design-Build (DB) or Design-Build-Operate-Maintain (DBOM)
- Joint Venture (JV)
- Project Alliancing.[40]

2.14 The Committee decided at the outset of the inquiry to address matters encompassing the use of private funds for infrastructure. It does not go as far as NSW Treasury in suggesting that PPPs can include any contracted relationship between the public and private sector. Accordingly, the inquiry did not address traditional methods of procurement. The focus of this inquiry was largely confined to the types of relationships generally described as PFPs. However, the Committee was also interested to examine the lessons learned from the management of partnerships which have emerged through the application of project alliancing models. These are discussed later in the Report.

2.15 The Committee observes that many of the current processes for addressing PPPs appear to have emerged from responses to historical problems, and notes that these processes are continuing to evolve. For example, in her study of Victoria's partly-privatised prison system, Ms Valarie Sands describes how the massive changes generated by NPM impacted on public accountability, such that it became a challenge to distinguish between the responsibilities of elected representatives and public servants in policy and administration roles. Further, she states:

> NPM has further exposed the accountability gap between the accountability doctrine, conventions and reality. Practice has moved ahead of the doctrinal adjustments required of the traditional model, creating vagueness, gaps and disagreements. However, NPM may have done us all a favour and forced the development of more relevant accountability models. This process is ongoing, with a number of contemporary accountability models emerging to cope with the realities of today's public administration.[41]

2.16 The Committee also notes that, proportionately, PPPs are a small part of the overall State capital program. Mr John Pierce, Secretary of NSW Treasury told the Committee:

> … in terms of the total State's capital program, PFPs have been and will continue to be a relatively small proportion. Over the last ten years, if we just look at the public sector contribution to those projects, the[y] tended to average about three per cent of our total capital program.

[39] NSW Treasury presentation to the Committee, 5 July 2005, p 5
[40] *ibid,* p 10
[41] Sands, V J, 'Victoria's partly-privatised prison system' in *The Asia Pacific Journal of Public Administration,* 26 (2) p

> Generally it peaked just prior to the Olympics at about seven per cent. Perhaps a truer measure is if you include the private sector contribution to those projects and if you did that then over that ten year period the average ratio of PFP projects in the total program is around the eight per cent mark. From the very beginning I suppose we have always said that we would never expect PFPs to account for more than maybe ten to fifteen per cent of the total capital program.[42]

2.17 The Committee is keen to ensure that the lessons from historical problems around the management and governance of PPPs are both learned and properly applied.

[42] Mr John Pierce, Secretary, NSW Treasury, Transcript of Evidence, 2 December 2005, pp 28, 29

Chapter Three – Applying the Legal and Policy Framework

3.1 In this Chapter, the Committee examines the key documents underpinning PPP management and policy in NSW. They are the *Working with Government: Policy for Privately Financed Projects* and the *Working with Government: Guidelines for Privately Financed Projects.* The latter is generally referred to as the *Working with Government* (or WWG) Guidelines.

3.2 NSW Treasury has indicated that the policy framework and PPP practices currently in place are focussed around guidelines which have a strong degree of consistency across Australian jurisdictions. The submission explains the *Working with Government: Guidelines for Privately Financed Projects:*

> had its origins in a Heads of Treasuries review of privately financed projects. The HOTs working party evolved into a regular forum of exchange of information among jurisdictions, culminating in the creation of a National PPP Forum at Ministerial level. … The Government issued the final version of WWG as official guidance in November 2001. [43]

3.3 The statutory basis for the *Working with Government* Guidelines is the *Public Authorities (Financial Arrangements) Act 1987*, which allows public authorities to enter into financial arrangements, generally with the approval of the Treasurer.

3.4 NSW Treasury states:

> WWG provides guidance on the framework and processes to enable the public and private sectors to work together on improving public service delivery through private sector provision of infrastructure and related non-core services. WWG describes a competitive and transparent mechanism to govern the procurement of privately financed projects, and the principles or "rules of the game" under which such procurements are conducted.[44]

3.5 In their establishment, all PPP/PFP frameworks and guidance derive from the work undertaken in the United Kingdom. There, the position on the Private Finance Initiative (PFI) evolved through several stages.

3.6 From 1981 to 1989, the UK had a set of rules, known as the Ryrie Rules, designed to ensure that the introduction of private finance into government-owned industries occurred under conditions of fair competition and that it added value. The Ryrie Rules were 'formally retired' in 1989.[45]

3.7 When the PFI was announced in 1992 by the former Chancellor of the Exchequer, the government gave the green light to largely unfettered private sector involvement in the public sector:

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[43] NSW Treasury submission No 24, p 7
[44] *ibid,* p 8
[45] Allen, Grahame, *The Private Finance Initiative (PFI),* Research Paper 01/117, 2001, House of Commons Library, p 13

> In the past, the Government has been prepared to give the go-ahead to private projects only after comparing them with a similar project in the public sector. This has applied, whether or not there was any prospect of the project ever being carried out in the public sector. I have decided to scrap this rule. In future, any privately financed project which can be operated profitably will be allowed to proceed. [...] Secondly, the Government have too often in the past treated projects as either wholly private or wholly public. In future, the Government will actively encourage joint ventures with the private sector, where these involve a sensible transfer of risk to the private sector. [...]
>
> Thirdly, we will allow greater use of leasing where it offers good value for money. As long as it can be shown that the risk stays with the private sector, public organisations will be able to enter into operating lease agreements, with only the lease payments counting as expenditure and without their capital budgets being cut.[46]

3.8 In 1997, under the Blair Labour Government, a review of the PFI was commenced. It made 27 recommendations with a particular focus on helping to foster PFI expertise in government. Guidance documents, policy statements and technical notes were also published at this time.

3.9 In 1999, a second review of PFI (the Bates Review) was conducted, which recommended the formation of PartnershipsUK. Its mission is to work with both public and private bodies to improve the planning, negotiation and completion of PPPs. It has a board with membership from both the public and private sectors and the public interest is represented by an advisory council.

3.10 In 2000, the Office of Government Commerce was established in the UK, to modernise procurement across government. Within OGC, the Private Finance Unit is responsible for developing and promoting PFI for public bodies.[47]

3.11 NSW Treasury notes that Australian jurisdictions are moving toward greater consistency in policy frameworks and practices for PFPs, and that this is reflected in the effort to develop standard commercial principles for PFP contracts. These are being developed by the NSW and Victorian treasuries as part of the National PPP Forum. The Victorian commercial principles document was published in June 2005. In its submission, NSW Treasury states that it has been working with other parties, including the Victorian Treasury, through the National PPP Forum, to develop a version of standard commercial principles which it anticipated would be available in early 2006.[48] On 3 April 2006, a NSW Treasury official advised that the NSW document will now be made available mid-year.[49]

Governance and Accountability

3.12 The NSW guidelines apply to all Government agencies, including departments, public trading enterprises and State-owned corporations.[50] They are not, however, mandatory, and several commentators indicated to the Committee that there are gaps

[46] Lamont, Norman, quoted in *The Private Finance Initiative (PFI),* Research Paper 01/117, 2001, House of Commons Library, p 14
[47] Allen, Grahame, *The Private Finance Initiative (PFI),* Research Paper 01/117, 2001, House of Commons Library, pp 16, 17
[48] NSW Treasury submission No 24, pp 4, 31
[49] Telephone conversation with Ms Nin Rejante, NSW Treasury, 3 April 2006
[50] NSW Treasury, *Working with Government: Guidelines for Privately Financed Projects,* p3

in their interpretation by agencies. While there are general references in the Guidelines to accountabilities, these are not clearly codified in respect of governance roles in either the Guidelines or the *Working with Government: Policy for Privately Financed Projects*.

3.13 In evidence to the Committee, the Auditor-General told the Committee:

> Certainly one aspect where we believe they [the Guidelines] are deficient is that they are not mandatory. ... The language in them suggests a government expectation that they will be complied with but equally, some agencies have said to us, they are only guidelines, we do not have to comply with those aspects. That is the main reason why in my report two days ago I suggested the key aspects of the guidelines should be given legislative backing.[51]

3.14 The Report referred to by the Auditor-General addresses issues relating to Contract Summaries for Privately Financed Projects. It also refers to the need to specify accountabilities regarding certain PPP disclosures, stating:

> The Government should:
>
> - make it clear to all Ministers and agencies that the [Working with Government] Guidelines are mandatory
> - introduce a standard template for all contract summaries
> - introduce legislation to:
>   - cover key aspects of the Guidelines, particularly those relating to contract summaries and other disclosures
>   - require Ministers to table the Audit Office review of a PFP contract summary
>   - at the same time they table the summary in Parliament
>   - require the timely tabling of contract summaries, preferably within 30 days of the Audit Office report being signed
>   - clarify the ability of Ministers to table contract summaries if Parliament is not sitting
>   - require Ministers to table revised contract summaries in Parliament if any significant changes take place. This revised summary should also be subject to review by the Audit Office before tabling.[52]

3.15 The Committee supports the Auditor-General's recommendation. It believes that in view of public expectations for proper governance for PPPs, the framework needs to be extended beyond the concept of guidance notes for public servants. This means the Guidelines require the force of compulsory directions or legislation.

3.16 Other Australian jurisdictions, including Victoria and Queensland outline in their public private partnerships guidance material a set of accountability or corporate governance requirements for all parties, including portfolio Ministers, Cabinet, the Project Team and Project Director.[53] They also specify measures to safeguard the

[51] Mr Bob Sendt, Auditor-General, Transcript of Evidence, 18 November 2005, p 36

[52] Audit Office of NSW, 'Privately Financed Projects – Contract Summaries' in *Auditor-General's Report to Parliament 2005, Volume Four,* p 5

[53] Partnerships Victoria; *Public Private Partnerships Policy*, 2001, p 12; Queensland Department of State Development, Public Private Partnerships Guidance Material *Policy*, p 11

public interest, including questions specifically referring to the rights and involvement of affected individuals and communities, ongoing public access, equity arrangements for disadvantaged groups, consumer rights, assurance for community health and safety, privacy considerations, accountability and transparency and effectiveness in meeting government objectives.[54]

3.17 In the United Kingdom, the guidelines for procurement are set out by HM Treasury in *The Green Book: Appraisal and Evaluation in Central Government* (2003) and the *Value for Money Assessment Guidance* (2004). In addition, the Government's approach to PFI is explained in *PFI: Meeting the investment challenge* (2003), and more recently in *PFI: strengthening long-term partnerships* (March 2006). These documents identify the Government's commitment to the use of PFI where it can offer the best value for money. However, they stipulate this is not to be at the expense of employee terms and conditions, and the use of PFI must be consistent with the Government's wider public sector reform agenda.[55] The NSW and UK materials are similar in that, while they provide guidance for public servants, they do not define Ministerial accountabilities. This was not always so. In 1997, the UK Government published *Twelve Guiding Principles in Using Market Testing and Contracting Out*. These principles included reference to Ministerial responsibility for the 'value for money' test and Ministerial accountability for services contracted out to the private sector.[56]

3.18 PartnershipsUK has also explored the importance of Ministerial leadership in developing an enabling culture for the success of PPPs and it has led discussion on ways of encouraging 'quality' and consistent leadership for PPPs.[57]

3.19 The NSW *Working With Government* Guidelines identify the practices and processes which Treasury expects the public sector to follow when embarking upon a PPP. The Committee acknowledges that these guidelines do include principles of value for money and the separation of the investment decision from the procurement decision. However, the public interest is not prominently addressed - readers of the guidelines are directed to an Appendix for guidance relating to its assessment. The question of how focus on the public interest is maintained over the life of a project is not addressed. In addition to the deficiencies identified around public expectations of governance, the guidelines have received strong criticism for their cursory handing of public disclosure issues. Indeed, in his recent *Review of Future Provision of Motorways in NSW*, Professor Richmond proposed several recommendations for strengthening public disclosure arrangements for PPPs, which the Committee understands the Government has accepted.[58]

3.20 Many international commentators have indicated the need for governments and the community to achieve a better understanding of the governance and accountability questions inherent in PPPs, particularly because of the complex interrelationships

[54] Partnerships Victoria; *Public Private Partnerships Policy*, 2001, p 12; Queensland Department of State Development, Public Private Partnerships Guidance Material *Policy*, p 11

[55] HM Treasury, *PFI: Meeting the investment challenge,* 2003, p 30 and *PFI: strengthening long-term partnerships,* March 2006, p 31

[56] *Twelve Guiding Principles in Using Market Testing and Contracting Out*, issued by the Chancellor of the Duchy of Lancaster, 4 November 1997

[57] PartnershipsUK, *Delivering Public Sector Innovation,* Seminar, 9 November 2004, p 13

[58] Professor David Richmond, Transcript of Evidence, 16 February 2006, p 32

between the public and private sectors that PPPs generate. This question was explored in 2004 by contributors to a special issue of the *Journal of Corporate Citizenship.* Hodge and Greve have also suggested that a consequence of the complexity of these relationships is that PPPs could potentially alter the way in which both the public and private sectors are organised. They argue the need for governments to keep their governance responsibilities separate from commercial performance concerns because of the risk of pressures to alter the 'rules of the game':

> that support the appearance of a positive, growing and thriving state business sector rather than maintain rules of the game initially set to provide optimal competition in the interest of citizens.[59]

3.21 Other commentators have addressed concerns about the adequacy of the guidelines in specific terms, about the importance of guidelines being applied uniformly, and about the use of standard terms. These matters are addressed elsewhere in this Report.

3.22 The Committee believes that a review of the current WWG guidelines is necessary, and that they should form part of a broader framework for PPPs. While it is aware that there is supporting material, the Committee believes there should be explicit direction given as to what should be included and considered as vital by agencies in developing projects. It suggests that key elements for inclusion in a PPP framework be:

- PPP Policy, Principles and Objectives (addressing, in particular, Value for Money, the public interest, risk assessment and allocation, evaluation and monitoring and knowledge management);
- PPP Governance;
- Public Disclosure Arrangements; and
- Monitoring and Evaluation Processes.

3.23 While the focus upon a broad framework is important, the Committee emphasises that it would be concerned if this was to be considered merely a cosmetic 'requisite' or box-ticking exercise by parties dealing with PPPs. It believes that strong leadership is required to engender discussion among relevant parties aimed at understanding the implications of such Government objectives as value for money and the public interest, as well as embedding the spirit and intent of governance, disclosure and other project management arrangements. It suggests that, in light of ongoing concerns about the handling of PPPs, there is value in pursuing this agenda.

RECOMMENDATION 1: That the framework for considering PPPs in NSW be strengthened, to include:

- a clearly defined PPP policy, principles and objectives;
- governance and public disclosure arrangements; and
- refined process guidelines addressing identified deficiencies.

RECOMMENDATION 2: That the Government implement the recommendation of the Auditor-General in relation to the publication of contract summaries, by making the *Working With Government* Guidelines mandatory.

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[59] Hodge, Graeme and Carsten Greve, 'Public-private partnerships: A policy for all seasons?' in *The Challenge of Public-Private Partnerships*, Edward Elgar Publishing, 2005, p 345

3.24 In the longer term, the Committee expects that adherence to such a framework would assist both the NSW Parliament and the Auditor-General to compare the performance of PPPs across agencies and at key time intervals. Elements of performance which may be of interest include:

- ongoing value for money;
- capacity to deliver on Key Performance Indicators;
- mapping of emerging risks; or
- examination of the benefits of project refinancing.

3.25 Such scrutiny might also allow an assessment as to whether PPP outcomes are being achieved and whether any other matters identified by community members as a priority in considering PPPs are becoming apparent, such as social equity or environmental considerations.

3.26 However, by establishing the optimum governance and accountability standards for PPPs, the public sector can also indicate its expectations of others in the partnership. The Assistant Victorian Auditor-General recently commented:

> The public sector environment requires different governance approaches to those used in the private sector. If private sector participants are to operate successfully and effectively in the public sector, they must understand and accommodate such differences in their own governance arrangements.[60]

[60] Walker, Russell A, 'Public Private Partnerships: Governance and Accountability Issues', presentation to *National Conference of Parliamentary Environment and Public Works Committees, 13 July 2004*, p 9

Chapter Four - The Decision to Use PPPs to Procure Infrastructure

4.1 This chapter describes the processes used by the NSW Government in the lead up to a decision about how to procure a project. Where the decision is to procure a project through a PPP, the chapter also examines prominent issues including the use of the Public Sector Comparator, agreement on an appropriate discount rate and determining the cost of capital.

4.2 The NSW Treasury submission indicates that there are several key principles underpinning the evaluation of private investment in public infrastructure in NSW. It notes that a clear Government policy distinction is made between the decision to invest in a project and the decision to use PFP or some other method of procurement to deliver the project. The investment decision requires a Business Case, an economic or financial appraisal which:

> …demonstrates the basis for the preferred option – i.e., that option where economic or financial benefits exceed its costs, or is the most cost effective solution (if project benefits are equivalent for all options considered. The project should also be shown to be consistent with the Government's priorities and the agency's own service delivery objectives. As a result of the investment decision, a project is included in the Government's investment plan and funding for the project is reviewed as part of the annual budget.[61]

4.3 The submission also notes:

> WWG Guidelines require Government approval for the investment decision, and for the procurement decision if the project is a PFP.[62]

4.4 NSW Treasury indicates that the procurement decision is based upon a Value for Money (VFM) assessment. The concept of VFM derives strongly from the UK experience with PPPs, referred to in Chapter Two. In the UK, value for money is defined as:

> … the optimum combination of whole of life cost and quality (or fitness for purpose) to meet the user's requirement.[63]

4.5 That definition illustrates that cost consideration is not the only driver for the procurement decision in the UK.

4.6 According to the NSW Treasury submission, the policy position in NSW is:

> The decision rule is that the Government will not use PFP procurement unless it delivers value for money to the State, which means getting the best possible outcome at the lowest possible price.[64]

4.7 The submission indicates that VFM may arise from:

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[61] NSW Treasury submission No 24, p 12
[62] *ibid,* p 12
[63] HM Treasury, *PFI: strengthening long-term partnerships,* March 2006, p 29
[64] NSW Treasury submission No 24, p 13

- integration of service delivery and whole-of-life costing;
- innovation;
- potential for efficient risk transfer to the private sector; or
- more efficient asset use and management over the life of the asset.[65]

4.8 It does not, however, specifically mention quality.

4.9 The Committee considers separation of the investment and procurement decisions by government to be sound and prudent policy. The Committee also believes that value for money should remain the driver for the procurement decision, and suggests that a stronger focus in NSW on an optimum combination of whole of life cost and quality (as in the case of the UK) would be ideal for NSW PPPs.

4.10 The Committee also felt that there would be improvement to the framework where value for money was the key to deciding to procure infrastructure using a PPP and the decision was freed from the constraint of procurement at no cost to Government. It noted that the *Review of Future Provision of Motorways in NSW* made a recommendation in this regard.[66] The issue was also discussed in the First Report of the Joint Select Committee on the Cross-City Tunnel of February 2006.

RECOMMENDATION 3: That the practice of specifying procurement of PPPs at no cost to Government should be abandoned.

Public Sector Comparator

4.11 The *Working with Government* Guidelines require that a Public Sector Comparator (PSC) be developed for all PFP proposals as way of testing whether privately financed arrangements would provide better value for money than traditional procurement methods.[67]

4.12 A PSC is the calculation of what a project would cost if the public sector were to provide the infrastructure and services rather than going to market. This includes capital and operating expenses with special factors added to account for the comparative financing benefits of the public sector and for the additional costs for transferring risks to the private sector. The PSC is usually expressed as a single dollar figure in net present value (NPV) terms which takes into account inflationary effects over time.

4.13 The Committee heard divergent views on the use of the Public Sector Comparator, the accuracy of how well it is calculated and how and when it should be disclosed.

Calculation of PSC

4.14 The *Working with Government* Guidelines emphasise the importance of preparing comparators carefully and comprehensively. They acknowledge that there are

[65] *ibid,* p 13
[66] Infrastructure Implementation Group, Premier's Department, *Review of Future Motorways in NSW,* December 2005, p 7
[67] NSW Treasury 2002 *Working with Government Guidelines* p 45

potential uncertainties because of the need to forecast costs and risks over the life of the project.

4.15 The guidelines provide for separate ways of calculating PSCs for economic (or revenue-generating) infrastructure and social (or budget-funded) infrastructure. Economic infrastructure PSCs are usually developed on a project financed basis. These PSCs incorporate:

- Competitive neutrality adjustment to cover taxes and charges to which the public sector would not normally be subject;
- A commercial capital structure reflecting optimal level of debt and equity for the value of the project;
- A debt guarantee reflecting the margin between the project's credit rating and the State's AAA credit rating; and
- A commercial level of return on the Government's equity investment.

4.16 PSCs for social infrastructure, on the other hand, are based on the cash flow model used to demonstrate costs under traditional procurement. These include:

- The base costs of delivering the services;
- A competitive neutrality adjustment (only for State taxes); and
- Estimate of the expected costs of risks emerging over life of the project with some distinction between retained and transferred risks.[68]

4.17 NSW Treasury included the following table in its submission to highlight these differences:

Constructing a PSC for Economic and Social Projects

Model	**Social Infrastructure**	**Economic Infrastructure**
Key Differences	• No market risk transferred to private sector • Cost risk is a key driver • Usually implemented by a General Government Agency	• Third party revenue (market risk) transferred to private sector • Revenue risk is a key driver • Corporations delivery model
Competitive Neutrality	• State taxes	• State taxes • Commonwealth taxes
Risk Valuation	• Cost risk valued and included in cash flow • All risks identified	• Cost risk valued and included in cash flow • Equity priced off listed infrastructure products, which reflect market risk • Debt + Tcorp and guarantee fee
Raw Project Costs	• Capital • Operating Costs • Maintenance Whole of Life Costing	• Capital • Operating Costs • Maintenance • Whole of life Costing

Source: Submission No 24 NSW Treasury p.16

[68] NSW Treasury 2002 *Working with Government Guidelines* pp 47-48

4.18 The NSW Treasury submission states that the PSC is a vital component of the assessment of PPP projects. It is the threshold price that private proponents must meet in order to demonstrate the value for money of the proposal.[69]

4.19 According to NSW Treasury, in constructing a PSC, all risks are identified, assessed and valued so that they can be assigned optimally. The NSW Treasury submission also states that transferable and retained risks are separately identified and costed. In the assessment process, the projected costs of transferable risks are added to the PSC and retained risks added to the private bid in order to maintain a consistent approach.[70]

4.20 Grimesy and Lewis, in considering the use of PSCs both in Australia and internationally, point out that the PSC is necessarily theoretical as it is done before a project has commenced based on estimates of the full costs, revenues and risks. However, there are always going to be a great number of risks and uncertainties in such projections.[71]

4.21 The Committee acknowledges that the accurate forecasting of costs and risks is complex and highly technical, however, there seems to be less criticism of the accuracy of admittedly less complex social infrastructure PSCs than of those for commercial projects with revenue streams. Babcock and Brown, a merchant bank, noted that the PSC for the NSW schools project was highly accurate (unlike many others) because the Department of Education and Training had had much recent experience in procuring similar schools.[72] The Committee notes that this is a social infrastructure PPP so a less complex PSC was required.

4.22 The Committee heard that for other projects, the PSC was not accurate or was not updated when planning had advanced and more information came to light. Mr David Roseman from Macquarie Bank argued that the PSC was not always used and, when it was, it was not particularly accurate.[73] Mr Tony Poulter from PricewaterhouseCoopers expressed a general lack of confidence in government's ability to cost service delivery accurately over the longer term, stating:

> I think most people would say that, although forecasting capital costs is difficult and there is always a margin for error, and that you are more likely to get it right on a portfolio basis than you are to be absolutely right on a particular project, despite those qualifications I think most people would say that certainly with assets like schools and hospitals there is a reasonable degree of confidence in the public sector's ability to cost. I think it is sometimes more difficult on longer-term operating and maintenance costs. Sometimes the public sector is asking the private sector to apply standards which have not previously been applied or which, if they have been applied, have only been applied recently; and there must therefore be a greater degree of uncertainty about the ability to forecast. That matters in terms of the pubic sector comparator, but I think it also matters in terms of the public sector's degree of confidence in the numbers it is forecasting for the commitments it will be entering into under the contract, however it is procured, which can be important to everybody, because if you enter a procurement

[69] NSW Treasury submission No 24, p 16
[70] *ibid*, p 16
[71] D. Grimesy and M.K. Lewis (2005) 'Are Public Private Partnerships Value for Money? Evaluating alternative approaches and comparing academic and practitioner views' *Accounting Forum* 29 pp 345-378, p 353, p 367
[72] Babcock and Brown, submission No 17, p 5
[73] Mr David Roseman, Transcript of Evidence, 2 December 2005, p 20

> process and then find that, for maybe understandable reasons, there has not been a full understanding of the long-term operating costs, you can have budgetary problems and need to revisit the specification or look at the way the project is going to be funded. So it is particularly in the area of through-life costs that I think more work could sometimes be done on what the long-term estimates are.[74]

4.23 Mr Peter Hicks, Corporate Manager, Infrastructure and Investment, Leightons, was also concerned about the accuracy of PSCs produced by consultants without direct experience in delivering projects:

> I think, generally speaking, when we bid for projects the Government has set a comparator which has been established by organisations that are not involved in delivery of projects. They are consultants, people who are highly professionally qualified, but they have never actually had to deliver a project for a dollar. They understand it all. They can sit on the sidelines but they have never had to suffer a loss or had to put their body on the line, so to speak, for a sum of money.
>
> We have been very frustrated when we bid to Government three contractors, often four contractors, who are used to bidding the market, understand the risks of pricing, understand the risks of pricing movements during the bid, and we all settle at a certain price and then the so-called expert has a different figure, often a lower figure, and we are harassed to get to that lower price, and it is just an impossible target. It is a mythical target established by someone who has actually not ever had to deliver to that price, so the sort of people who provide advice are quantity surveyors, and very reputable people, and they are the sort of people we use, but finally they do not have to take the risk on whether they win or lose. [75]

4.24 Babcock and Brown's submission made the relevant point that it was essential for PSCs to be kept up to date.[76] If prepared years in advance of projects being let, there is a real risk that they do not reflect current market conditions or the costs of materials and the PSC would not be consistent with values used by the private sector in preparing bids. The Committee agrees with this comment.

4.25 The Committee acknowledges that it is a difficult exercise to value risks. At the beginning of the project these might not be known in great detail, especially site specific risks which may not become apparent until planning is well advanced. For instance, when the Conservatorium of Music was being redeveloped the project was delayed by the need to investigate the extensive archaeological remains on the site.[77] Babcock and Brown suggest as alternative approaches either completing planning work prior to finalising the PSC or amending the PSC once it is done.[78] Both of these suggestions have merit.

4.26 Unions NSW also stressed the importance of including contract monitoring costs in the PPP side when evaluating projects in order to compare like with like. [79] The Committee agrees with this approach and would expect that every effort is made to include realistic estimates of all costs.

4.27 The Committee is aware, from a study of the literature, of the potential for 'transaction costs' in PPPs to be underestimated. Transaction costs include the costs of

[74] Mr Tony Poulter, Transcript of Evidence 16 February 2006, p 25
[75] Mr Peter Hicks, Transcript of Evidence 16 February 2006, pp 2,3
[76] Babcock and Brown, submission No 17, p 7
[77] Mr John Pierce, Secretary, NSW Treasury, Transcript of Evidence, 2 December 2005, p 33
[78] Babcock and Brown, submission No 17, p 7
[79] Unions NSW, submission No 13, pp 43,44

monitoring and evaluating the ongoing arrangements and delivery of a PPP. Examining PFP projects in the UK, Professor Jean Shaoul found that:

> Monitoring has turned out to be more costly than anticipated, performance indicators have been difficult to operationalize, due to the subjective nature of the outcome, and contracts changes have been time consuming and complex.[80]

4.28 The Committee received evidence from Professor David Richmond indicating that transaction costs of PPPs are quite high and need to be justified.[81] Professor Richmond noted that the Infrastructure Implementation Group had framed a recommendation to this effect in its December 2005 report.

4.29 In a more general comment on this issue, Mr Pat Barratt, former Auditor-General of the Australian National Audit Office, wrote in 2003 about factors upon which agencies should focus which may well contribute to transaction costs, including the need to identify and manage whole of contract issues, such as:

> retention of corporate knowledge, succession planning and industrial relations and legal issues.[82]

4.30 In the United Kingdom, the Committee was told by the National Audit Office that because the risks in early PFIs were unknown, they were priced quite generously and were able to be refinanced on very good terms. They were also informed that the PSC was traditionally calculated as to be marginally more expensive than a PFI which has led in recent times to HM's Treasury giving less weight to such calculations. Instead, the United Kingdom is moving from a PSC model to developing a 'should cost' analysis.[83] Mr Gary Sturgess of the Serco Institute also commented that, in response to the perceived problems with the accuracy of the PSC, they were being prepared less frequently in the United Kingdom, stating:

> The UK is moving away from having public sector comparators which is a bit unfortunate because, rough as they are, they are a useful device for giving some idea about what sort of savings have been made over what government thought it was probably going to cost. But the view has been taken that they [PSCs] are so rough and that really the point has been proven after six hundred projects, the view has been taken that they [government] should just have the competition and see what the best price is. As I said, this does have the unfortunate consequence that if you research the recent NAO reports in the UK, you will find less evidence in the last two years than there was previously of the level of savings that have been made.[84]

4.31 The Committee considers that it would be unfortunate if this practice was adopted in New South Wales. Even the most vocal critics of PPP projects have acknowledged the importance of demonstrating they can deliver improved value for money over traditional procurement. For instance, the Unions NSW submission states:

> When the Government Guidelines were initially published in 2001, many in the community (including trade unions, and other stakeholders) were re-assured by these

[80] Shaoul, Jean, 'The Private Finance Initiative or the public funding of private profit', in *The Challenge of Public-Private Partnerships – Learning from International Experience,* Graeme Hodge and Carsten Greve, 2005, p 200
[81] Professor David Richmond, Transcript of Evidence, 16 February 2006, p 42
[82] Barratt, P, *Public Private Partnerships – Are there gaps in public sector accountability?* Address to 7th Biennial Conference of Australasian Council of Public Accounts Committees, February 2003, p 25
[83] Appendix Three, p 127
[84] Mr Gary Sturgess, Transcript of Evidence, 19 October 2005, p 4

commitments to undertake rigorous and systematic comparison of the cost of undertaking a project by the public sector, versus the private sector, and the promise of transparent disclosures.[85]

Discount Rate

4.32 A key point of contention about the accuracy of the PSC is the selection of an appropriate discount rate to reflect the relative level of risks for projects faced by the private and public sector. The discount rate refers to a percentage rate added to the annual raw costs of the public sector to perform the activity over time when converting it to the Net Present Value figure.

4.33 This is a contentious topic because the discount rate depends on an analysis of risks developed without any certainty of their likelihood. Grimesy and Lewis observe that in a hypothetical perfect world with perfect knowledge of all risks, the 'right' discount rate would be the rate of return on a winning bid.[86] Small changes in a discount rate can lead to different outcomes, as observed by Unions NSW. The Unions NSW submission provides examples of how changes in discount rate can lead to vastly different results.[87]

4.34 Professor Graeme Hodge of Monash University argued that the selection of the appropriate discount rate was of vital importance in developing the PSC:

> Peter Fitzgerald in Victoria did an assessment in 2004 and his results were quite fascinating. He looked at eight projects and he found that if you evaluate using the Treasury and Finance discount rate of 8.6 per cent, we suspect that those deals resulted in a 9 per cent saving to the public purse compared to conventional procurement. If, however, we make that same analysis based on a lower discount rate of 5.6 per cent, you find out that those savings evaporate and it actually costs 6 per cent more than conventionally acquired projects. So Peter Fitzgerald's evaluation to my mind is quite important because it was saying that the discount rate that is used in this complex public sector comparator evaluation matters a lot and we have got to understand more about how it directly relates to calculating relative merit.[88)]

4.35 Professor Hodge went on to say:

> What is the appropriate public sector comparator framework? At the moment it is a hugely complex black box and if you read the UK assessments you would have to say when you read the words "this as manipulatable framework", then I personally get concerned that we are moving out of the realms of finance and evaluation and we are moving into the realms of policy advocacy. So what is the best framework and what is the appropriate discount rate? As I say, in the Fitzgerald studies in Victoria when you used a lower discount rate, PPPs seemed to cost more. When you used a higher discount rate, as suggested by Treasury, PPPs seemed to save us money. It does matter. I know on the domestic front for my home mortgage I chase a half percent off if I can get it somewhere else. It strikes me as odd that governments would not question the availability of private finance at three percent more than they get it through government finance.[89]

[85] Unions NSW, submission No. 13, p 40
[86] Grimesy and Lewis, *op cit* p 367
[87] Unions NSW, submission No 13, p 46
[88] Professor Graeme Hodge, Transcript of Evidence, 2 December 2005, p 14
[89] *ibid*, p 16

4.36 The NSW Treasury submission states that the discount rate for the PSC is chosen on the basis of individual projects' risks using the Capital Asset Pricing Model (CAPM) which is based on the economic theory that investors expect additional return on investments if they are expected to accept additional risks and will price assets accordingly.[90] Using this model, the base rate of return (the risk free rate) is assumed to be the rate on bonds issued by TCorp with discount rates developed for individual projects for each particular type:

- Economic infrastructure – the project's Weighted Average Cost of Capital (WACC) and
- Social infrastructure – the PSC uses the TCorp borrowing rate while private bids are assessed using the TCorp borrowing rate with the addition of another rate to reflect risks that are transferred to the private sector.[91]

4.37 The NSW Treasury submission states that, as there are no fixed rules regarding the discount rate, it is important to conduct sensitivity analysis of the calculation by using a range of rates.[92] This practice is consistent with the views of academics Grimesy and Lewis that suggests using a range of figures to deal with situation where small change in assumptions such as the discount rate can lead to major change to results. This process helps avoid inaccuracy.[93]

4.38 Some submissions were dubious of the suitability of the Government's current approach. The Unions NSW submission was highly critical of it, stating:

> In summary, the NSW Guidelines for calculations of the PSC are fundamentally biased against the option of direct public sector investment in infrastructure projects, by combining the use of 'hypothetical adjusted costs' with the use of high discount rates, supposedly to reflect risks.[94]

4.39 The Unions NSW discussion of the valuing of risk is based on Canadian guidelines for PPP projects. These include an allowance for costs overruns in the base cost so that the cost used is the 'hypothetical risk adjusted cost' and then reflecting project specific risks by using a high discount rates. The submission argues that this leads to double counting of the risk. The problem with assuming there would be cost overruns with public sector providers is that such assumptions can lead to bias towards private sector providers. This can lead to an 'optimism bias' about the performance of the private sector compared to the public.

4.40 The submission provides several examples of how discounting against the cost of capital to reflect the higher costs of private sector finance and then to reflect risk could lead to bias if the discount rate is excessive. No examples of actual discount rates used by NSW Treasury are included in the Unions NSW submission (although it contends that a rate of 19% could be used by Treasury).[95] Specific information on discount rates is not generally available to the public. Issues about disclosure of the PSC will be discussed below.

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[90] NSW Treasury, submission No. 24, p 15
[91] *ibid*, p 17
[92] *ibid*, p 17
[93] Grimesy and Lewis *op cit,* p 365
[94] Unions NSW, submission No 13, p 54
[95] *ibid*, p 45

4.41 Unions NSW states that the academic consensus is that the appropriate discount rate to evaluate government funded projects should be the rate at which governments can borrow subject to adjustments to reflect a moderate amount of risk in the order of 2 per cent.[96] It cautioned, in particular, against the dangers of using a high discount rate to reflect the private sector cost of capital in investment evaluations. In its view, such poor quality evaluation led to an inappropriate decision to sell the State Bank of NSW in 1995 for less than its true value.[97]

4.42 NSW Treasury on the other hand was adamant that it did not use high discount rates. Its stated policy on selection of the appropriate discount rate is based on a national paper prepared for Australian Heads of Treasury. The work on selection of a discount rate distinguishes between risks that should be retained and risks that should be transferred for revenue generating and risk cost. The guidance states:

> Some Practitioners consider that including risks in both the cash flows and the *Discount Rate* is double counting. This is not the case. The cash flows account for risk in the sense of considering all possibilities and deriving a mean or *Expected Value* but do not account for risk in the sense of providing specific compensation for the potential for returns to depart from those *Expected Value*s due to systematic risk. For example, a project with a certain cash flow return of $50 per annum would have the same expected cash flow as a project with a 50% probability of $0 return and 50% probability of a $100 return per annum. The *Expected Value* of the cash flows therefore does not reflect the variance of the cash flows due to systematic risk or the co-variance of those cash flows with the cash flows of a portfolio of projects. To the extent that the potential variance is sensitive to systematic risk this is taken account of through the *Discount Rate*.[98]

4.43 In response to questions on notice, witnesses from NSW Treasury reinforced the Department's position that there was no bias against provision by the public sector, stating that the methodology for selecting discount rates agreed by all Australian governments was based on sector neutral provision:

> The methodology involves adjustment to both the cash flows and discount rates.... Great care is taken to ensure no double counting of the estimated value of risk in the PSC. It is incorrect to say that high discount rates are used.[99]

4.44 This Report will not examine the technicalities in the absence of detailed knowledge about the calculation of recent PSCs. The Committee observes that current international practices are to use a lower discount rate than had earlier been the case because of improved knowledge about valuing risks. Recently, in the United Kingdom discount rates for PPP projects were reduced from 6 to 3.5 % which addresses earlier academic concern about bias against the public sector.[100] Unions NSW points out that in the United States that there has been a trend towards lower discount rates in recent years.[101] This is apparently consistent with the NSW Treasury's stated policy.

[96] Unions NSW, submission No. 13, p 55

[97] *ibid*, pp 57-59

[98] Commonwealth Treasury *Determination of Appropriate Discount Rates for the Evaluation of Private Financing Proposals* , June 2002

[99] NSW Treasury, correspondence 13 January 2006, p 4

[100] Grimesy and Lewis *op cit* p 356

[101] Unions NSW submission No 13, p 56

Guidance

4.45 The Committee was told that there is limited guidance material about how PSCs should be calculated and Mr Tony Poulter from PricewaterhouseCoopers suggested ways this could be improved:

> The guidance at the moment that is published on public sector comparators is pretty high level. There has been quite a lot of experience about how to do risk workshops, how to quantify risk uplifts, how to take account of the way in which those risk uplifts should be aggregated across a project. Clearly you do not add them all up, you have to look at scenario analysis, and also the relationship between risk uplifts and discount rates. There is not a lot published on that and I actually think that providing guidance on this, so that people doing projects understand what the lessons have been in more detail, and so that private sector people bidding understand more what the approach is going to be, would be desirable for all parties.
>
> I do not think this needs to be a huge tome or operations manual. I think taking principle down two levels to how you do this and some examples of how it has been done in the past would be helpful for everybody.[102]

4.46 Mr Poulter particularly identified whole of life costs and risk elements. He suggested that these can be quantified using statistical techniques.[103]

4.47 The Unions NSW submission was also critical of the lack of information available about calculating the PSC, noting that the WWG guidelines indicated in 2002 that further guidance on such issues as the structure of the PSC and the selection of a discount rate would be published at a later date. The submission notes the economic appraisal documents published on the NSW Treasury website have not been updated since the WWG were published. It suggests expanding guidance to include such issues as appropriate consideration of Government overheads and the valuing and allocation of risks.[104]

4.48 The NSW Treasury submission notes it has been working on a document of standard commercial principles for PFP projects to assist in the allocation of risk.[105] However, the Committee considers that, as an interim measure, publication of the guidance on discount rate selection would assist the provision of information.

4.49 The Committee considers that there should be no need to restrict access about the principles underlying calculation of PSCs even if it is appropriate to keep actual PSCs confidential at various stages of the project to assist the Government's negotiating position.

RECOMMENDATION 4: That NSW Treasury publish guidance on selection of a discount rate and other information about the PSC as part of improving guidelines for PPP projects.

Disclosure of PSC and Discount Rate

4.50 Representatives of Unions NSW were particularly critical of the Government's current and recent practices in relation to developing and disclosing the PSC. The Unions NSW submission states:

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[102] Mr Tony Poulter, Transcript of Evidence, 16 February 2006, pp 28, 29

[103] *ibid*. p 29

[104] Unions NSW submission No 13, p 41

[105] NSW Treasury, submission no 24, p 31 –The submissions indicates that this will be published early in 2006. The Committee is advised that it is more likely to completed by June 2006.

> The publication of the PSC was supposed to assure the community that Government had learned from past experience, and was committed to a more open and transparent process.[106]

4.51 The Unions NSW submission contends that the *Working With Government* Guidelines are flawed because they do not require the disclosure of the proposed revenues of a project if it is privately funded, do not require disclosure of the discount rate used in calculating the PSC and, rather than requiring disclosure of projected cash flows, calculate hypothetical costs and adjustments for risk.[107] In evidence, a consultant for Unions NSW, Professor of Accounting, Bob Walker stated:

> First off I think the broad concept of the PSC was positive. The idea was that Government would provide assurance to the community that these were value for money. The Government at the time spelt out, through some guidelines, what should be contained in the public sector comparator. One of the points made in the submission is that those guidelines have not been followed. Contract summaries were to include the product of the PSC and a cost benefit analysis, I think they need to be looked at together. Of the reports we have reviewed that material was either not there, there was very little cost benefit analysis in all except as I recall one of the contract summaries. Incidentally, there was not an Auditors-General's report on them either and we have been unable to obtain copies of those. The results of the public sector comparator was summarised in a few lines. Moreover, another defect of that is that it is quite evident that a lot of public private partnerships have been subject to major design changes after the contracts were signed. The guidelines should have seen a revised PSC being prepared and placed on the record. I don't think that has happened either.[108]

4.52 He went on to say:

> … I have never seen a full PSC published, I have seen a table of one line without any detail about the calculations. That is not providing any assurance at all.[109]

4.53 Mr Danny Graham, Director, Privately Financed Projects, NSW Treasury explained that current policy is for the PSC to be released to bidders during social infrastructure projects and it is released selectively based on consideration of the maximum advantage to Government:

> On social infrastructure projects it has been the practice for the ones we have had in the market place to release the PSC number to the relevant bidders. The guidance material has taken the position that we are trying to maintain the Government's competitive position in regard to these transactions, so the release or non release of the PSC to the bidders is a function of whether or not we feel it will achieve a better outcome for us. With the social infrastructure projects we have take the view that releasing the aggregate numbers to the private sector to ensure a better and more competitive outcome and to target our affordability level is clearly a good outcome for us.[110]

4.54 However, Unions NSW opposed the release of the PSC to bidders as another example of potential bias against the public sector performing the projects as it enables these bidders to know what price they need to match to win the contract.[111]

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[106] Unions NSW, submission No 13, p 40
[107] *ibid*, p 36
[108] Prof. Bob Walker, Transcript of Evidence, 2 December 2005, p 40
[109] *ibid,* p 40
[110] Mr Danny Graham, Transcript of Evidence, 2 December 2005, p 34
[111] Unions NSW, submission No 13, p 59

4.55 The NSW Treasury submission states that, for both social and economic infrastructure PFPs, the raw Public Sector Comparator is disclosed in the contract summaries.[112]

4.56 There are conflicting views about whether these PSCs are in fact being released by the NSW Government. The Unions NSW submission pointed out that published PSCs for five projects were either incomplete or outdated and provided the following commentary:

Project	**PSC shows projected cash flows and NPV of Government funded project?**
New Schools Project – May 2003	Only shows PSC 'most likely case' as 7.3% more expensive than PPP (but not strictly comparable as PPP was net of 'child care revenues')
Cross City Tunnel – June 2003	No – but discloses PSC for shorter tunnel – projected NPV of risk adjusted RTA's costs $41.93 m
Eastern Creek Alternative Waste Technology Facility (September 2003)	No
Westlink M7 Motorway (August 2003)	No
Lane Cover Tunnel, widening of Gore Hill freeway etc (July 2004)	No – comment that instead of a PSC shows present Value of (public sector) costs, compared with Present Value of benefits [including non-financial benefits] to motorists, pedestrians, etc, and benefit/cost ratios.

Source: Unions NSW, submission No 13 pp 64-66

4.57 Ms Linda English of the University of Sydney, part of a team engaged in a long term research project on evaluating PPPs, also indicated there was not adequate disclosure of PSCs:

> [the PSC] is a sort of moveable feast, which makes it actually quite difficult to audit, so you start at the beginning of the process to try to work out what the cost - and this is just a hypothetical cost - of public provision is because we really we suspect the Government has no intention of private provision, but as they talk to the contractors that PSC is constantly developing, so it is not something that is easily graspable, I don't think, and I think that is a problem for auditors general and other people who are trying to work out how to monitor these things: What is it that you have actually captured in the PSC? [113]

4.58 The discount rate used is not disclosed publicly although bidders may be informed. The current NSW policy is to disclose to bidders the discount rate for social infrastructure projects. However, for economic infrastructure, where the relevant discount rate is the weighted average cost of capital, NSW Treasury argues that if this was disclosed, along with some other matters, hypothetically, commercial in confidence matters such as the bidders rate of return on investment or profit margin could be calculated.[114] Unions NSW recommends that these discount rates should be disclosed.[115] The submission disputes the need to protect commercially sensitive information from private partners, stating:

[112] NSW Treasury, submission No 24, p 27
[113] Ms Linda English, Transcript of Evidence, 16 February 2006, p 17
[114] NSW Treasury, submission No. 24, p 28
[115] Unions NSW, submission No 13, pp 62

> It is difficult to see how basic financial information about pricing and profit forecasts could possibly disadvantage operators after they had won a contract – particularly when such information is routinely made available to financial markets.[116]

4.59 Mr Gary Sturgess, Executive Director of the Serco Institute in the United Kingdom and formerly a senior public servant in New South Wales, told the Committee.

> I cannot think of any reason why you would not make public sector comparator available. It is the same with the evaluation criteria. There are a lot of procurements conducted, even in the UK, where the evaluation criteria are not made available to the bidders. I cannot imagine why government would not want to let the private sector know what matters to it in terms of the [evaluation] weightings and so on.[117]

4.60 A witness from Macquarie Bank indicated that it was not always useful to see the PSC because it was not always helpful in preparing bids:

> At the end of the day, even if we see what the public sector comparator is, typically our experience is that in a lot of transactions it does not reflect reality. We are not builders and so forth and we have probably just as much trouble, if not more, than the people assessing it on your side to work out whether the construction cost, for example, is a competitive construction cost, but we have experienced probably 80-90 per cent of the time the builders telling us that it is just not a fair number.[118]

4.61 On the other hand, he indicated it was more helpful to understand the logic behind the PSC calculation as it would enable a meaningful discussion.[119] Babcock and Brown, a firm of merchant bankers, argued that disclosure of the Public Sector Comparator can promote effective competition during the bid process by such means as focusing attention on government expectations so that bidders can appreciate whether their scoping of the project is consistent with the government's. The Committee acknowledges that disclosure might risk the Government's competitive advantage and might hamper the development of innovative solutions.

4.62 The Auditor-General stated in evidence to the committee that he considered the PSC should be available at the conclusion of the bidding process. The Deputy Auditor-General, Mr Tony Whitfield, stated:

> I can see an argument that it should be made available to the bidders. I would think that there would be a risk in letting it out to the public prior to concluding the deal, but once the deal has been struck I believe then the public is entitled to be aware of all the elements that went into the bid and how that decision was made, so in other words the risk sharing, the details of the contractual arrangements, if there is revenue sharing within the contractual arrangements, whether there is an upfront payment and what that upfront payment was for, whether it was to compensate the government for expenditure that was necessary to allow the project to occur or whether it was in fact a premium to obtain a contract.[120]

4.63 While there is no Government policy to disclose any of the assumptions behind the PSC, the Committee does not consider this to be sufficient as a way of providing assurance to the public that the PPP project will provide value for money. Therefore, the Committee suggests that NSW Treasury consider reviewing the policy on disclosure.

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116 Unions NSW, submission No 13, p 70
117 Mr Gary Sturgess, Transcript of Evidence, 19 October 2005, p 4
118 Mr David Roseman, Transcript of Evidence, 2 December 2005, p 20
119 *ibid* p 21
120 Mr Tony Whitfield, Transcript of Evidence, 18 November 2005, p 38

RECOMMENDATION 5: As the Committee found there was strong public interest in increased disclosure of the PSC, it recommends that NSW Treasury review the policy on disclosure of the PSC in consideration of the public interest in knowing that such projects achieved greater value for money than would be possible under traditional methods of procurement.

Cost of Capital

4.64 A key feature of the arguments against the use of PPP arrangements is that, as governments are usually able to borrow money more cheaply than the private sector, projects should be financed by public debt rather than private finance. For instance, Professor John Quiggin of the University of Queensland advocates the use of publicly issued special purpose infrastructure bonds as an alternative to private financing.[121] Professor Graeme Hodge of Monash University told the Committee:

> The reason that I used this term 'mega credit card' I guess is because I wanted to use accessible language. When people say 'what are these deals all about', I think the onus is on someone to say 'do not be too concerned, it is just government using an arrangement, it is a bit like me taking out a mortgage with my house or taking out a credit card'.
>
> On the use of the term "credit card" though, the reason I use that for public policy debate is because I know that some credit cards are better than others and I would much prefer to use a credit card where I can buy credit on three per cent interest than use another credit card that is going to require me paying 18 per cent. It is an accessible way of saying to people this is a financing deal, when you borrow money you do have to be careful. There is nothing bad about a credit card. I think they are rather handy sometimes but unfortunately I usually have to pay my all bills with a credit card, in the same way governments have to pay bills.[122]

4.65 The Unions NSW submission argues against the use of PPPs because in part:

> Governments can obtain finance at a lower rate than private sector firms; and private sector participants in PPPs expect a far higher return on investment than the government's cost of capital. Hence it makes sense for government agencies to borrow directly rather than enter into arrangements with Special Purpose Entities that establish liabilities, that are, 'in substance', borrowings.[123]

4.66 However, the NSW Treasury submission states that the fact that governments can borrow more cheaply than the private sector is simply a function of the coercive powers of states to raise revenue. This is perceived by credit markets as being a lower risk investment than private debt. NSW Treasury argues that the true cost of a project to Government would include the costs of the risks of the project, not just the cost of the Government in servicing the debt to finance a project.[124]

4.67 Mr Dennis O'Neill, Chief Executive of the Australian Council for Infrastructure Development, told the Committee:

> I think there is firstly a grave misunderstanding of the cost of capital. Not only out there generally in the public but also more specifically amongst policy makers and politicians. There is, in some respects, still a very simplistic view that because the so-called risk free rate of borrowings by Government, which is the long term bond rate, is some couple of

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[121] Professor John Quiggin, submission No. 16, pp 7, 8
[122] Professor Graeme Hodge, Monash University, Transcript of Evidence, 2 December 2005, p 18
[123] Unions NSW, submission No 13, p 23
[124] NSW Treasury, submission No 24, pp 13, 14

> per cent less than the average private rate that you or I might apply to a mortgage on our house, but surely the only way to get capital for governments is to go for borrowings…
>
> … Bidders for these projects do that. They price all these other risks and therefore while there is undoubtedly a role for governments to borrow and to invest, we would argue that that has to happen or should happen for those projects for which there is no direct economic return. There are a lot of externalities. It could be major arterial roads into regional New South Wales, country roads, those sorts of things, certain types of social infrastructure and the like, you borrow and you invest, but where you can get a third party revenue stream which could be fairly priced and equitably distributed, there is no reason why you should not do private financing where the risks have been properly priced.[125]

4.68 Mr John Pierce, Secretary, NSW Treasury reinforced the argument against public borrowing to fund all projects because:

> The problem with that one is that if you start down that track then our credit rating would go into junk bond status. Why, because we do not have the tax base to support the level of debt we have to service, which gets to the heart of why we think there is a difference.[126]

4.69 Mr Gary Sturgess told the Committee that, in fact, the gap between the cost of capital for the public and private sectors is narrowing as the market for these projects matures with improved knowledge about appropriate pricing and allocation of risks:

> ...[W]hat happens is that as the market becomes comfortable with the policy area and becomes comfortable with government's intentions and the risks, that gets bid away. Obviously there are exceptions, but generally the efficiency gains from competition far outweigh any benefits in terms of the government being able to borrow more cheaply. If you are making savings in the order of twenty per cent, they really do just swamp whatever difference there is in government being able to borrow slightly more cheaply. You have got to look at both those factors.[127]

4.70 The Committee was told by Partnerships UK that there is widespread misunderstanding about the relative costs of capital between the private and public sector and noted that Ministers have difficulty communicating complex economic information.[128]

4.71 In conclusion, the use of PPPs as a procurement strategy should only make sense if the additional cost of private sector capital is balanced by the greater efficiency of the private sector provision. The Committee accepts the logic of this argument.

Accounting for PPPs

4.72 Opponents of PPPs argue that one reason for governments to choose these arrangements is to avoid incurring public debt. Debt is shifted from the State's balance sheet to the private sector despite the State having certain liabilities to pay the private partners. For instance, the Unions NSW submission contends that an accounting treatment of PPPs that removes debt from the balance sheet has been, and continues to be, a motivating factor for their use. It states that PPPs do not

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[125] Mr Dennis O'Neill, Chief Executive Officer, Australian Council for Infrastructure Development, Transcript of Evidence, 18 November 2005, p 29

[126] Mr John Pierce, Transcript of Evidence, 2 December 2005, p 33

[127] Mr Garry Sturgess, Transcript of Evidence, 19 October 20005, p 7

[128] Appendix Three, p 128

appear in the balance sheet and therefore expand the Government's available finance without appearing as public debt.[129]

4.73 As a corollary of this, the public may not be adequately informed of the true condition of the State's finances. This leads to a lack of accountability and can have dire consequences. Professor John Quiggin of the University of Queensland pointed out that shifting liabilities from the balance sheet contributed to the sudden and catastrophic collapse of the American energy marketing company Enron in 2001.[130]

4.74 PPP accounting policies have developed in the absence of a specific Australian Accounting Standard. In 2004, NSW Treasury joined other States and Territories to adopt as an accounting policy (as distinct from a standard) the principles used in the United Kingdom Accounting Standard FRS 5 'Reporting the Substance of Transactions: Private Finance Initiative and Similar Contracts'. This advice uses the concept of determining whether infrastructure produced in a PPP was an asset and in which party's books it should appear depending on the relative proportions of risk and commercial rewards borne by each party.[131] The form of the contract for the individual PPP project and the allocation of risk is therefore crucial for determining the nature of the project appearance in accounts.

4.75 In NSW Treasury's current accounting treatment, there is once again a distinction in the between economic and social infrastructure:

- **Economic infrastructure** with user charges paid to the private sector would usually not be recorded in the public sector's balance sheet but an asset returning at the end of the contract (such as a toll road) will be recognised by the public sector as an asset gradually increasing in value over time.
- **Social infrastructure** can be either:
  - a finance lease which is a borrowing of the State. These are used in cases where the Government retains most of the demand risk. Once a project is functioning (ie the construction phase is complete) it would be recorded as a liability offset against an asset of equal value; or
  - An operating lease which is not recorded in the State's accounts. These leases are used in cases where the majority of the risk is held by the private sector.[132]

4.76 NSW Treasury's submission and verbal evidence separate the decision to procure from the method of procurement. Although acknowledged that some projects do not appear in the balance sheet in some cases, this is stated not to be a driver of the process. Dr Kerry Schott, the Executive Director of Private Projects and Asset Management, stated:

> It is a real key to getting good policy to not let your financing decision drive what it is you do or frankly you will come unstuck. It is very important that the first decision that is made by the Government is what capital do we want to provide the services that we have to provide.[133]

[129] Unions NSW, submission No 13, p 25
[130] Professor John Quiggin, submission No. 16, pp 6, 7
[131] FRS 5 pp 2-4
[132] NSW Treasury, submission No 24, pp 28, 29
[133] Dr Kerry Schott, Transcript of Evidence, 2 December 2005, p 30

4.77 The Secretary of NSW Treasury, Mr John Pierce, stated:

> ….whether projects procured through PFPs end up being on the State balance sheet or off the State's balance sheet is a by-product of that procurement decision, it is not a driver of it. You do not do PFPs for the sake of it and because we effectively make investment decisions on the basis the Government that makes the investment decisions has got to be prepared to fund and finance the thing itself. If you are and it becomes part of that investment decision how are you going to buy it?
>
> There are a number of options available to you. Irrespective of the way the accounting standards operate or whether it ends up on or off balance sheet a key consideration is the economics of that underlying decision about which procurement method to follow, I suppose internally you refer to as the rose by any other name type of principle.[134]

4.78 He went on to state that the credit rating agencies considered all the state's financial obligations when assessing its creditworthiness, including obligations under major contracts. The NSW Treasury submission pointed out that Loan Council Reporting requirements compel Australian governments to provide comprehensive information annually about liabilities for current and planned PPPs. These are included in NSW Budget Paper No 2.[135]

4.79 Dr Schott provided some examples of the accounting treatment:

> … If there is no risk to the Government in the project then it is off balance sheet. There are very few projects that fall into that category and the ones that do are what we refer to in the submission as economic infrastructure and that includes things like water treatment plants where somebody is paying for the water or toll roads. All of the other projects that we do are on the balance sheet and the way that they appear on the balance sheet [is as John said, it] is as a liability because we have a liability to make an on going payment for a school or a hospital or whatever and that ticks out every month.
>
> With rolling stock for rail cars that we are currently working on there will be obligations to pay for that as the cars are made available by the provider. That gets recorded on the balance sheet as a provision. So instead of being a borrowing, it gets recorded as a liability provision, that is really the principal difference. There is a bit of misunderstanding about this, I think, because a lot of people seem to assume that everything is off balance sheet but that is actually not the case.[136]

4.80 The Unions NSW submission argues that this accounting treatment is not adequate and sees problems with current accounting treatment as an emerging interest in an asset over time as the contract draws to an end:

> In other words, PPP contracts involving hundred[s] of millions of dollars are said to be 'agreements equally proportionately unperformed', so they can be accounted for by treating period payments as payments for services rendered in that accounting period – the same way that businesses might treat rental payments for a photocopier.[137]

4.81 The Unions NSW submission contends that the UK accounting treatment should not be considered authoritative because of what the submission argues is unusually limited criteria for recognising an asset.[138]

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[134] Mr John Pierce, Transcript of Evidence, 2 December 2005, p 29
[135] Correspondence from NSW Treasury, p 3
[136] Dr Kerry Schott, Transcript of Evidence, 2 December 2005, p 30
[137] Unions NSW, submission No 13, p 32
[138] *ibid*, pp 29-31

4.82 The Committee acknowledges that NSW Treasury is accounting for these projects appropriately in accordance with the most recent professional advice. The Committee supports accounting treatment that promotes public knowledge about the Government's liability for these projects. There should certainly be efforts to clarify public understanding of the issue of off-balance sheet accounting.

4.83 The Committee notes that in the absence of accounting standards for the treatment of PPP projects, guidance on accounting treatment should be published and made widely available.

RECOMMENDATION 6: That NSW Treasury should develop material for public consumption about the current accounting treatment for PPPs.

Recent Developments in Accounting

4.84 The Committee notes that the issue of appropriate accounting for PPP projects is complicated by the absence of an agreed national standard. New South Wales agencies are required to use accounting standards developed by the Australian Accounting Standards Board in their financial reports. Australian standards are generally adopted to reflect international standard setting processes. Standard setting processes at the Australian and international level are highly consultative and individual standards, particularly on contentious issues, can take several years to develop.

4.85 In March 2005, the International Financial Reporting Interpretations Committee (IFRIC) of the International Accounting Standards Board issued three draft interpretations for comment:

- D12 Service Concessions Arrangements – Determining the Accounting Model
- D13 Service Concessions Arrangements – the Financial Asset model and
- D14 Service Concessions Arrangements – the Intangible Asset Model

4.86 These provided alternative models for the accounting model for concession arrangements based on control of the assets in PPP or service concession arrangement where there is a contractual arrangement between the 'grantor' (the public partner) and the 'operator' (the private partner) for the provision of public services. The Draft Interpretations apply to arrangements under which the grantor controls both the infrastructure and any significant residual interest in the infrastructure. Interpretation D12 proposes that the operator does not recognise the infrastructure as its property, plant and equipment. Rather, the operator should recognise the rights it receives in exchange for providing construction and other services (or other consideration) to the grantor as either :

(a) a financial asset – if the grantor has primary responsibility for paying the operator; or
(b) an intangible asset – in all other circumstances, i.e. if the users of the concession services pay the operator for the services.

4.87 These interpretations do not address how the public sector 'grantor' side of the public private partnership should account for their interest in the projects. Australian Heads of Treasuries Accounting and Reporting Advisory Committee (AHTARAC) and the Australian Accounting Standards Board (AASB) both provided comprehensive comments indicating that these interpretations would not meet the accounting requirements of Australian public sector partners in such arrangements. The AASB suggested that all other standard forming have provided advice on both sides of a relationship. AHTARAC's comments argued that it was possible for the control test as defined in the interpretation to misleadingly assign control of an asset to the public partner when control would only revert at the end of the contract. AHTARAC advocated replacing the idea of control with the 'risk and rewards' approach using in the current accounting policy adopted by Australian Treasuries.[139]

4.88 These draft interpretations are still under consideration by IFRIC.[140] The Committee does not consider that it can add any resolution to overcome this gap in the accounting standards and notes that international negotiations should take their course.

Disclosure of Private Sector Arrangements

4.89 The Unions NSW submission argues that sums collected by private sector operators from the public by way of user charges (such as tolls) should be disclosed to improve accountability of the Government of the full cost of these projects. The submission recommends that the NSW Government report a much greater range of information in relation to PPP projects including fees, liability of the Government to ensure availability and estimates of the amounts payable by the private sector.[141]

4.90 The Committee notes that it would be a fundamental change to the meaning of the public sector accounting if the Government were obliged to disclose fees collected by a third party. However it would assist in accountability to the public for their liability if this information were known.

4.91 The Committee also notes that information about the amount of funds raised through tolls is publicly available from shareholder information. For example, the Macquarie Infrastructure Group details its tolls in information to shareholders.[142] It would be helpful if government partners could provide the public with information about how to find this.

RECOMMENDATION 7: Where the public pays commercial fees or tolls to private sector partners in a PPP, the public sector partner provide information in their reports about how the public can find information about the amount of revenue raised by private sector partners.

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[139] Australian Heads of Treasuries Accounting and Reporting Advisory Committee 'Response to International Financial Reporting Interpretations Committee Draft Interpretations on Service Concession Arrangements', Submission from the Urgent Issues Group of the Australian Accounting Standards Board 'IFRIC Draft Interpretation'

[140] http://www.iasb.org/current/ifric_consideration.asp accessed 12 April 2006

[141] Unions NSW, submission No 13, pp 34, 35

[142] Monthly reports on average daily revenue and traffic on weekdays and week-ends for the Eastern Distributor, the M4, the M5 and the M7 are available from eg http://www.macquarie.co.au/au/mig/new/20060406

Chapter Five - Adequacy of Guidance (WWG Guidelines)

5.1 This Chapter addresses the *Working with Government* Guidelines in general, although some of its provisions are discussed in detail in other Chapters.

5.2 In November 2001, the New South Wales Government released *Working with Government: Guidelines for Privately Financed Projects*, which provides a framework for the public and private sectors to interact when undertaking PFPs. The Guidelines specifically cover Privately Financed Projects (PFPs), with other forms of Public Private Partnerships (PPPs) covered by the *NSW Government Procurement Policy*.[143] The Guidelines describe a competitive and transparent mechanism to allow the combination of skills from both sectors to provide solutions for the community. [144]

5.3 New South Wales followed Victoria in releasing its Guidelines, with other states later issuing their own documents.[145] The Guidelines resulted from a series of consultations between Heads of Treasuries and forums of Ministers from all Australian jurisdictions. The various Australian approaches have strong links to the UK's Private Finance Initiative (PFI).[146]

5.4 The Guidelines address the following aspects of private investment in public infrastructure:

- Identifying suitable projects;
- Project development, including approvals, assessment and disclosure;
- Project management structure;
- Risk management;
- Contractual issues; and
- The Public Sector Comparator.

5.5 Evidence presented to the Committee indicated the Guidelines could be made more effective in a range of ways, including:

- The introduction of supporting legislation;
- Incorporating recent experience in PPP management;
- Ensuring a standardised approach to common stages of PPP development; and
- More consistent practical application by agencies and between jurisdictions.

5.6 Previous guidelines on private financing of public infrastructure were released in NSW in 1988 and 1995, but the 2001 document included new innovations, such as:

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143 NSW Treasury, *NSW Government Procurement Policy*, July 2004; NSW Treasury, submission No 24, p 7

144 New South Wales Government *Working with Government: Guidelines for Privately Financed Projects*, November 2001

145 NSW Treasury, submission, pp 7, 8

146 Private Finance Initiative (UK) information available from http://www.hm-treasury.gov.uk (accessed 18 May 2006)

- Distinguishing between core and non-core services;
- Requiring Cabinet-level approval at specific stages;
- Providing explicitly for social infrastructure; and
- Introducing the principle of 'value for money' to determine whether a project should be procured as a PFP.[147]

5.7 The submission provided by Sydney Water Corporation noted:

> The guidelines are considered to be comprehensive with respect to the various phases of project development, the risk management framework and major contractual issues.[148]

5.8 The Department of Health commented on the usefulness of the Guidelines in establishing a foundation upon which PFPs could be approached, allocating risk between the sectors and identifying projects that merit partnership between public and private sectors.[149]

5.9 Various officers of the Department of Health also reflected on the value of the Guidelines:

- Mr Bob McGregor, Deputy Director General, identified the risk management component as 'particularly useful';
- Mr David Gates, Director, Asset and Contract Services, considered the major benefit to be a degree of consistency in the market place between agencies and also between Australian jurisdictions;
- Ms Elsie Choy, Associate Director, Joint Sector Development, noted 'the guidelines have been very useful in providing a framework for identifying projects which are appropriate for a PPP and their implementation'; and
- Mr Glenn Monckton, Project Director of the Department's Long Bay Forensic and Prison Hospitals PPP Project, considered the Guidelines were 'a useful tool for the effective management of the project, being mindful of matters that need to be covered in managing a PPP project and particularly the risk allocation identified in the *Working With Government* Guidelines to identify risks and how those risks should be treated within a PPP project'.[150]

5.10 One example of the way in which the Guidelines inform agencies' approaches to PPPs can be found in the matter of unsolicited bids, which refers to those cases where the Government receives PPP proposals without having called for tenders. The Guidelines specifically detail the process and general requirements for dealing with unsolicited proposals to ensure they are subject to the same discipline and due diligence as solicited proposals. That is, they must demonstrate an overall community benefit and be consistent with the Government's plans and priorities.[151]

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[147] NSW Treasury, submission No 24, p 8

[148] Sydney Water, submission No 26, p 3

[149] Mr Glen Monckton, Mr David Gates, Ms Elsie Choy, Mr Bob McGregor, Transcript of Evidence, 17 February 2006, p 9

[150] *ibid,* p 9

[151] The Parramatta Transport Interchange is one example of a successful unsolicited proposal that was assessed as yielding value for money. NSW Treasury, submission No 24, pp18, 19

5.11 The Director-General of the Premier's Department receives unsolicited bids in New South Wales in the first instance. Single-agency proposals are referred to the relevant agency, but wider consideration is given to proposals relating to more than one agency, or those that are not already part of the Government's plans. The Premier's Department will consult relevant agencies to assess the merits of a proposal.

5.12 Unsolicited proposals usually will be tested in the market place through competitive tendering, although the guidelines also explain to proponents the circumstances in which the Budget Committee of Cabinet (BCC) might allow the bid to bypass the competitive tendering process.[152]

5.13 Like many aspects of the Guidelines, the New South Wales approach on this issue is similar to that of the HM Treasury in the United Kingdom, which stipulates that any bid received by government must be subjected to market consultation and competition.[153]

Improving the Guidelines

5.14 Despite their general usefulness, the Department of Health noted it was consolidating some sections of the Guidelines in consultation with NSW Treasury in order to reflect current needs and practices of the Department. In addition, the Department of Education and Training's experience in building and opening nine new schools using a PFP, the New Schools Privately Financed Project, indicated the Guidelines were quite complex in parts. A Post-Implementation Review of the Project suggested the need for greater simplification and clarity.[154]

5.15 Other parties supported the view that the Guidelines should be improved, largely acknowledging the Government's broadening experience of managing PPPs since the Guidelines were first developed and published.

5.16 Mr Tony Poulter, of PricewaterhouseCoopers (PWC), expressed this sentiment:

> The *Working With Government* Guidelines are now a few years old. There are lots of good principles in them, which are well understood and observed, but there has been a learning curve in a number of jurisdictions, including in New South Wales, over the last few years with new deals being completed, and some not being completed, and I think that experience could usefully be codified in some areas to give guidance rather than rely on people understanding what is being done in those precedent deals.[155]

5.17 The PWC submission identified a number of aspects in the Guidelines it considered to be 'international best practice', including requirements on budgetary provisions, discount rates that evaluate risk allocation between sectors and the approach to handling hedging issues.[156]

[152] NSW Government, *Working with Government* Guidelines, pp 12, 13
[153] Appendix Three, p 124
[154] NSW Treasury, *New Schools Privately Financed Project Post Implementation Review*, December 2005, p 4
[155] Mr Tony Poulter, Transcript of Evidence, 16 February 2006, p 25
[156] PricewaterhouseCoopers, submission No 25, p 4

5.18 PWC argues that further codification is required to account for new benchmarks, such as the Victorian Government's guidance on Standard Commercial Principles and the greater understanding of contractual issues between the public and private sectors.[157]

Consistency in Application

5.19 Some evidence to the Committee, such as that provided by Mr Bob Sendt, Auditor-General, and Mr Gregory James, of Maddocks Lawyers, identified deficiencies in the current Guidelines, including uncertainty over their status and inconsistent application.[158]

5.20 Arguments for greater consistency in application focus on both the need for a standard approach between NSW agencies and greater uniformity between Australian jurisdictions in developing and managing PPPs. While the guidelines produced in the various states and territories have developed according to respective needs, evidence to the Committee suggested these approaches had converged to some degree in recent times. It heard there would be additional benefits if, at some stage in the future, it is possible to formalise a more standardised approach between jurisdictions.[159]

Legislative Backing

5.21 The absence of any legislative force in support of the Guidelines has allowed an inconsistent approach to develop between NSW agencies. Evidence to the Committee indicates certain parts of the Guidelines could be made mandatory, thereby achieving uniformity and certainty in some stages of developing and managing PPPs, which would benefit both public and private sectors.

5.22 Many 'guidelines' for public sector agencies are issued as Premier's Memoranda or Treasurer's Directions and have the force of mandatory directions. The *Working With Government* Guidelines have no mandatory requirement outlining their application and the Auditor-General noted some agencies apparently consider the Guidelines to be an expectation only and have deviated from them as they have seen fit.[160]

5.23 Evidence from Professor Richmond and the Auditor-General suggested legislative backing was essential for at least part of the guidelines to ensure agency compliance. According to Professor Richmond only some sections will benefit from supporting legislation due to the need to maintain flexibility in the overall process:

> …there are parts of it that probably could become mandatory. I think there does need to be some discretion available to agencies because the difference between projects can be quite significant and some things make a great deal of sense for one project and not for another.[161]

5.24 Both Professor Richmond and the Auditor-General expressed similar views in terms of the sections that would most appropriately become mandatory. As noted in Chapter

[157] PricewaterhouseCoopers, submission No 25, p 4

[158] Auditor-General, Transcript of Evidence, 18 November 2005, p 36; Mr Gregory James, Maddocks Lawyers, Transcript of Evidence, 2 December 2005, p 3; Mr Dennis O'Neill, AusCID, Transcript of Evidence, 18 November 2005, pp 29, 30

[159] Ms Linda English, University of Sydney, submission No 4, p 2; Mr David Roseman, Macquarie Bank, Transcript of Evidence, 2 December 2005, p 21

[160] Auditor-General, Transcript of Evidence, 18 November 2005, p 36

[161] Professor David Richmond, Transcript of Evidence, 16 February 2006, p 32

Three, in 2005 the Auditor-General conducted a compliance review of contract summaries and raised the possibility of legislation to:

> …cover key aspects of the Guidelines, particularly those relating to contract summaries and other disclosures.[162]

5.25 Contract summaries are produced in response to the complex contractual arrangements for PPPs that may not be easily accessible and difficult to interpret. The Government requires the relevant Government agency to prepare a contract summary according to certain disclosure requirements set out in the Guidelines. The relevant Minister must then table the summary in Parliament. According to the Auditor-General, these requirements could readily become mandatory for all PPPs to ensure reporting and disclosure requirements are observed.[163]

5.26 Contract summaries might also be improved by setting standard approaches to contents, layout and format to allow better access to information. The Auditor-General supported this view:

> While the RTA [for example] may have developed a fairly standard approach, other organisations may only deal with one of these arrangements every decade or so and they tend to develop a contract summary from the ground up. If there was some better structure, some standardised structure to these, it would make readers of the contract summaries, members of Parliament and others, better able to interpret what was included in the summaries.[164]

5.27 Therefore, some sections of the guidelines should be mandatory, but flexibility in other areas could be maintained to respond to the specific characteristics of each project.

RECOMMENDATION 8: That the completion of contract summaries relating to PPPs should become mandatory for all agencies through the introduction of legislation, Premier's Memorandum or a Treasurer's Direction.

RECOMMENDATION 9: That the process of reporting contract summaries should be clarified through the inclusion in the Guidelines of specific steps and mandatory reporting deadlines, including,

- Reporting deadlines for providing the contract summary to the Audit Office and tabling in Parliament following the Audit Office's 'approval':
- requiring tabling of contract summaries within 30 days of the Audit Office report being signed;
- clarifying the process by which Ministers can table contract summaries when Parliament is not sitting; and
- requiring Ministers to table revised contract summaries in Parliament in the event of any significant changes to the original document.

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162 Audit Office of NSW, 'Privately Financed Projects – Contract Summaries' in *Auditor-General's Report to Parliament 2005, Volume Four,* p 3; Professor David Richmond, Transcript of Evidence, 16 February 2006, p 32
163 *ibid,* p 3
164 Auditor-General, Transcript of Evidence, 18 November 2005, p 3

RECOMMENDATION 10: That the *Working With Government* Guidelines should include a standard template outlining requirements for content and presentation of contract summaries.

Benefits of Standardising Processes and Terms

5.28 Standardising the process in the initial development stages of PPPs may also assist in reducing costs. For example, some commentators thought legal costs could be reduced in the initial stages.[165] Mr Andrew Council, of the Australian Construction Association, provided a pertinent example:

> A simple thing like the definition of *force majeure* in these contracts, we should not be entertaining discussions with lawyers about trying to find force majeure from contract to contract, it should be just standard.[166]

5.29 A centrally developed and standardised approach may also help offset limitations on certain agencies that only occasionally used PPPs and were therefore hampered by a lack of expertise in managing them.[167] Providing a formula to the early stages of project development should stabilise the process and allow more opportunity to focus on actual service provision and other key aspects of the project.[168]

5.30 The benefits to different agencies of this kind of 'information sharing' was emphasised in the Sydney Water Corporation's submission. [169]

Public Disclosure and Reporting to Parliament Over the Length of Projects

5.31 Professor Richmond indicated that the Government had accepted recommendations made in the *Review of Future Provision of Motorways*, which will particularly impact on guidelines for public disclosure and Government accountability for key decisions.[170] Two important recommendations of the Review's recommendations include:

- The release of all project deeds and other agreements signed on behalf of the government with consortia, with a prescribed timetable for release; and
- The public release of information on significant variations to project deeds and other agreements that occur during the course of major PPP contracts, including summaries of impacts on the parties and on the public interest.[171]

5.32 Mr Michael Cush, of the Department of Education and Training, suggested any move to enhance transparency should ensure appropriate treatment of commercially sensitive information.[172] The Committee is mindful of this concern.

5.33 Limitations on information being released publicly are explained by the need for confidentiality in commercial matters. However, the Committee heard it is an issue

[165] Mr Gregory James, Maddocks Lawyers, Transcript of Evidence, 2 December 2005, p 3; Appendix Three
[166] Mr Andrew Council, ACA, Transcript of Evidence, 18 November 2005, p 6
[167] Planning Workshop Australia, submission No 20, p 4
[168] PricewaterhouseCoopers, submission No 25, p 5
[169] Sydney Water Corporation, submission No 26, p 3
[170] Professor David Richmond, Transcript of Evidence, 16 February 2006, p 32
[171] Infrastructure Implementation Group, *Review of Future Provision of Motorways in New South Wales*, p 7
[172] Mr Michael Cush, General Manager, Asset Management, Department of Education and Training, Transcript of Evidence, 17 November 2005, p 5

for debate as to when that need subsides and the release of information would not adversely affect commercial arrangements.

5.34 It is understandable that attention focuses on the development stage of PPP projects but true results and effectiveness are most effectively assessed through long-term monitoring and evaluation. While negative results caused by PPPs are frequently mentioned in the media, less is heard about successful PPPs and what makes them successful.[173] Professor Graeme Hodge noted the apparent lack of information available about recent PPPs, but the issue becomes more crucial as time goes by. Ms Linda English, of the University of Sydney, provided a submission noting that reviews of PPPs were seldom released, either by governments or private sector partners. She noted the most crucial time to judge the success or otherwise of PPPs was when the project was established, allowing actual service provision to be assessed against the costs of the project. Lack of reliable information makes such assessment problematic, but Ms English also notes:

> …there is little evidence in Australia or elsewhere of a systematic attempt to develop a theoretically and empirically informed post period evaluation system capable of capturing, evaluating and reporting on the success of these complicated long-term partnerships.[174]

RECOMMENDATION 11: That NSW Treasury strengthen the *Working With Government* Guidelines in light of lessons learned from the management of previous or current PPPs and clearly outline the form and standard by which it expects agencies to report on compliance with the guidelines.

5.35 NSW has a number of requirements relating to Public Disclosure of PPP information, including preparation of a contract summary, as previously discussed. There is evidence that the Government could improve its approach to releasing information on PPPs. The *Review of Future Provision of Motorways in New South Wales* states:

> … there is still a need to outline a clear policy and process to ensure that the policy intent of public disclosure is achieved in a manner which does not compromise the Government's ability to obtain sound commercial outcomes in the public interest.[175]

5.36 Accordingly, the Review provided recommendations on these processes and reaffirmed this public policy intent. It proposed a far more detailed process for public release of information, such as a clear timetable for each project and required actions for documents not disclosed, including reasons why they are withheld and what arrangements have been made for release in the future.

5.37 Disclosure issues are discussed more fully in Chapter Six.

Public Sector Comparator

5.38 As discussed in Chapter Four, the Public Sector Comparator (PSC) allows the potential viability of a private sector proposal to be contrasted against the cost of undertaking the project through the public sector.[176] The Guidelines provide some details on the PSC, but at the time the Guidelines were published the PSC was still evolving and

[173] Ms Linda English, University of Sydney, submission No 4, p 2
[174] *ibid,* p 2
[175] Infrastructure Implementation Group, *Review of Future Provision of Motorways in New South Wales*, p 5
[176] NSW Treasury, *Working with Government Guidelines for Privately Financed Projects*, p 45

specific details were not included. It was intended that further information on the PSC would be issued in later guidelines and NSW Treasury circulars, as they became available.[177] A comparison of Australian jurisdictions shows that New South Wales operates with a less detailed policy on its PSC than some other jurisdictions.[178]

Public Interest

5.39 The Guidelines require prospective PPPs to be tested against a range of criteria to determine whether or not it is in the 'public interest' for them to proceed. The criteria include:

- Effectiveness;
- Impact on key stakeholders;
- Accountability and transparency;
- Public access and equity;
- Consumer rights;
- Security; and
- Privacy.[179]

5.40 Some evidence presented to the Committee viewed the criteria as too limited in scope. Mr Ben Kruse, from the United Services Union, considered that industrial relations issues should be specifically considered when evaluating the 'public interest':

> …there is nothing that requires a council to assess impacts on employment in part of the public interest evaluation. There is a requirement for the council to consult with things that are identified as "stakeholder groups", whatever they are, but there is certainly no reference to unions or employees as such.[180]

5.41 The Western Australian approach specifies additional considerations for identifying the public interest. WA's *Project Evaluation Guidelines* considers general principles and adds a level of social impact analysis, including issues such as the environment, heritage, native title and quality of life.[181]

5.42 With respect to rights of employees, the Western Australian Guidelines specifically state:

> The Government will not support any PPP which establishes conditions of employment that are below what the Government considers to be appropriate industry standards. Such standards may be, but are not limited to, relevant awards, industrial agreements or employee-employer agreements.[182]

5.43 Aside from reviewing the criteria by which the public interest is assessed, there is scope for New South Wales to improve its methods of identifying the public interest

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[177] NSW Treasury, *Working with Government Guidelines for Privately Financed Projects*, p 5

[178] L. Sharp and F. Tinsley, *PPP Policies Throughout Australia A Comparative Analysis of Public Private Partnerships*, pp 11, 12

[179] NSW Treasury, *Working with Government Guidelines for Privately Financed Projects*, p 10

[180] Mr Ben Kruse, United Services Union, Transcript of Evidence, 18 November 2005, p 32

[181] Department of Treasury and Finance (WA), *Project Evaluation Guidelines*, p 5

[182] Department of Treasury and Finance (WA), *Partnerships for Growth Policies and Guidelines for Public Private Partnerships in Western Australia*, pp 9, 10

with more effective methods of consultation. The *Review of Future Provision of Motorways in New South Wales* noted 'some years' might pass between community consultation and project approval, contract finalisation and eventual project completion. The Review recommended that the RTA, in this specific case, work with relevant parties to a PPP contract to develop:

> …a seamless process of consultation and stakeholder management through all phases of a project.[183]

5.44 There is a strong argument for additional consultation to be undertaken during the approval process for a project. It is noteworthy that the Victorian and Queensland Governments undertake preliminary assessment of the public interest and then complete fuller analysis during the business case development. Currently in New South Wales, all projects are subject to a single broad public interest test before being offered as PPPs.[184]

RECOMMENDATION 12: That the public interest test be given greater prominence in PPP assessment, including:

- Refining criteria to better reflect public concerns;
- Strengthening links between public interest criteria more closely to Government policy; and
- Outlining processes by which public interest criteria can be given full and appropriate consideration at the assessment stage and throughout the life of a project.

Other Suggestions for Improvements

5.45 Other improvements to the Guidelines were suggested to the Committee. For example, NSW Treasury's *New Schools Privately Financed Project Post Implementation Review* suggested some aspects of the project management requirements were unwieldy, particularly with respect to the number of persons and agencies involved in advisory committees. The membership and structure of committees has been refined to provide a greater focus and concentration on the service delivery agency and NSW Treasury's supporting role.[185]

5.46 NSW Treasury stated it would review the WWG Guidelines in the first half of 2006, taking into account recommendations made in this Post Implementation Review.[186]

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[183] *Review of Future Provision of Motorways in New South Wales*, pp 8, 33

[184] NSW Treasury, *Working With Government Guidelines*, p 57; Department of Treasury (Victoria) *Partnerships Victoria: Practitioners' Guide*, June 2001, pp 23, 76, 78

[185] NSW Treasury, *New Schools Privately Financed Project Post Implementation Review*, p 8

[186] *ibid*, p 4

Chapter Six - Disclosure Rules

6.1 This chapter will discuss current policies on disclosure for PPPs, criticisms of the current arrangements and proposals for change.

6.2 Disclosing relevant and accurate information relating to a PPP is crucial to reassure the community that value is being achieved through the project. The Committee agrees with much of the evidence presented to it indicating that current disclosure requirements can be improved.

6.3 It is also important to consider the extent of compliance to current disclosure requirements.

6.4 In 2004, the Committee tabled a report on a Private Members Bill which, if enacted, would have required the publication of all Government contracts regardless of their size. At that stage the Committee considered that the existing disclosure requirements for contracts included in Premier's Memorandum 2000-11 were adequate. It did however recommend that the Auditor-General include a compliance review of the publication of contract summaries in his 2004-5 program.[187]

6.5 The Auditor-General has since performed two relevant compliance reviews of the publication of contract summaries, including those for Public Private Partnerships, which indicate that compliance has been limited. On this basis the Committee considers there may be a need to strengthen disclosure requirements for PPP projects which are generally large in scale and attract significant public interest.

6.6 However, any consideration of change must look to maintain an environment to allow effective interaction between public and private sectors, including recognition of constraints of commercial confidentiality and issues not appropriate to be raised in the public arena.

6.7 The Committee’s views on improving disclosure largely concur with those expressed in the *Review of Future Provision of Motorways in New South Wales*. The Review stated a clear policy was needed to ensure effective public disclosure, but the Government should not compromise its capacity to obtain positive commercial outcomes in the public interest.[188]

6.8 The Review’s recommendations proposed a more detailed process for releasing information, including a clear timetable for disclosure and provision of explanations when specific documents are withheld and details of how they will eventually be released.[189] The Committee understands the Government has accepted these recommendations in relation to motorways and considers that they should extend to all PPPs.[190]

[187] PAC *Government (Open Market Competition) Bill 2003 and Visits of Inspection* Report 8/53 (no 151, p xi)
[188] Infrastructure Implementation Group, *Review of Future Provision of Motorways in New South Wales*, p 5
[189] *ibid*, p 5
[190] Professor Richmond, Transcript of Evidence, 16 February 2006, p 33

Current Disclosure Arrangements

6.9 At present, Government contracts with the private sector are subject to a number of policies and statutory Acts that specify conditions for release of information, including:

- *Working With Government Guidelines for Privately Financed Projects*;
- *Ministerial Memorandum 2000-11*; and
- *Freedom of Information Act 1989*.[191]

6.10 Contract summaries are the principal vehicle for the public to receive information relating to PPPs, but specific types of information are excluded, such as:

- Commercial in confidence material, such as the private entity's cost structure or profit margins;
- Matters relating to intellectual property/trade secrets; and
- Matters putting the contractor at a commercial disadvantage with competitors.[192]

6.11 As discussed earlier, NSW Treasury distinguishes between social infrastructure PFPs and some economic infrastructure PFPs. Social infrastructure PFPs involve direct Government expenditure that must be approved by Parliament in the same manner as other Government appropriations. However, commercial-in-confidence considerations, such as a road toll, apply for some economic infrastructure PPPs, whereby the Government allows a private sector company to levy a charge, which may impact on disclosure requirements.[193]

6.12 The internal workings of the private entity are considered confidential, except when such information fits within other reporting requirements, such as those set by the Australian Stock Exchange and the Australian Securities Investment Commission.[194]

6.13 The experience of PPPs in New South Wales has shown it can be difficult to obtain specific information relating to projects. For example, there has been significant community interest in contract details for the Cross-City Tunnel and a number of witnesses noted the limited availability for information. It has been observed that this created significant disquiet in the community.

6.14 It can even be problematic obtaining details regarding actual reviews of PPPs that have been established.[195] Evidence presented by Ms Linda English and Professor James Guthrie, both of Sydney University, indicated the difficulty in obtaining detailed information on PPP projects, which not only creates confusion but also reduces the capacity for ongoing assessment to determine value to the community:[196]

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[191] NSW Treasury, submission No 24, p 26
[192] *ibid*, p 27; NSW Treasury, *Working With Government Guidelines*, p 27
[193] NSW Treasury, submission No 24, p 26
[194] *ibid*, p 28
[195] Professor Guthrie, Transcript of Evidence, 16 February 2006, p13
[196] Ms Linda English, University of Sydney, submission No 4, p 2

> It appears, in Australia at least, that the magnitude of financial commitments to PPPs is in stark contrast to the paucity of public disclosure of their cost and independent assessment of their outcomes.[197]

6.15 Ms English told the Committee:

> … we believe at the moment (that) actual reviews and disclosure of reviews are patchy, and even when we looked at the Auditor General's ordinary financial statement audit, it is very difficult to find specific comments on PPP type activities. It is a real effort.[198]

Contract Summaries

6.16 The reliance on contract summaries to present information on PPPs recognises that documents relating to these contracts are complex, extensive and difficult to interpret.[199] Contract summaries are provided to the Auditor-General for assessment and are eventually tabled in Parliament by the relevant Minister.[200]

6.17 Looking beyond the availability of mere contract summaries, the Committee heard evidence that contracts in their entirety should be publicly available despite their complexity, not just summaries.[201]

6.18 Evidence to the Committee reflected the general usefulness of contract summaries, particularly in promoting a consistent approach by agencies reporting on PPPs and presenting complicated information in a relatively accessible form.

6.19 The Committee heard that contract summaries could easily be more effective, notwithstanding their current usefulness. One witness, Professor Graeme Hodge, expressed doubts over the value of distilling information from contracts that stretch ‘from the floor to the roof’ into a summarised document.[202]

6.20 At present, the NSW Government requires for all PPPs that:

- A contract summary be prepared after a contract is signed by the Government and a private sector partner;
- A contract summary be made available to the Auditor-General for audit within 30 days of the contract becoming effective;
- Within 90 days of receipt by the Auditor-General, the audited contract summary must be tabled in Parliament by the responsible Minister; and
- After tabling, the availability of the contract summary must be advertised in the Public Notices.[203]

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[197] L. English and J. Guthrie, *State Audits of PPPs in Australia: a lack of accountability?* Paper for submission to European Accounting Association, 31 January 2006, p 4
[198] Professor Guthrie, Transcript of Evidence, 16 February 2005, p 13
[199] Infrastructure Implementation Group, *Review of Future Provision of Motorways in New South Wales*, December 2005, pp 29, 45
[200] *ibid*, p 28
[201] Professor Graeme Hodge Transcript of Evidence, 2 December 2005, p 17; Mr Gary Moore, Director, NCOSS, Transcript of Evidence, 18 November 2005, p 10; Professor David Richmond, Transcript of Evidence, 16 February 2006, p 33
[202] Professor Graeme Hodge, Transcript of Evidence, 2 December 2005, p 17
[203] Infrastructure Implementation Group, *op cit*, s 6.6

6.20 Chapter Three referred to improving specific requirements of agencies when completing contract summaries, particularly the way contract summaries are developed and presented, including clear instructions regarding the timing of tabling the summary in Parliament. With respect to contract summaries, the Auditor-General's *Compliance Audit of Privately Financed Projects – Contract Summaries* proposed:

- increasing the level of disclosure;
- introducing legislative backing to ensure compliance on some aspects of contract summaries;
- introducing clearer guidelines;
- preparing a template and standard procedures; and
- subsequent tabling of the documents in Parliament.[204]

6.21 The Committee supports these proposals and has made a related recommendation in Chapter Three to ensure a mandatory and standardised approach.

6.22 The Committee recognises the value of contract summaries, but considers there should be access to all documents related to PPPs, subject to commercial confidentiality considerations. It is the Committee's view that contracts should eventually be disclosed in their entirety, which would allow ongoing assessment of a Project and reassurance to the community that the public interest is being maintained.

6.23 The UK Department of Health's approach to contract summaries is based on a template that specifies the information that should be provided, including:

- Background details, such as the project specification, investment objectives and the expected timing of key dates;
- Project details, such as the total capital cost, the scope of facilities management services included in the contract and details of the consortium partners;
- Capacity details, such as demand assumptions and scope for future flexibility;
- Staffing/TUPE (Transfer of Undertakings (Protection of Employment)) details, such as the number and timing of any staff being transferred or seconded to the consortium;
- Financial details, such as the unitary charge amount and the indexation basis; and
- Other key details, such as derogations from the standard contract and the terms allowing deductions from the unitary charge.[205]

6.24 The Department's disclosure is based on the principle that it should 'respond positively to requests for information' where possible.[206]

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[204] Audit Office of NSW, 'Privately Financed Projects – Contract Summaries' in *Auditor-General's Report to Parliament 2005, Volume Four,* pp 3-5;

[205] HM Treasury (UK), *PFI: strengthening long-term partnerships*, March 2006, p 25

6.25 The UK Government has introduced a number of reforms to enhance the transparency of PPPs and accountability, including publishing estimates of future payments for each PPP and publishing the capital value of contracts signed to date and in the process of being procured. Much of the information on PPPs is available through the HM Treasury website, including an online database of projects. Other UK Departments are being encouraged to operate under the same guidelines as the Department of Health.[207]

6.26 The Committee also notes the approach of New York City's Office of the Comptroller, which considers that releasing as much information as possible provides confidence to investors. Details of PPPs are provided through Annual Financial Statements, independent studies on various issues and the Mayor's annual report on Operations. All information is available on the Office's website.[208]

Proposed Change

6.27 The Committee accepts there are constraints relating to the sensitive nature of some aspects of contracts between public and private sectors, with caution needed to ensure effective interaction between public and private sectors. The need for privacy not only reflects the commercial interests of the private sector - the Government too may need to withhold public release of documents in certain situations, in order to preserve relationships during negotiations for other contracts.

6.28 The Committee is concerned at the recent situation in which the NSW Parliament's Joint Committee into the Cross-City Tunnel referred assessment of sensitive documents to former Chief Justice of the New South Wales Supreme Court, Sir Lawrence Street – an exercise consuming considerable time and expense.[209]

6.29 Discretion is needed in this area and one alternative is for the Public Accounts Committee to review sensitive documents, as was recently suggested in a report by the Western Australian Public Accounts Committee.[210]

6.30 However, on balance, the Committee considers that the Auditor-General is best placed to determine which documents can be released and/or when they may be released in the future.[211] Such a recommendation was made in the *Review of Future Provision of Motorways in New South Wales*, as Professor Richmond explained:

> My suggestion is that the contracts should be released but the timing ought to be agreed with the Auditor-General and an agency should make a case for saying there are a hundred documents however this part of this document, or this document, should not be released at this time but it can be released in, say, three months time when we have finished the negotiations or the consortium has, so they are not disadvantaged by that.[212]

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[206] An example of an exception is the inappropriateness of releasing such as confidential patient information, HM Treasury (UK), *PFI: strengthening long-term partnerships*, March 2006, p 25

[207] *ibid*, p 24

[208] Appendix Three, p 138

[209] New South Wales Parliament, *First Report: Joint Select Committee on the Cross City Tunnel*, February 2006, p135-138; J. Porter, 'Legal fears block release of tunnel papers', *The Australian* 2 November 2005, p 3

[210] Public Accounts Committee (WA), *Review of the Financial Management Bill 2005 and the Auditor General Bill 2005*, 6 April 2006.

[211] Infrastructure Implementation Group, *Review of Future Provision of Motorways in New South Wales*, p 29

[212] Professor David Richmond, Transcript of Evidence, 16 February 2006, p 33

6.31 Several parties to the inquiry raised concerns about the capacity of the Auditor-General to review or release details of 'private' aspects of PPPs. The Auditor-General indicated he had made recommendations of his own to the Government in relation to this issue.[213]

6.32 The Committee is also concerned that the release of information regarding significant variations to projects needs to be undertaken in such a way as to make clear the linkages between the original and current proposal and related expenditure.

6.33 In addition to the premise that contracts should be released in their entirety, depending on appropriate timing of their release, the Committee also concurs with recommendations that disclosures should be updated when there are significant changes made by either side.[214]

6.34 Disclosure of documents relating to PPPs has been inadequate and contributed to negative views and confusion regarding these projects. It has also caused difficulty in assessment of the effectiveness of PPPs once they are established and delivering a service to the community. The Committee considers that contract summaries are useful, but can be improved by becoming standardised and mandatory for agencies involved in PPPs. The Committee also believes contract documents should be available in their entirety, with the Auditor-General's involvement to assess the appropriateness of releasing sensitive documents.

RECOMMENDATION 13: In addition to contract summaries, all contracts relating to PPPs should be available in their entirety to the public in due course. The Auditor-General should recommend the timing of releasing sensitive documents and agencies should endeavour to meet this timeframe and explain any variations. Details of significant variations by either side to the contracts must be publicly available.

[213] Mr Bob Sendt, Auditor-General, Transcript of Evidence, 18 November 2005, p 35
[214] Professor Bob Walker, Transcript of Evidence, 2 December 2005, p 46

Chapter Seven - Risk Assessment and Allocation

7.1 This chapter will outline the process of risk assessment, allocation and management in PPP projects and comment on how well these processes are managed in NSW.

7.2 The *Working With Government* Guidelines state that a 'risk' relating to a PFP refers to:

> … the chance of an event causing actual project circumstances to differ from those assumed when forecasting project benefit and costs, and the impact of that event.[215]

7.3 Risk management is the:

> … identification, assessment, valuation, allocation, mitigation and monitoring of risks associated with a project. The aim is to reduce their variability and impact. [216]

7.4 The Guidelines provide a standard outline for handling various forms of risk relating to a project and allocating them to public and private sectors. The process of risk allocation and management is continually evolving and, according to evidence presented to the Committee, now reflects a greater understanding of each party's goals and the need for a genuine relationship between the two sides to make the project successful.[217]

7.5 The NSW Treasury submission indicates that a project procured through a PFP, rather than through traditional procurement, requires more risks to be allocated due to the long-term nature of the concession period, involvement of the private sector and interface with the public sector.[218]

7.6 NSW Treasury emphasised the Government's aim is not to maximise risk transferred to the private sector, but is rather to:

> …optimise the allocation of risks to the public and private sectors according to which party is best able to manage these risks.[219]

Risk Assessment

7.7 The *Working With Government* Guidelines provide an indicative list of the types of risks that may arise in a project. While this list is not exhaustive, it can assist agencies in identifying the types of risks that may be encountered and their likely financial effect.[220]

7.8 According to the Guidelines, each project must undergo full risk analysis, which commences at the strategic planning stage and includes the following steps:

Establish Context:

- proposal familiarisation, ie identify project scope, objectives, assessment criteria, key elements and issues.

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215 NSW Treasury, *Working with Government: Guidelines for Privately Financed Projects*, p 55
216 *ibid,* p 55
217 Mr Gary Sturgess, Serco Institute, Transcript of Evidence, 19 October 2005, p 5; Mr Tony Poulter, PricewaterhouseCoopers, Transcript of Evidence, 16 February, 2006, p 29; and Mr David Hudson, Australian Construction Association, Transcript of Evidence, 18 November p 2
218 NSW Treasury, submission No 24, pp 12, 13
219 *ibid*, p 31
220 *ibid*, p 33

Risk Analysis:

- identify all potential risks;
- assess potential likelihood and consequences of each; and
- screen or grade risks, identifying minor, moderate and major risks.

Risk Response Planning:

- identify feasible responses to risks, including prevention, impact mitigation, transfer and acceptance;
- select the best response for each risk;
- develop risk action schedules and other management measures, as appropriate. document planning; and
- prepare a risk management plan for large/complex projects; prepare risk action schedules and measures for others.

Risk Management Implementation:

- implement plan, action schedules and management measures;
- monitor the implementation; and
- periodically review risks and evaluate need for additional risk management. [221]

Risk Allocation

7.9 Risk allocation refers to the distribution to one party of responsibility for dealing with the consequences of each risk, or agreeing to deal with the risk through a specified mechanism that may involve both parties sharing the risk.[222]

7.10 A risk table provided in the *Working With Government* Guidelines outlines the risk category, description, consequence, mitigation and preferred allocation in relation to the following areas:

- Site risks;
- Design, construction and commissioning risk;
- Sponsor risk;
- Financial risk;
- Operating risk;
- Market risk;
- Network and interface risk;
- Industrial relations risk;
- Legislative and government risk;
- Force majeure risk; and
- Asset ownership risk.[223]

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[221] NSW Treasury, *Working With Government Guidelines*, p 33
[222] *ibid,* p 55
[223] *ibid*, pp 34-37 and pp 61-77

7.11 While the identification, allocation and management of risks is considered for each case, the Guidelines set out a preferred approach to encourage standardised contracts and reduce transaction costs.[224] The NSW Treasury submission notes this consistent approach provides the market with a common point of reference and promotes an open process for risk allocation and the pricing of bids.[225]

7.12 The Committee also heard that it is crucial to ensure the preferred risk allocation between public and private sectors is actually reflected in the terms of the contract.[226] Notwithstanding assumptions about which sector can best manage specific risks, differences may arise during the course of a project, which emphasise the importance of the contract document, as noted by Mr John Pierce, NSW Treasury:

> …(I)n any contractual relationship, be they PFPs or anything else, there will be during the term of the contract areas where people disagree. It is not possible to anticipate what all those areas are but in light of experience over more recent years we do provide a very careful attention in the negotiations so that we can very clearly specify things like default termination payments and figures, indemnities and required insurances that people have to have and dispute resolution processes. When disputes arise people often think that there is a problem but when you go back to the contract details the way to resolve those quite often can be very clear.[227]

7.13 The Committee has been mindful that the Government's approach to risk allocation may vary depending on whether a PPP is an economic infrastructure project or a social infrastructure project. As noted elsewhere, economic infrastructure refers to fixed assets that support economic activity and development in a fundamental way, such as roads and telecommunications facilities. Social infrastructure projects generally refer to physical infrastructure that assists provision of social services, such as hospitals, schools and prisons.[228]

7.14 The risk allocation differences relate to:

- *Market or Demand Risk*

  Social infrastructure has minimal market risk to the private infrastructure provider and is usually paid for out of tax revenue. Cost risks are the key factor in financial outcomes. Revenues from economic infrastructure PPPs tend to be from third parties and the private infrastructure provider fully bears market risk. Revenue risks are the key driver of financial outcomes;

- *Treatment of core versus non-core services*

  The Government maintains responsibility for providing core services (such as clinical services in hospitals), but may utilise private sector provision and the transfer of associated risks of non-core services (such as cleaning services); and

- *Translation into Contract Terms*

[224] NSW Treasury, *Working with Government: Guidelines for Privately Financed Projects*, p 34
[225] NSW Treasury, submission No 24, p 31
[226] *ibid*, pp 34, 35
[227] Mr John Pierce, Secretary, NSW Treasury, Transcript of Evidence, 2 December 2005, p 35
[228] NSW Treasury, *Working with Government: Guidelines for Privately Financed Projects*, pp 54, 56; and also Mr Roseman, Transcript of Evidence, 2 December 2005, p 28

Agreed risk allocation must be appropriately reflected in contractual agreements between the public and private sectors. According to the NSW Treasury submission, certain contractual terms need to be very clearly specified for both social and economic infrastructure to ensure risk allocated proceeds as intended by the contracting parties.[229]

Optimal Risk Allocation

7.15 The NSW Treasury's principle of 'optimal risk' allocation is based on the notion that risks should ultimately rest with whichever side can best manage them, which means that:

> …the risk is allocated such that value for money is maximised (or the aggregate cost of managing the risks is minimised) on a whole-of-life basis [of the PPP].[230]

7.16 As stated in the Guidelines, the Committee acknowledges the Government should retain only those risks that it can manage more effectively than the private sector.[231]

7.17 It is generally assumed the private sector is an effective manager of commercial risk, while the public sector is better suited to managing regulatory risk.[232] In the event that a risk is outside the control of either sector, then responsibility should be shared.[233]

7.18 Optimal allocation of risk is now accepted as an effective way to achieve good long-term results for the community, but in the past there has been temptation for government to exploit its negotiating power and allocate most, if not all, risk to the private sector. Experience has shown this can have a damaging effect on a partnership between the sectors and the overall success of the project. [234]

7.19 The Government's powerful negotiating position was noted by Mr David Hudson of the Australian Construction Association:

> Let us understand that in contracting it is the clients that set the rules of engagement, so therefore Government, as the master of this relationship, certainly has a very real responsibility to set the tone, to set the environment of what takes place… I think that ultimately the contractors and the Government in fact have a shared goal, and that is to deliver a better infrastructure solution, to deliver better services to the community, clearly to maximise value for the Government and the people of New South Wales and at the same time to do so where contractors get a fair reward for the tasks they perform and for the risks that they take. [235]

7.20 Considering why the Government should not take advantage of competitive bidding for projects and allocate as much risk as possible to the private sector, Mr Jim Barrett, of the Australian Construction Association, said:

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[229] NSW Treasury, submission No 24, pp 31, 32

[230] *ibid*, pp 32, 33; see also NSW Treasury, *Working With Government Guidelines*, p 33

[231] NSW Treasury, *Working With Government Guidelines,* p 34

[232] See Leeanne Sharp, Fred Tinsley *PPP Policies Throughout Australia A Comparative Analysis of Public Private Partnerships*, p 19

[233] NSW Treasury *Working With Government Guidelines*, p34

[234] Mr Gary Sturgess, Serco Institute, Transcript of Evidence, 18 November 2005, p 5 and examples of burdening of the private sector with inappropriate risk, as provided by Mr O'Neill, Transcript of Evidence, 19 October 2006, p 27

[235] Mr David Hudson, Australian Construction Association, Transcript of Evidence, 18 November, 2005, p 2

> It might be a great thing from the public sector's point of view to say we have actually transferred that risk, but in doing so this issue of value has gone down the drain because you ultimately end up paying a lot more for it because it is a risk that the other side could not manage and has had to price it and you have actually paid for that.[236]

7.21 Mr Gary Sturgess, Serco Institute, noted it was not 'not healthy' for the public sector to transfer all risk and it could lead to a situation where:

> …the winner (of the contract) will come back to government and try to get you to assume some of the risk. That becomes dangerous, because then you get the problem …where the game is basically about contract variation: 'Let's bid a ridiculous price and then play the contract variation game afterwards'... Alternatively, the contractor will fall over and even if they are able to struggle on and just keep the thing together, if government wants a [contract] variation in the course of the thirty year life of that project, it will find a private sector party that is going to say, "Look, if you want to talk to us then let's talk first about price. We've been bleeding [financially] on this project for five years, so let's discuss that …[237]

7.22 The NSW Treasury submission outlines alternative approaches for cases where it may not be possible to place a specific value on a risk or to allocate the risk, they include:

- Capping the maximum for which the Government will be liable in each case;
- Providing an appropriate dispute resolution mechanism to determine how an unforeseen risk will be shared; and
- Identifying specific circumstances that will result in payments by the Government.[238]

Standardised Risk Management

7.23 The NSW Treasury submission explained that while each project's risks must be allocated according to their merits, a standard approach to risk is desirable in order to minimise transaction costs.[239]

7.24 There are significant advantages in a standardised approach, as noted by Mr Barrett:

> Standardised contracts have a benefit in that the conditions associated with the contract or risks associated with it become well known. They become the risks that are then publicly executed for all projects. Therefore, both sides of the bargaining equation are able to then price those risks, because we know what the risk is, we have dealt with it before, we know how to manage the risk, we know if it is insurable, we know how to deal with it."[240]

7.25 The current guidelines on risk allocation available to PPP partners ensure a solid foundation for agencies to negotiate risk allocation. There is also opportunity to tailor risk allocation according to the characteristics of each project.[241] Although the current Guidelines on risk allocation appear to have been useful, the Committee concurs with

[236] Mr Jim Barrett, Transcript of Evidence, 18 November 2005, p 6
[237] Mr Gary Sturgess, Serco Institute, Transcript of Evidence, 19 October 2005 p 5; see also Mr O'Neill's reference to inappropriate allocation of risk, Transcript of Evidence, 18 November 2005, p 27
[238] NSW Treasury, submission No 24, p 34
[239] *ibid,* p 31 and *Working with Government: Guidelines for Privately Financed Projects*, p 33, L. Sharp and F. Tinsley *PPP Policies Throughout Australia A Comparative Analysis of Public Private Partnerships,* p 19
[240] Mr Jim Barrett, Transcript of Evidence, 18 November 2005, p 5
[241] As noted by Mr Tony Poulter, Transcript of Evidence, 16 February 2006, p 30

evidence that a simple and updated version of the Guidelines should be released to reflect recent experience.[242]

7.26 The NSW Treasury submission states that the NSW and Victorian Treasuries have been working closely to develop a set of standard commercial principles for PPP contracts. The Committee notes Victoria published its commercial principles document in June 2005.[243]

7.27 The Committee notes recent comments made by NSW Treasury's Director of Private Finance Projects, Mr Danny Graham, which suggests a genuinely standardised set of national commercial principles for PPP contracts appears is not likely in the immediate future. As noted above, the NSW Government is due to release its own set of principles shortly that, although broadly similar to those released in Victoria, will be tailored to suit New South Wales.[244]

Risk Management

7.28 The NSW Treasury submission outlines a number of steps to ensure appropriate management of risks in PPPs. It is now standard practice for PPPs to conduct risk workshops involving key stakeholders to identify major risks likely to impact on the project and their possible cost. The result of this process is eventually incorporated into constructing the risk adjustments to the Public Sector Comparator and in drafting elements of the project contract. [245]

7.29 Evidence presented to the Committee indicated that the guidance on risk management has been useful to agencies with PPP projects, but updating the guidelines may be timely.[246]

7.30 Professor Graeme Hodge reflected concern that the process of forecasting and costing risk was inadequate:

> It is amazing to me to see how project risks are estimated and projected. They are done in a workshop environment; people make them up next to a whiteboard. It is really very amateurish the way that we go about public risk at the moment, although government pays real money for these risks.[247]

7.31 The submission from Unions NSW provided a number of criticisms. It claimed that the *Working With Government* Guidelines:

- Fail to incorporate risks of the private sector partner in the same way they are considered in the Public Sector Comparator (PSC);
- Fail to explore the potential for private sector partners to earn excessive profits, which may represent missed opportunity for the Government;

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[242] Mr Glenn Monckton, Transcript of Evidence, 17 February 2006, p 9. See also Mr Tony Poulter, Transcript of Evidence, 16 February 2006, p 29

[243] Department of Treasury and Finance (Victoria), *Partnerships Victoria: Standard Commercial Principles*, June 2005; see also NSW Treasury, submission No 24, p 31

[244] *Infrastructure & Privatisation Report*, 10 May 2006, available from http://www.lgcentre.com.au. Accessed 17 May 2006.

[245] NSW Treasury, submission No 24, p 33

[246] Mr Bob McGregor, Transcript of Evidence, 17 February 2006, p 9

[247] Professor Graeme Hodge, Transcript of Evidence, 2 December 2005, p 16

- Fail to consider the risk of Government being forced to pay compensation should there be a need to upgrade public sector infrastructure; and
- Allow no flexibility to adjust to changed circumstances during the term of the contracts, resulting in the Government losing control of the standard of service.[248]

7.32 The Committee accepts the approach to risk allocation had been 'learn-as-you-go' and further development of the process will improve overall results over time. One example of the evolving approach is the 'New Schools Phase 1', where the Government deviated from the accepted practice of transferring to the private sector all interest rate risk after financial close. The change in policy reflected the long-term view that it would be cheaper for the Government to carry interest rate risk in conjunction with managing overall State debt.[249]

7.33 The NSW Treasury submission to the Committee explained the decision in this case:

> …it was determined that it could actually be cheaper in the long run for the Government to bear some of the interest rate risk itself, in conjunction with its management of the overall State debt… (T)he Government is now willing to consider a number of options for sharing of interest rate risk in (PPPs).[250]

7.34 The process of risk allocation and management has evolved, but there is room for the process to be better understood. Optimal allocation of risk has clearly improved the environment in which PPPs are negotiated and improved overall results for the community. A significant step forward would be made in NSW through the release of a local version of standard commercial principles on PPPs. The Committee urges NSW Treasury to complete this document as soon as possible. It is also important for agencies to have opportunities to share knowledge related to risk allocation and management. Agencies new to the process should have the advantage of accessing all public sector experience.

7.35 The Committee is supportive of the current practice of risk assessment and analysis for PPP projects, chiefly through the conduct of risk workshops involving partners in the project. It is important that all risks and their cost implications are properly identified, understood and appropriately allocated and that information about the workshop outcomes is properly communicated.

RECOMMENDATION 14: That NSW Treasury continue to review the process by which project risks are currently formulated to ensure the Government maximises value for money.

[248] Unions NSW, submission No 13, p 73
[249] NSW Treasury, submission No 24, p 35
[250] *ibid*, p 35

Chapter Eight - Knowledge Management

8.1 This Chapter addresses the term of reference about the extent of opportunities to share knowledge across and between agencies.

8.2 The Committee received mixed opinions about the capacity of the public sector in NSW to properly manage PPPs. These, in part, relate both to building the capacity of agencies and their sharing of knowledge about lessons learned from PPP management.

8.3 Mr David Hudson, Vice-President of the Australian Constructors Association told the Committee:

> You ask the question, does the public sector have the capacity? I have got to say: yes. I deal with the public sector quite a lot. It is staffed by very competent people, very astute people, often driven to do a good deal for the Government in the same way people here are looking to protect their company, and they, of course, have access to a bevy of consultants who are very, very sharp. … The balance of power, I would say, is with the Government, not with the contractor. The Government conceives the deal, it sets the rules for the deal and it actually has the power of award of the deal and there is competition.[251]

8.4 However, there was also a good deal of concern expressed in general about skills across agencies to effectively manage PPPs. The Auditor-General, Mr Bob Sendt, indicated that this was related to the infrequency of PPP projects undertaken by agencies:

> I had concerns that many agencies get involved in these projects once in a decade or less frequently, and they do not have the in-house skills … but the RTA, because it has a regular role in these types of projects, seems to have developed some level of in-house expertise that it is perhaps better able to match it with the private sector.
>
> For other agencies, I think there is a real skills gap. There is a difficulty in contracting in advice from the private sector because quite often all of those who might give advice are tied up with one of the consortia who are bidding.[252]

8.5 Mr Peter Hicks, Corporate Manager, Infrastructure and Investment, Leighton Contractors, noted that, in the case of the RTA, it had a team of people dedicated to the job of interacting with the private sector on a number of PPP projects, such that:

> they were the same people learning themselves and building incrementally on that … and there was a consistency.[253]

8.6 In its submission, Infrastructure Partnerships Australia (IPA) indicated that private sector parties had experienced delays and increased costs 'due to the lack of experience and expertise on the government side of the transaction'. It added:

> It appears that expertise is diluted within the public sector.[254]

[251] Mr David Hudson, Transcript of Evidence, 18 November 2005, p 4
[252] Mr Bob Sendt, Transcript of Evidence, 18 November 2005, p 37
[253] Mr Peter Hicks, Transcript of Evidence, 16 February 2006, p 6
[254] Infrastructure Partnerships Australia, submission No 21, p 4

8.7 The Committee was also concerned about a generally expressed view that because the private sector was more deft and better able to remunerate its project managers, its capacity to negotiate deals would always 'outdo' the public sector. Mr Dennis O'Neill, Chief Executive Officer of the Australian Council for Infrastructure Development said that the answer to keeping skills within government was to:

> … pay for it. It just requires the will to say: What are the skills we need, what is the market price for those skills, what training and other incentive frameworks do we acquire within the context of public sector employment, be it on contract or be it direct, to get the right skills in place?[255]

8.8 Mr Tony Poulter, Project Finance Adviser, PricewaterhouseCoopers, told the Committee that the level of expertise in agency PPP teams was growing:

> I do not think we are yet at the level where you would say it is adequate in every agency that might be considering PPPs. I think that is inevitable. It is part of a learning curve. … I think it is being addressed in some ways by bringing expertise into the central agencies, particularly of the Treasury and the Infrastructure Implementation unit, and I think that is the right thing to do. I think a little more could be done by way of having secondments into the public sector … which has succeeded in other jurisdictions.[256]

A Central PPP Unit?

8.9 The Committee discussed the concept of developing a central unit, separate from but related to NSW Treasury, tasked with assembling the skills required to negotiate and provide management advice for PPPs. It considered whether such a unit could also assist in the sharing of knowledge about PPP management across agencies and disciplines. The Committee asked the question as to whether a model for the establishment of this unit could be similar to that of PartnershipsUK. It was felt that a PartnershipsUK model could also have implications for broader issues around coordination of PPPs. These issues are discussed in Chapter Eleven.

8.10 PartnershipsUK has a mission of working with and for the public sector to:

> support and accelerate the delivery of infrastructure renewal, high quality public services and the efficient use of public assets through better and stronger partnerships with the private sector.[257]

8.11 PartnershipsUK evolved from and replaced the Treasury Taskforce, initially established to be the central focus of all PFI activities across the UK Government. It is seen as a body with the key commercial skills to improve the process of planning, negotiating and completing PPPs on equal terms with the private sector. It is, itself, regarded as a PPP.[258]

8.12 The Committee received a mixed response to the concept of a model similar to PartnershipsUK for NSW. Some parties indicated that such a model was unnecessary, as the required capacity existed either in NSW Treasury or within individual agencies. NSW Treasury indicated to the Committee that it serves as the central repository of information about PFPs in NSW, in terms of technical aspects, the Public Sector

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[255] Mr Dennis O'Neill, Transcript of Evidence, 18 November 2005, p 26

[256] Mr Tony Poulter, Transcript of Evidence, 16 February 2006, p 27

[257] www.partnershipsuk.org.au

[258] Allen, Grahame, *The Private Finance Initiative (PFI),* Research Paper 01/117, House of Commons Library, December 2001, pp 16, 17

Comparator and project management structures. NSW Treasury seeks to use this information to develop a common approach between agencies around procurement.[259] In evidence to the Committee, Mr John Pierce, Secretary of NSW Treasury said that while there may be an advantage to the private sector of one central agency negotiating contracts in terms of the 'deal flow', for service provision agencies:

> it is very important to us that the agency that has specified these are the services that we want and has to manage the contract over the longer period of time is deeply involved in the process. They have to take ownership of it if they are going to take ownership of the outcomes, the services being provided and have the commitment of the appropriate skills and resources to manage the contract over a period of life.[260]

8.13 Mr Bob McGregor, Deputy Director-General, Department of Health, indicated that, as a large procurer of projects, the Department considered that it is appropriate for it to retain its own in-house expertise. The Department does, however, work with NSW Treasury on procurement and implementation issues.[261]

8.14 Mr Jim Barrett, Executive Director of the Australian Constructors Association told the Committee that although the ACA had previously argued for a similar body to PartnershipsUK, with independent private sector expertise to facilitate deal flow:

> I wonder actually whether we may have gone a bit past that because I think there is probably quite a bit of experience in the public sector now to handle it.[262]

8.15 However, he added:

> If it is an issue of giving the public sector confidence that there is extra expertise that can help facilitate the development of these projects …It is certainly something we would support.[263]

8.16 In its submission, Planning Workshop Australia argued for a model similar to PartnershipsUK. It suggested that the NSW Government does not have a 'critical mass' of PPP projects and that:

> This 'critical mass' of projects and continuous deal flow can be substantially improved at State level by establishing a separate statutory entity with a political mandate and legal authority …[with a] significantly greater probability of harnessing and bringing together high level financial and technical expertise within one area of state government.[264]

8.17 In its submission, Maddocks Lawyers also argued for a body in NSW similar to PartnershipsUK:

> NSW needs a properly empowered government taskforce or agency to develop policy and provide assistance to procuring authorities.[265]

8.18 Similarly, IPA stated that:

> There is merit in the establishment of a Centre of Excellence and expertise within government which could act on behalf of agencies to operate PPP transactions.[266]

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[259] NSW Treasury submission No 24, p 37
[260] Mr John Pierce, Transcript of Evidence, 2 December 2005, p 32
[261] Mr Bob McGregor, Transcript of Evidence, 17 February 2006, pp 12, 13
[262] Mr Jim Barrett, Transcript of Evidence, 18 November 2005, p 5
[263] *ibid,* p 5
[264] Lyneham, Prof Sonja, Planning Workshop Australia, submission No 20, p 4
[265] Maddocks Lawyers, submission No 9, p 2

8.19 IPA suggested that a Centre of Excellence would improve capability and capacity in both the public and private sectors, but added the important proviso that line agencies should be involved in the setting of public policy objective.

8.20 After examining this evidence, the Committee therefore concludes that while there would be some advantages to incorporating elements of the PartnershipsUK model into a NSW framework for the management of PPPs, this could be achieved without creating a separate, central unit. However, the Committee felt that there should be a clarification of the multiple, and potentially conflicting, roles currently played by NSW Treasury in relation to PPPs.

8.21 The Committee heard that one concern about this in relation to the accountability of PPPs was that, in the absence of other arrangements, State Treasuries have been charged with the responsibility of 'taking the running' on PPPs along with their other roles:

> [Treasury] are really the sole agenda setters, the rule makers, the implementers, the benefactors, the regulators and evaluators of PPP type activities.[267]

8.21 Professor Graeme Hodge told the Committee that:

> there is an overriding onus on government to build up its own capacity to separate out on the one hand advocacy for these deals, being the project proponent, and being a steward in the public interest…[268]

RECOMMENDATION 15: That the NSW Government take account of the experience of the UK Government and optimise the expertise currently available for PPP management in the NSW Treasury and other key agencies by incorporating elements of project planning and facilitation expertise into a NSW PPP framework.

Knowledge-Sharing in Practice

8.22 Regardless of the form or structure finally decided upon for PPP project planning and facilitation elements, the Committee also believes that it will be critically important for a fully supported program of knowledge sharing to be implemented across and within agencies regarding PPP project management. In its submission, NSW Treasury indicated that the exchange of knowledge [on PFPs] is encouraged and facilitated. It said, however:

> there may be limited opportunities for exchange between agencies during the course of project development, particularly in regard to project details that are commercial in confidence.[269]

8.23 The Committee noted that NSW Treasury also retains a central repository of materials upon which agencies can draw to assist in their better management of PPPs. In its submission, NSW Treasury noted that this includes:

- technical aspects such as the Public Sector Comparator and risk assessment;
- contract documentation;

[266] Infrastructure Partnerships Australia, submission No 21, p 4
[267] Professor James Guthrie, Transcript of Evidence, 16 February 2006, p 11
[268] Professor Graeme Hodge, Transcript of Evidence, 2 December 2005, p 18
[269] NSW Treasury, submission No 24, p 36

- advice on setting up of the procurement framework and strategy (eg, project management structures).[270]

8.24 The Committee observed that these documents also include the Department of Education and Training's Post-Implementation Review (PIR) of the New Schools Privately Financed Project. The PIR includes lessons learned from the first phase of the Project, and includes a series of recommendations to improve subsequent PPPs.

8.25 In its submission, PricewaterhouseCoopers suggested that the Government could assist knowledge sharing between agencies by facilitating training courses for 'the next generation of PPP project managers and directors as well as by encouraging more secondments for the private sector to central and line agencies.[271]

8.26 HM Treasury, in the UK, recently announced that the UK Government will:

> develop a secondment model so that public servants with experience of complex procurements are retained and deployed on projects across the public sector rather than their skills being lost[272]

8.27 The Committee observed limited opportunities to share knowledge or lessons learned among agencies through discussion in the NSW public sector. Although they work with NSW Treasury during the procurement process, perversely, agencies seemed more prepared to share knowledge with similar organisations or industry sectors in other Australian jurisdictions than with other NSW agencies. This was indicated in evidence provided by both the Department of Education and Training and the Department of Health. [273] However, Mr Ron Quill, General Manager, Asset Solutions, Sydney Water Corporation, told the Committee that Sydney Water shares the knowledge it has gained from alliancing projects with agencies such as NSW Treasury and the Department of Commerce, as well as in various fora in and around Australia.[274]

8.28 The Committee believes that, in terms of capacity-building within the NSW Government sector, knowledge-sharing must be more strongly encouraged.

RECOMMENDATION 16: That knowledge sharing between agencies is more effectively supported by senior management in agencies as a means of increasing level of skill regarding PPP management, including:

- library resources (including on-line resources)
- periodic workshops to discuss good practice and shared learning, and
- programs of secondment from other agencies and/or the private sector.

8.27 Agencies also indicated how lessons from PPP management had positively influenced other aspects of their operations. Officials from the Department of Health indicated

[270] NSW Treasury submission No 24, p 37
[271] PricewaterhouseCoopers, submission No 25, pp 2, 3
[272] HM Treasury, *PFI: strengthening long-term partnerships*, March 2006, p 11
[273] Department of Education and Training, evidence, 17 February 2006, p 4 and Department of Health, Transcript of Evidence, 17 February 2006, p 12
[274] Mr Ron Quill, General Manager, Asset Solutions, Sydney Water Corporation, Transcript of Evidence, 16 February 2006, p 40

that their experiences with PPP procurement had translated into a 'discipline' for working on conventional procurement processes.[275]

8.28 Several organisations felt that the small size of the PPP market in Australia suggested the need to aim for national coordination of PPP policy and markets. Maddocks Lawyers suggested this could be achieved through 'cooperative federalism'.[276] AusCID recommended that NSW 'look for opportunities to collaborate with other jurisdictions in developing an improved information base':

> There is an urgent need for collaborative strategies and planning by all jurisdictions in support of national outcomes, with appropriate consultative institutional arrangements to reflect the current investment framework.[277]

8.29 In its submission, the South-East Region Training and Enterprise Centre (SERTEC) also recommended a national forum, but in the form of a non-profit, non-partisan body involving membership from both the private and public sectors.[278]

8.30 The Committee noted the work of the National PPP Council, a forum comprising all Australian Governments involved with PPPs. The Council was convened to promote consistent approaches to project development (including standardised risk allocation models, tendering processes and interactive bidding processes), assist staff development through knowledge-sharing and training and pool resources and experiences for problem-solving.[279] The Council's website documents only one meeting, although the Committee understands that subsequent meetings of the forum have occurred. The website also lists PPPs being undertaken by respective jurisdictions. The listing is known as the *Pipeline of PPP Projects*.

PPP Knowledge-Sharing in Local Government

8.31 The Committee also heard about concerns that the Local Government sector may be ill-equipped to manage PPPs. The United Services Union told the Committee that some Councils feel pressured to go down the PPP path because of inadequate funding to meet expanding community need. It indicated that some Councils turn to PPPs as a panacea for the provision of infrastructure and facilities without necessarily considering the risks or consequences.[280]

8.32 In its submission, Maddocks Lawyers said:

> Local government, typically, lacks the resourcing and expertise demanded of a PPP project. Accordingly, there is a strong need for policy guidance and support which is currently absent.[281]

8.33 In part, the concern about policy guidance for Local Government is being addressed by the recent introduction of mandatory guidelines governing the decision by a Council to enter into a PPP. The applicability and adequacy of the guidelines may take some time to determine, however. The Committee heard of doubts regarding the resourcing

[275] Department of Health, Transcript of Evidence, 17 February 2006, p 15
[276] *ibid,* p 3
[277] Australian Council for Infrastructure Development, submission No 7, p 19
[278] SERTEC submission No 14, p 6
[279] www.pppforum.gov.au/vision
[280] United Services Union submission No 10, p 4
[281] Maddocks Lawyers, submission No 9, p 4

of the Department of Local Government to provide the necessary support for its responsibilities in response to the PPP legislation.[282] Mr Garry Payne, Director-General of the Department of Local Government, indicated that the Department's role would be merely to check that a potential PPP project had followed all of the processes set out in the guidelines, and noted that the Department has a 'small allocation' to engage expert consultants to assist with matters such as risk assessment, when required.[283]

8.34 The Committee heard evidence that there are opportunities for personnel from one Council with experience in managing PPPs to share their knowledge with other interested Councils.[284] Mr Garry Payne also commented that the new guidelines could be applied in other jurisdictions, particularly within Australia.

8.35 However, in its submission, Unions NSW expressed concern that the development of 'silos' in Local Government and in State Government agencies has meant that information is often not shared, and dialogue between departments about matters which should be part of an integrated whole does not occur.[285] This is also of concern to the Committee, which believes that, just as is recommended for State Government, at Local Government level, senior management will need to be strongly engaged to promote shared learning about PPP management issues.

8.36 There is the suggestion that Local Government bodies require the same type of project management expertise as that offered to central government agencies by bodies such as PartnershipsUK. In the UK, 4Ps is the project support expert for Local Government PFI and PPP procurements. It works with local authorities to help build project management capacity. This capacity includes skills development and training, provision of high quality expert technical guidance and Gateway Reviews at key decision points, conducted by independent, experienced peers.[286] Maddocks Lawyers told the Committee that 4Ps had helped to achieve standardisation of policy and contractual materials at a Local Government level in the UK and that such a model could facilitate knowledge sharing between local authorities in NSW.[287]

8.37 The Committee believes that may be scope for the State Government to explore in consultation with Local Government, the adoption of a model for Local Government

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[282] Mr Christopher Kelly and Mr David Baird, Partners, Maddocks Lawyers, Transcript of Evidence, 2 December 2005, p 4, United Services Union transcript of Evidence, 18 November 2005, p 32
[283] Mr Garry Payne, Director-General, Department of Local Government, Transcript of Evidence, 16 February 2006, pp 21, 22
[284] *ibid,* p 24
[285] Unions NSW, submission No 13, pp 75, 76
[286] www.4ps.gov.uk
[287] Maddocks Lawyers, submission No 9, p 4

incorporating peer support, systems support and sharing of expertise similar to that operated by 4Ps in the United Kingdom.

RECOMMENDATION 17: That the Government consider adoption of a support structure for PPPs managed by Local Government along the lines of that developed and operated by 4Ps in the United Kingdom, which incorporates peer support, systems support and sharing of expertise.

Chapter Nine - Evaluation and Monitoring of PPPs

9.1 The inquiry's Terms of Reference include an examination of government models for evaluating and monitoring private investment in public infrastructure. The models for evaluating the decision to commence a project are discussed in Chapter Four. This Chapter addresses the need to evaluate and monitor the performance of PPPs over their whole life.

9.2 As indicated earlier in this Report, some witnesses felt that, although there was intense scrutiny in the period leading up to the procurement decision, there was insufficient attention to the question of value for money over the life of a PPP project. Professor James Guthrie told the Committee:

> There is very little attention being given to post-contract stage and especially PPE [post-period evaluation]. … what we think we need to focus our minds to is not necessarily the pre-decision specifications and the pre-decision contracts and the performance criteria which is publicly available, the financial modelling … there has been a lot of attention given to that … what we are really interested in is the outcomes … the evaluation of effectiveness, the understanding of value for money and the managing and monitoring and evaluation of post-contract activities, and then hopefully forming some view as to success or not. I do not think success can just be measured in terms of was it built on time, or was it built quicker than time, or was it built on budget. That to me is only part of the PPP game.[288]

9.3 Professor Guthrie and Ms Linda English of the University of Sydney have been undertaking a project on PPP evaluation.

9.4 Mr Gregory Campbell, Partner, Maddocks Lawyers indicated support for the University of Sydney project to investigate, in relation to PPPs:

> … how well they are being administered, [and] whether they have really added value.[289]

9.5 In its submission, NSW Treasury stated that its role in relation to monitoring of a PPP project ceases at financial close, when the service agency takes responsibility for an internal project or contract management.[290]

9.6 Other forms of review that may ensue include a Post Implementation Review (required as part of the *Working with Government* Guidelines) and the potential for performance reviews, such as those undertaken by the Auditor-General.

9.7 Some submissions suggested the need for the Auditor-General to have specific or strengthened powers to audit PPP projects, including auditing over the long life of a project or projects. Guthrie and English noted:

> There is some evidence that auditors-general have made attempts to monitor and evaluate PPPs. However, there has been no systematic monitoring and evaluation of PPPs by any Australian auditor-general.[291]

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[288] Professor James Guthrie, Transcript of Evidence, 16 February 2006, p 10
[289] Mr Gregory Campbell, Transcript of Evidence, 2 December 2005, p 1
[290] NSW Treasury submission No 24, p 25
[291] Ms Linda English, University of Sydney, submission No 4, p 2

9.8 Professor Hodge suggested there is a need for independent scrutiny to ensure that 'precise deals are adhered to over the whole length of the contract'.[292]

9.9 Maddocks Lawyers indicated that PPPs should be submitted to an independent auditor, similar to the process undertaken by the UK National Audit Office.[293] The Committee notes that the UK National Audit Office only audits selected projects.

9.10 The NSW Auditor-General told the Committee that the Audit Office has the powers to conduct ex post performance audits on PPPs. However, given the current scope of work of the Audit Office, some fifteen performance audits per year can be undertaken across the entire spectrum of the public sector, including projects where services may be delivered through PPPs.[294] This would suggest that the scrutiny of PPPs by the Auditor-General will not occur in the comprehensive manner suggested to the Committee by some parties.

9.11 However, some effective assessment can occur. The Committee noted that the Post Implementation Review of the first phase of the New Schools Project contained many excellent recommendations which could inform improved PPP management. It also noted the Audit Office Performance Audit of the same Project, which concluded that the contracts were established and let 'in a way that greatly assists their potential for delivering value for money'.[295]

9.12 The Committee noted that while the Audit Office Performance Audit of the New Schools Project considered the reporting and monitoring system for the project was thorough and appropriate for the task, it noted:

> it is largely reliant on self-monitoring by the contractor [and] DET will need to carefully oversight and regularly audit the effectiveness of the system.[296]

9.13 The Audit Office also observed that DET had not as yet completed work on a Contract Administration Manual, although the facilities are now operational. It considered that an appropriate process of review needs to be instated, separate from the day-to-day function of contract administration needs.[297] The Audit Office made recommendations along these lines to DET and NSW Treasury. Those relating specifically to evaluation are as follows:

- DET needs to expedite completion of the Contract Administration Manual. The Manual also needs to be regularly reviewed and updated during the 30 year life of the *New Schools Privately Financed Project*
- DET and Treasury need to ensure that the cross-agency *Project Management Steering Committee* can oversight and report on whether the *New Schools Privately Financed Project* continues to offer value for money
- DET needs to work with Treasury to design an appropriate evaluation process to review whether the project continues to provide value for money

[292] Professor Hodge, Transcript of Evidence, 2 December 2005, p 17
[293] Maddocks Lawyers, submission No 9, p 2
[294] Mr Bob Sendt, Auditor-General, Transcript of Evidence, 18 November 2005, p 36
[295] Audit Office of NSW, *The New Schools Privately Financed Project,* Performance Audit, March 2006, p 2
[296] *ibid,* p 5
[297] *ibid p 5*

- Treasury needs to update and expand its *Guidelines for Privately Financed Project* in order to continue to ensure a consistent, transparent and accountable approach to PFPs in NSW.[298]

9.14 The Committee concurs with these recommendations. Notwithstanding the benefits to DET through their implementation, the Committee felt that for whole of government benefit there needs to be either a change in priorities or some direction given to agencies about the importance of monitoring and evaluation within an overall PPP framework. This would help achieve a consistent focus on evaluation and monitoring as an essential tool in informing PPP management and delivery.

9.15 The Committee felt that a need for a more systematic approach to post period evaluation for PPPs would assist scrutiny over the whole life of a PPP project, allowing for comparison across projects and administrative jurisdictions and assisting practical application of 'lessons learned'.

RECOMMENDATION 18: That the Government discuss processes for implementing a more systematic approach to post period evaluation for PPPs to allowing for comparison across projects and administrative jurisdictions and to assist in practical application of 'lessons learned', thereby adding to 'value for money'.

9.16 Evidence provided by Mr Cush, of the Department of Education and Training, indicated that the Department experienced no additional monitoring costs in relation to the New Schools Project.[299]

9.17 Notwithstanding the observation of the Department about the cost of monitoring and evaluation of PPPs, the Committee believes it is critically important for all agencies to be aware of the importance of monitoring and evaluation the ongoing delivery arrangements of PPPs in NSW, to ensure that value for money is being achieved.

RECOMMENDATION 19: That in the process of costing a project to be delivered as a PPP, agencies and NSW Treasury should give adequate attention to ensuring that transaction costs, particularly the costs of monitoring and evaluating delivery arrangements are accounted for, over the full life of the project.

[298] *ibid,* p 3
[299] Mr Michael Cush, General Manager, Asset Management, Department of Education and Training, Transcript of Evidence, 17 February 2006, p 8

Chapter Ten – Public Administration of PPP Issues

10.1 In the course of the inquiry, the Committee heard evidence about a range of issues that impact upon the public administration of PPPs. Some of these have been addressed elsewhere in the Report, in terms of the way they contribute to a stronger PPP framework. This Chapter addresses a range of other PPP administrative issues.

The Culture of the PPP Market

10.2 The Committee heard evidence about a negative 'culture' in the PPP market, relating principally to untenable risks being taken on by private sector parties in the bid process. Mr Gary Sturgess, Executive Director, Serco Institute, spoke about the potential for a destructive element in the PPP market whereby governments seek to transfer too much risk to the private sector, where private sector bidders take on risks they cannot manage and where predatory behaviour is allowed to flourish.[300]

10.3 The Auditor-General, Mr Bob Sendt, acknowledged the potential for the process to fail and for Government to have to intervene to continue 'essential public service', but indicated that studies show the public sector is understanding risk better.[301]

10.4 However, Mr Dennis O'Neill, CEO, Australian Council for Infrastructure Development, told the Committee that while there are clear examples where the commercial outcomes were 'deemed to be skewed in favour of one side or the other', he believed that there were now matching skills between the sectors in the negotiation process which relegated those examples to 'ancient history'.[302]

10.5 Some critics of PPPs remain unconvinced, arguing that the PPP market is predicated upon and driven by private sector interests, the management expertise drawn primarily from the private sector and the processes biased in favour of the private sector. Professor Quiggin of the University of Queensland suggests that a crucial problem, at least in the political rhetoric surrounding deals, is an unfulfilled expectation on the part of the public parties to agreements that the term 'partnership' implies:

> a relationship between specific parties, who can be assumed to operate on shared understandings of mutual benefit, rather than relying primarily on written contracts.[303]

10.6 Professor Quiggin illustrates how the contractual basis of PPPs is more favourable to private sector interests than to governments, in terms of legal commitment to the deal, income flows and obligations, bundling of contracts, negotiation of service contract arrangements, denial (to the government) of new entrants to the market and, often, the transfer of demand risk to the private sector.[304]

10.7 Professor Jean Shaoul says that, in the United Kingdom, the Value for Money (VFM) appraisal methodology established by the Treasury for PFIs is not neutral:

[300] Mr Gary Sturgess, Executive Director, SERCO Institute, Transcript of Evidence, 19 October 2005, p 5
[301] Mr Bob Sendt, Auditor-General, Transcript of Evidence, 18 November 2005, p 39
[302] Mr Dennis O'Neill, CEO, AusCID, Transcript of Evidence, 18 November 2005, p 26
[303] Professor John Quiggin, submission No 16, p 16
[304] *ibid,* pp 16, 17

> … but is itself biased in favour of the private sector option and has important wealth distributional implications.[305]

10.8 Professor Shaoul also notes that PartnershipsUK, charged with the mission of helping the public sector deliver 'fast and efficient development and procurement of PPPs' is majority-owned by:

> private sector institutions, including financial services companies that have been involved in financing PFI projects and others that have PFI contracts. Furthermore, the majority of the board members come from the private sector, with the public represented by only two non-executive directors and the public interest represented through an Advisory Council. The structure, ownership and control of PUK is important because it sets the PFI agenda and reflects the conflict between policy promotion and policy control acknowledged by the government…[306]

10.9 The Committee noted that PartnershipsUK, itself, identified an issue affecting the culture of delivery of PPPs. It indicated that small to medium contractors are 'hostile' to PFIs, because they are used to old design-build models which were traditionally small and local. Now that the rules exclude any preference for local contractors as a criteria, this has led to specification in the terms of contracts for a contractor to show 'a good-sized local office with a 24 hour presence'.[307]

10.10 In reference to the emergence of cultural issues defined through the relationship of parties to a PPP, PricewaterhouseCoopers indicated in its submission that a key problem in the relationship between parties to a contract arose because of the 'tactics of negotiation on both sides' where:

> Significant negotiation time and fees are still spent on such issues for each project as a result of position-taking by both sides.[308]

10.11 The submission suggests two initiatives as a means of mitigating this problem:

> (i) Publication of updated and detailed guidance on acceptable contract terms, in the light of Victorian Standard Commercial Principles, [and]
>
> (ii) Clear instructions from the State to its advisors, particularly legal advisors, that it expects them to adopt these terms with minimum amendment, rather than cherry-pick provisions from previous contracts.[309]

10.12 Mr Gary Sturgess suggested addressing the issue of a negative culture by promoting better dialogue between the parties to a contract, issuing better project specifications and introducing more standardised terms in contracts.[310] The issue of standard forms and contracts is discussed in more detail below.

10.13 In its submission, SERTEC, a regionally-based employment and business advisory body, also suggested the need for improved dialogue between parties to a PPP and the development of processes that can influence a positive culture of cooperation towards

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[305] Shaoul, Jean, 'The Private Finance Initiative or the public funding of private profit?' in *The Challenge of Public-Private Partnerships – Learning from International Experience,* Graeme Hodge and Carsten Greve, 2005, p 193

[306] *ibid,* pp 193, 194

[307] Appendix Three, p 128

[308] PricewaterhouseCoopers, submission No 25, p 8

[309] *ibid*, p 8

[310] Mr Gary Sturgess, Executive Director, Serco Institute, Transcript of Evidence, 19 October 2005, pp 2-4

shared objectives and improved outcomes in the PPP market. SERTEC proposed that facilitation of this dialogue could occur through a national forum representative of all the parties.[311]

Standard Forms and Contracts

10.14 The Committee received evidence from a large number of witnesses who indicated that the use of standard forms of contracts could assist in reducing bid and project costs. Mr Gary Sturgess, Executive Director, SERCO, told the Committee that standardisation of clauses lowers transaction costs, particularly in terms of savings on lawyers and consultants. He noted, however, that a tradeoff may occur where innovation is sought, and suggested that if this is the objective:

> … there is some benefit in allowing companies to experiment and come up with different proposals…[312]

10.15 On the other hand, Mr Christopher Kelly, Partner with Maddocks Lawyers told the Committee that among the advantages of standard terms and contracts would be:

> … that lawyers would be a little more removed from the process. So rather than spending a lot of time debating about the meaning of particular words or the drafting of particular clauses, one could instead focus on more important parts of the transaction, and particularly commercial aspects and indeed the specifications, which are of course what set out the services to be provided.[313]

10.16 Mr Kelly also indicated that a disadvantage of standardisation may be a loss of flexibility, particularly on the part of the private finance market.[314]

10.17 HM Treasury, in the UK, has determined that the process of standardising PFI contracts:

> helps spread best practice, improving PFI procurements across the public sector, and reduces the length and cost of PFI procurement.[315]

10.18 However, Professor Graeme Hodge told the Committee that he was not convinced that standardised contracts were a solution. He indicated that while standardised contracts would help understand the deal more quickly, the more important question was one of ensuring that there was an authoritative and independent body which:

> evaluated the PPP route in totality, both including the deal that is done as well as the future transaction costs that go on, both inside the government sector as well as questions of taxation and how funds are being funnelled through various overseas channels.[316]

[311] SERTEC submission No 14, pp 3-6
[312] Mr Gary Sturgess, Transcript of Evidence, 19 October 2005, p 2
[313] Mr Christopher Kelly, Transcript of Evidence, 2 December 2005, p 2
[314] *ibid*, p 2
[315] HM Treasury, *PFI: meeting the investment challenge,* July 2003, p 9
[316] Professor Graeme Hodge, Transcript of Evidence, 2 December 2005, p 19

10.19 The Committee heard that NSW Government agencies, such as the Department of Health, use standard contracts and have found these to be most effective.[317]

RECOMMENDATION 20: That NSW Treasury expedite the use of standard forms and contracts for PPPs.

Alliancing

10.20 A project delivery mechanism which presented some aspects of desirable elements of partnership is the alliancing model. It was described to the Committee as a collaborative and inclusive process which enables parties to share the development of project objectives, KPIs, risks and rewards, and which encourages problem-solving.[318] While not strictly a PPP, the Committee was told about benefits from the lessons learned through alliancing both within Australia and internationally.

10.21 The Australian Constructor's Association described alliancing as a 'relationship-based approach' to procurement. Mr Jim Barrett, Executive Director of ACA said:

> Alliances have a much greater investment [by] the parties up front and they are not a model that you would use every other day, but for projects where there are high risks, a lot of unknown elements, that there are very sharp time lines … the client and the contractor can work together, perhaps with their consultants in a team, so there is a much greater emphasis on risk sharing through the alliance. It is a formal structure but it is a formal structure that actually puts everyone in the same team sharing the unknowns together, and it has been a very successful procurement strategy.[319]

10.22 One of Sydney Water's alliancing projects, the Northside Storage Tunnel Alliance, indicated just how it perceived the working relationship, through its commitment to the following alliancing principles:

- Act in a way that is 'best for project';
- Build and maintain a champion team, with champion leadership. Which is integrated across all disciplines and organisations;
- Commit to a no-blame culture;
- Honour our commitment to one another;
- Use breakthroughs and free flow of ideas to achieve exceptional results in all project objectives;
- Commit corporately to openness, integrity, trust, cooperation, mutual support and respect, flexibility, honesty, and loyalty to the project;
- Outstanding results provide outstanding rewards;
- Deal with and resolve all issues within the Alliance;

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317 Mr David Gates, Director, Asset and Contract Services, Department of Health, Transcript of Evidence, 17 February 2006, p 15

318 Australian Constructors Association, *Public Private Partnerships: Putting Guidance into Action*, p 18

319 Mr Jim Barrett, Executive Director, Australian Constructors Association, Transcript of Evidence, 18 November 2005, p 8

- Spread the Alliance culture to all stakeholders; and
- Encourage challenging 'business as usual' behaviours.[320]

10.23 The Committee also received evidence from Mr Ron Quill, Sydney Water, who said:

> In terms of innovation … particularly in alliances … what we have found is that the private sector have brought to bear methods and systems and also some technologies that they have, where they have been able to increase the efficiency at which projects have been delivered and also reduce the risks particularly of various elements of project delivery.
>
> … I should refer to some outstanding results in regard to safety. One of our alliance projects won a national safety award.[321]

10.24 The Committee acknowledges that the alliancing method would lend itself only to certain projects, but also feels that it offers some important 'lessons learned' which could be applied to PPP management in general.

RECOMMENDATION 21: That, in the consideration of procurement options, Government agencies and NSW Treasury explore and assess the advantages offered by a full range of models which can deliver optimum value for money and community benefit, including project alliancing.

Coordination of PPPs

10.25 While NSW Treasury has, to date, played the key coordination role in relation to PPPs, in October 2005, the Premier announced the formation of an Infrastructure Implementation Group (IIG) to oversee major infrastructure coordination and delivery. The IIG will:

- assist reviews of all major infrastructure proposals proposed by State agencies and State Owned Corporations, particularly their deliverability and level of risk;
- liaise with Treasury, Department of Planning and relevant agencies on the delivery of the annual State infrastructure Strategy, including the monitoring and implementation of projects; and
- identify and advise the Premier and IPCC [Cabinet Standing Committee on Infrastructure and Planning] of 'at risk' projects with recommended actions for IIG support and facilitation.[322]

10.26 The IIG role impacts directly upon the coordination of PPPs. NSW Treasury told the Committee that the *Working With Government* Guidelines would need to be updated to take into account these new organisational arrangements and responsibilities.[323]

10.27 Professor David Richmond, who chairs the IIG, indicated that its role would be to assist the Premier in 'unlocking some of the road blocks' occurring in Government and the planning system in relation to infrastructure projects. He noted that the IIG would

[320] Northside Storage Tunnel Alliance, *Project Alliancing: The Northside Storage Tunnel Approach*
[321] Mr Ron Quill, General Manager, Asset Solutions, Sydney Water, Transcript of Evidence, 16 February 2006, p 39
[322] Ministerial Memorandum 2005-09
[323] Dr Kerry Schott, correspondence to Committee Chair, 13 January 2006, p 2

focus upon facilitation, noting that the central management of PFPs remains, appropriately, with NSW Treasury.[324]

10.28 Commenting upon role definition regarding PPPs, Professor Richmond added:

> The better position, it seems to me, is that the Treasury behaves, as they increasingly are, very much as the Government's banker. When the private sector is putting its proposal in its banker is going through every detail. That is the role that the Treasury plays and then it advises the Treasurer and there is the capability under the legislation that the Premier brought forward last year [*Infrastructure Implementation Corporation Act 2005*] which is really the Infrastructure Implementation Group in a statutory form… if one decided, to actually take over a project and run it centrally. I would tend to use that as a last resort … What you need at the centre is good policies and procedures, updated guidelines and a good Cabinet process to make sure the right questions are asked, both of a policy and of a financial nature.[325]

10.29 Both NSW Treasury and Professor Richmond noted recent changes to the *Environmental Planning and Assessment Act 1979* to facilitate the delivery of PPPs. The NSW Treasury submission notes project approval under the Act requires infrastructure projects to be assessed on their merits, taking into account land use planning and environmental considerations. It states:

> Until the project is approved under the EP&A Act, the design, specifications and costings cannot be clearly specified.[326]

10.30 This process is indicative of time delays for PPPs criticised by private sector partners. The NSW Treasury submission also states:

> The new provisions under Part 3A of the Act provide for early assessment and approval of key project parameters under a concept plan approval. For example, proponent agencies can lodge a concept plan application … Once approved, the agency could then tender for private partners to deliver the project, with the preferred tenderer having to obtain approval for only the details of the project consistent with the concept approval.[327]

10.31 NSW Treasury indicates this approach will have benefits and savings for all parties.

10.32 That view is supported by Infrastructure Partnerships Australia, which said:

> Government must also ensure that it is coordinated in its attitudes towards PPP projects. Situations have arisen in the past of Government sponsored projects be[ing] stymied by action, or lack of action, in areas of the public sector. IPA congratulates the Government on the recent amendments to the Environment Planning and Assessment Act which consolidate decision making responsibilities in respect of major infrastructure development. The abilities for one-stop approvals and concept approvals are very positive actions. Desirably other jurisdictions should follow the NSW example in respect of this legislation.[328]

10.33 The *Review of Future Provision of Motorways in NSW* recommended further improvement in coordination, by indicating that the key phases of the *Environment*

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[324] Professor David Richmond, Transcript of Evidence, 16 February 2006, pp 34, 35
[325] *ibid*, p 35
[326] NSW Treasury submission No 24, p 23
[327] *ibid,* p 23
[328] Infrastructure Partnerships Australia, submission No 21, p 6

Planning and Assessment Act 1979 process should be more aligned with key Government decision-making processes:

> In particular, there must be greater alignment between explicit project objectives and the objectives that the planning process sets out to achieve. This alignment should be assessed initially as part of the business case approval stage, based on the preliminary review of the Minister for Planning, and at each subsequent stage that the BCC [Budget Committee of Cabinet] considers the project. If there is a difference, it should be brought back to Cabinet for reconciliation.[329]

10.34 The Review also proposed agreement at Cabinet level on criteria for environmental and amenity criteria and standards for the construction and operational phases of major infrastructure projects.[330]

10.35 The Committee agrees with the intent of these recommendations, and suggests that they be extended to all NSW PPPs.

10.36 The Committee felt that the streamlining of the assessment process could also assist Local Governments involved in PPPs. It noted that in relation to the assessment of major projects, the Department of Planning has indicated it also seeks to maintain close links with local councils.[331] Mr Ross Woodward, Deputy Director of the Department of Local Government described the Department's role of trying to get local councils to better understand and assess the risks inherent in PPPs. He indicated that, in this regard, the Department's recently-issued guidelines would 'dovetail' with the *Working With Government* Guidelines.[332]

10.37 At the national level, the National PPP Forum involving representatives from Australian jurisdictions meets regularly. One of its initiatives, the National PPP Pipeline, provides an updated list of PPP projects around Australia, listed on relevant websites in each jurisdiction. In NSW, the information appears on the NSW Treasury website. But the Committee notes that very little additional information about the PPP Forum appears publicly. In view of the general call for improved transparency and accountability relating to PPPs, and for the sharing of knowledge about PPPs, publication of the outcomes of PPP Forum exchanges is considered worthwhile.

10.38 NSW Treasury's submission expressed concern about the potential risk of tender collusion because of the concentration of ownership of firms competing for PPPs in Australia. It said:

> … Australia has few large equipment manufacturers and civil construction companies, which presents a risk of tender collusion. This means that the Government must put extra effort into ensuring contestability in tendering processes.[333]

10.39 The Committee notes NSW Treasury's concern and suggests this is an issue central agencies should consider both in terms of probity and coordination.

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[329] Infrastructure Implementation Group, *Review of Future Provision of Motorways in NSW*, December 2005, p 8

[330] *ibid,* p 8

[331] www.planning.nsw.gov.au/assessingdev

[332] Mr Ross Woodward, Deputy Director-General, Department of Local Government, Transcript of Evidence, 16 February 2006, pp 21, 22

[333] NSW Treasury submission No 24, p 20

Opposition to Bid Bonds

10.40 Some commentators expressed concern about the use of tender or bid bonds by governments that are 'callable' if a proponent withdraws from a process. The Australian Constructors Association submission stated:

> ACA members do not regard bid bonds as appropriate. In all cases proponents have clear financial and reputational incentives to complete tenders. In a partnership process this should be regarded as sufficient.[334]

10.41 In evidence to the Committee, Mr David Hudson, Vice-President of ACA, expanded on this view, noting both that contractors have a finite 'pool' of bid bonds, that determines the amount of work they can take on and that, with significant expenditure by private sector partners on the development of a deal:

> … to ask for a bid bond … really is adding insult to injury, certainly when the other side of the deal is to pay for bid costs.[335]

10.42 AusCID and Maddocks Lawyers also referred to uncertainty in the tender process as a factor adding to bid costs.[336]

10.43 NSW Treasury indicated to the Committee there are difficulties in achieving a competitive marketing field in a 'concentrated' Australian construction market, where:

> … [t]he market is characterised by a small number of large contractors with the financial and technical capability to undertake large, complex projects.[337]

10.44 Treasury noted:

> Given these market constraints, the State has been compelled to introduce bidding procedures to ensure there is a competitive process in place.[338]

10.45 However, it also indicated that the NSW Government is aware of the impost of bid costs and is taking a number of steps to reduce these, including:

- Working with other States to develop standard commercial principles;
- Increasing the level of preparatory work prior to bringing proposals to market (including increased technical specification and provision of draft contracts in requests for proposals); and
- For some projects, consideration of a two-stage tender process.[339]

10.46 These efforts notwithstanding, the Committee considers that the use of bid or tender bonds is not appropriate in a PPP environment where true partnership is sought.

RECOMMENDATION 22: That NSW Treasury consider ways of reducing the need for bid bonds for PPPs.

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[334] Australian Constructors Association, submission No 3, p 13
[335] Mr David Hudson, Vice-President, Australian Constructors Association, Transcript of Evidence, 18 November 2005, p 6
[336] AusCID submission No 7, p 20, Maddocks submission No 9, p 3
[337] NSW Treasury submission No 24, p 21
[338] *ibid* p 21
[339] *ibid,* p 22

Re-financing of PPPs

10.47 The Committee is aware that one new area opening up to management scrutiny is that relating to the re-financing of PPP deals. This is of particular interest in the United Kingdom, where many early PFI deals have been or are in the process of being refinanced. The process offers windfall gains for both sectors, which need to be properly managed to ensure a fair share of any gains and, from the public sector perspective, a fair share of gains for public benefit.

10.48 The Committee noted a National Audit Office report which investigated the implications of refinancing in new deals, which have a new requirement for refinancing gains to be shared equally between the public and private sectors. (In existing deals, the private sector agreed generally to provide the public sector with 30 per cent of any refinancing gain). The report found:

- Debt refinancing gains for the government of 137m GBP up to February 2006 from PFIs;
- A decline in refinancing gains since 2004, attributed to increased scrutiny of refinancing arrangements and the private sector being less assured that the public sector will now agree to further refinancings involving significant increased debt;
- A potential shortfall in the estimate of refinancing gains estimated by the Office of Government Commerce;
- Gain sharing occurring generally in line with the voluntary code for sharing of refinancing gains (known as 'the Code')
- Refinancings provide scope for significantly increasing the investor's internal rate of return;
- Some refinancing risks, relating to continuing adherence to the voluntary nature of the Code, as well as variations in the finance market;
- The potential for service related risks, where the acceleration of benefits to shareholders may impact service delivery in the longer term, or where repayment of debt, which has increased through refinancing, is put at risk by poor service performance;
- Certain situations are exempt from gain sharing arrangements, including corporately financed projects, projects where the base case IRR (internal rate of return assumed in the bid) has not been achieved and projects where the contractor bears the risk of increased interest rates following financial close; and
- There is now and emerging secondary equity market in PFI shares.[340]

10.49 PricewaterhouseCoopers indicated that refinancing can occur in a number of ways:

- by extending the contract;

[340] National Audit Office, *Update on PFI debt refinancing and the PFI equity market,* 21 April 2006, pp 3-6

- through bank margins; and
- by adjusting the interest rate.[341]

10.50 Mr Paul Cleal, London-based Partner with PWC, suggested that the degree of interest in refinancing was largely about affordability. He cited the example of Health Trusts in the UK which have incurred large debts and are seeking ways of reducing these - refinancing of their PPP deals is an attractive option. Mr Cleal also indicated that the advantage for banks in the refinancing process is that they are achieving more of a return on advisory fees than on the servicing of debt.[342]

10.51 A report by HM Treasury in the UK recently noted that lending margins for senior debt have fallen, due largely to increased competition between debt providers. The report also says:

> This, together with the willingness of senior debt providers to lend for nearly the full period of the PFI contract, has reduced the likelihood or necessity of refinancing projects later as the benefit has also been captured through the initial procurement process.[343]

10.52 While issues relating to refinancing of PPPs have not yet emerged in the Australian PPP market, the Committee believes that it will be important to monitor developments in the UK and Europe.

[341] Appendix Three, p 125
[342] *ibid,* p 125
[343] HM Treasury, *PFI: strengthening long-term partnerships,* March 2006, p 110

Chapter Eleven - Social and Environmental Impacts

11.1 The Committee heard throughout the inquiry that one of the principal public impacts of PPPs is the difficulty of creating and maintaining public trust. A key lesson to emerge from the UK, and one repeated in many meetings conducted by the Committee delegation, is the view that in spite of many 'successful' PPPs, the community will always recall the PPP which was publicly regarded as a 'disaster.' For instance, Mr Michael Gerrard, Deputy Chief Executive of PartnershipsUK said: 'Public scepticism about PFIs is almost insoluble'.[344]

11.2 The corollary of a perceived lack of trust is a widely-held community perception that PPPs do not adequately address issues of social and environmental concern. This Chapter discusses ways of improving the level of public trust in PPP projects by ensuring the public informed of the full impacts of a project and by encouraging better administrative arrangements to take these impacts into account.

11.3 The Committee delegation heard that the PPP Forum in the UK was created to decrease the suspicion surrounding PPPs. The Forum representatives indicated that, if there are problems 'everyone hears about it'.[345]

11.4 Mr Rick Norment, Executive Director, National Council for Public-Private Partnerships in the USA observed a general resistance to PPPs on the basis that 'profit is evil' or on media reports of private executive excesses.[346]

11.5 Representatives of the International Federation of Accountants indicated that engendering public trust in PPPs required a focus on transparency.[347]

11.6 As the Committee heard during this inquiry these views are also held by some in NSW. The Combined Pensioners and Superannuants Association of New South Wales pointed to the Cross City Tunnel to highlight the dangers of PPPs:

> The tunnel has to be paid for by an unacceptably high toll in order to both reimburse the private consortium that built the infrastructure and assist with generating profit for the consortium. The toll, of course, is in addition to the tax paid by motorists who are under the assumption that at least part of their tax dollars go to roads and highway maintenance. This has particularly angered Sydney road users as the roads are a vital part of state's infrastructure – not to generate profits for private enterprise. The NSW public is being increasingly asked to accept PPPs as a way of the future.[348]

11.7 The United Services Union also referred to community concerns about accountability, the need for transparency and openness, public interest and equity issues relating to PPPs, particularly with regard to the Cross City Tunnel, noting:

[344] Appendix Three, p 128
[345] *ibid,* p 119
[346] *ibid,* p 131
[347] *ibid*, p 137
[348] Combined Pensioners and Superannuants Association of New South Wales, submission No 5, p 2

> While some of these issues are being sorted out between the government and the tunnel operators, it is a salient reminder that PPP[s] are often fraught with unanticipated outcomes with consequences which have economic, social or political dimensions.[349]

11.8 Recently, the community forum '10,000 Friends of Greater Sydney' sponsored a survey of 400 people, in which respondents indicated support for improved public transport as the preferred alternative for transit and for limiting traffic. The *Sydney Morning Herald* reports that three quarters of respondents indicated that the Government should borrow money for improving public transport, rather than enter into PPPs or redirect funds from elsewhere.[350] The tone of the article suggests public scepticism about PPPs remains high.

11.9 However, the Committee also heard evidence suggesting some PPP projects which are initially criticised are ultimately regarded as successful. As noted above, Mr Peter Hicks, Corporate Manager, Infrastructure and Investment, Leighton Contractors told the Committee:

> In our experience, the majority of projects are successful … Spencer Street in Melbourne [railway station upgrade] was a commercial disaster for us, but I don't know if you have visited Melbourne lately, but it is just fantastic. It is the best railway station in Australia and we have stayed there, stood behind it, spent the money and done the work. It is not a disaster. From a Government point of view, it is fantastic. They have achieved the best railway station in Australia.[351]

11.10 The Committee considered the factors that may affect public trust. It believes that these include:

- a desire for appropriate accountability and transparency regarding the PPP process;
- ongoing need for independent assessment of purported benefits from and costs of PPPs, including equity considerations and costs to consumers; and
- policy discussion focussed on PPP project outcomes which are delivered not at the expense of accepted community amenities or freedoms.

11.11 In relation to community consultation and involvement in individual PPPs, the *First Report* of the Joint Select Committee on the Cross City Tunnel reached some conclusions about that PPP project, identifying shortcomings in both informing the community and providing avenues for inclusive consultation. It recommended a Government review of existing consultation projects in relation to major infrastructure projects, development of plain English guides for the community to assist in defining its expectations and comparative study of best practice consultation methods.[352]

11.12 The Committee concurs that these measures would help to improve dialogue regarding PPPs, and hence impact upon public trust.

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[349] United Services Union, submission No 10, p2
[350] http://www.smh.com.au/news/national/just-fix-it-mounting-anger-over-transport/2006 ,15 May 2006
[351] Mr Peter Hicks, Corporate Manager, Infrastructure and Investment, Leighton Contractors, Transcript of Evidence, 16 February 2006, pp 5, 6
[352] Joint Select Committee on the Cross City Tunnel, *First Report: Cross City Tunnel,* February 2006, p 107

11.13 As indicated above, there is ample evidence to illustrate widespread public scepticism about the use of PPPs by governments. In addition to improved consultation measures, the Committee believes that the generation of trust about the public impact of PPPs would be enhanced if the Government better articulates and defines the role of private investment in public infrastructure. Mr Gary Moore, Director of the Council of Social Service of New South Wales (NCOSS) told the Committee:

> NCOSS's main concern with PPPs is the effect on disadvantaged people and communities, which we believe is not often considered in the PPP process. We believe that certain services are the core responsibility of government and not the private sector. In some instances, there may well be a valid role for the private sector in partnering with government to increase or improve the infrastructure associated with the provision of these services. We think public infrastructure should be considered both an economic asset and a social resource, for example, social housing as State communities, government skills and local resources.[353]

11.14 Mr Moore noted some examples of core government activities, which he suggested should never be delivered through PPPs because of their specialisation and the vulnerability of clients. These included residential out of home care for young people with highly challenging behaviours, disability service group homes, community health facilities, primary health care and juvenile justice.[354]

11.15 Mr Moore also indicated that the current arrangements did not necessarily achieve a fair balance between public good/social needs and private profit in a PPP arrangement.[355]

11.16 Further, Mr Moore noted the potential for 'cherry-picking' by the private sector of the profitable parts of human service provision, and concerns about potential cuts to services in circumstances where there is only a single provider:

> When you have got particularly a monopoly arrangement through a major single PPP contract, where is the independent arbiter looking at the question of service standards?

11.17 Mr David Skidmore, Policy Information Officer, Combined Pensioners and Superannuants Association, also expressed doubt that governments could manage PPPs to safeguard the interests of low income clients and members:

> I think it would be difficult, given the fact that private companies do have to maintain that bottom line and it does seem with PPPs, it is almost as if the Government is there to safeguard so they [private sector interests] can afford to go belly up and pull out of the enterprise and the Government has to deliver the cash to them.[356]

11.18 Professor Hodge told the Committee that there was ongoing concern, which needed to be addressed by governments, that PPPs did not sufficiently look after the 'customers' of PPPs. He said:

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[353] Mr Gary Moore, Director, Council of Social Service of New South Wales, Transcript of Evidence, 18 November 2005, p 10
[354] *ibid*, p 15
[355] *ibid*, p 11
[356] Mr David Skidmore, Policy Information Officer, Combined Pensioners and Superannuants Association, Transcript of Evidence, 18 November 2005, p 17

> Recent history would also suggest that the deals, I suspect, in fact many suspect, have been tilted in favour of the private sector rather than being for the primary benefit of citizens.[357]

11.19 Professor Hodge also indicated that there are few surveys about citizen opinions of PPPs.[358]

11.20 Professor James Guthrie told the Committee that a study of State audits of PPPs in Australia, undertaken by the Faculty of Economics and Business at the University of Sydney, had indicated, not only a lack of public accountability, but a lack of attention to service provision arrangements in the contract.[359]

Tolls and Fees

11.21 A direct public impact of PPPs is the impact of service fees and charges paid by customers. Several parties raised with the Committee concerns about the equity of user charges applying universally, and the consequent effects on low income earners. The Combined Pensioners and Superannuants Association told the Committee that the combination of the Cross City Tunnel toll and changes to feeder roads had created public outrage.[360]

11.22 Mr Gary Moore also indicated that NCOSS has concerns about the effect of infrastructure provision upon a significant proportion of the population through such long-term PPP contracts. He told the Committee that NCOSS had sought the provision of concessional E-tags across all tollways as a part of the negotiation of the contracts.[361]

11.23 The provision of subsidies for fees would be a matter of Government policy and outside the Committee's powers. However, the Government should demonstrate that it has considered the impact of fee-raising PPPs on low-income earners.

11.24 The Committee received a suggestion that one way of achieving greater fairness in relation to user prices and charges for infrastructure delivered through PPPs, would be to have the Independent Pricing and Regulatory Tribunal (IPART) set the prices. In its submission, NCOSS noted:

> While Sydney Water may be a monopoly, the public can have some confidence that prices are established by an independent regulator, the Independent Pricing and Regulatory Tribunal (IPART). No such oversights exist with private monopoly services (such as motorways) where prices are established by the operator or under the contract with the government. At no time are prices considered by an independent regulator to assess their fairness. Tolls appear to have increased with no justification except to provide a windfall profit to operators. NCOSS believes that process for services provided by monopoly operators of public infrastructure should be regulated by IPART.[362]

[357] Professor Graeme Hodge, Transcript of Evidence, 2 December 2005, p 15
[358] *ibid*, p 15
[359] Professor James Guthrie, Faculty of Economics and Business, University of Sydney, Transcript of Evidence, 16 February 2006, p 11
[360] Mr David Skidmore, Combined Pensioners and Superannuants Association, Transcript of Evidence, 18 November 2005, p 16
[361] Mr Gary Moore, Director, NCOSS, Transcript of Evidence, 18 November 2005, p 12
[362] NCOSS submission No 15, p 5

11.25 Professor Graeme Hodge also indicated that this approach would assist in supporting the customers or users of such services.[363] The Committee agrees there is merit in this suggestion.

11.26 Mr Tony Poulter, Project Finance Adviser with PricewaterhouseCoopers, described a model for PPPs, applied elsewhere, in which the private sector designs, builds, finances and operates a piece of infrastructure, but receives income based not on tolls, but upon 'availability payment streams', where the government pays according to standards of performance specified in the contract:

> I think the advantage of the availability payment stream is that it allows the government to hold the private sector to performance but to retain its own policy responsibility for what happens with traffic management and surrounding roads, and also to take the risk which arguably it is in a slightly better position than the private sector to absorb, of what happens generally to traffic patterns and economic growth and traffic levels, particularly in the city.[364]

RECOMMENDATION 23: That NSW Treasury consider the social impact of PPP tolls and fees and consider using a process similar to that followed by IPART to set tolls and fees for PPPs in a monopoly situation.

Employment Conditions

11.27 The Committee was concerned that public impacts may also include the potential impacts on public sector employment. It noted the UK experience, where, prior to 1997, there were limited safeguards to protect the terms and conditions for public sector employees transferred to the private sector as a result of PFI contracts. Transferred staff were subject to protection under the 'Transfer of Undertakings (Protection of Employment) Regulations 1981' (TUPE). In the UK, government policy now states that:

> the value for money that PFI can deliver should not be achieved at the expense of staff terms and conditions.[365]

11.28 A Code of Practice introduced in 2003 extended employee protection to reorganisations and transfers within the UK civil service, where TUPE cannot apply because there is no change in employer, but where the Code indicated that it is expected that TUPE principles should be followed.[366] More recently, the Government further extended that protection to include central government departments, agencies and non-departmental public bodies.[367]

11.29 Mr Gary Sturgess told the Committee that 'treating workers decently' in PPPs, particularly where employees have transferred across from the public sector, makes good commercial sense, both to keep a workforce intact and to retain intellectual capital:

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363 Professor Graeme Hodge, Transcript of Evidence, 2 December 2005, p 19

364 Mr Tony Poulter, Project Finance Adviser, PricewaterhouseCoopers, Transcript of Evidence, 16 February 2005, pp 26, 27

365 HM Treasury, *PFI: meeting the investment challenge,* July 2003, p 69

366 *ibid,* p 73

367 HM Treasury, *PFI: strengthening long-term relationships,* March 2006, p 37

> …so TUPE and good rules around transfer are also important for keeping your workforce intact, which if you are managing complex services, and you want to transfer all that corporate knowledge, you want those people to come over. Any kind of transition of employment is very unnerving for employees. You want them to be reassured as much as you possibly can in the course of that process so that they keep doing their job and doing it well.[368]

11.30 In its submission, the United Services Union noted that little attention is given in PPP studies to issues affecting the workforce. The Union was concerned that while initial investment in infrastructure may create jobs, net jobs are reduced after the construction phase as a means of maximising profit. The Union was also concerned that private consortia could drive down wages and conditions, with a resulting impact on the wider community, and this would be worse in rural and regional areas where there are fewer alternative sources of employment.[369]

11.31 The United Services Union also expressed concern about the failure of the Department of Local Government PPP guidelines to deal adequately with industrial relations issues.[370] Mr Garry Payne, Director-General, Department of Local Government, told the Committee that a planned meeting with the Union on these matters would result in a review. Points addressing these concerns would be included in the next issue of the guidelines.[371]

11.32 NSW Treasury advised that a Labour Services Agreement and Interim Agreement has been negotiated by the Government in relation to the Newcastle Mater Hospital PFP Project:

> The Labour Services Agreement provides that all non-managerial staff will remain NSW Health employees, and governs the terms on which selected employees will be placed under the management of the private consortium and its subcontractors.
>
> The Interim Agreement provides for management services prior to the commencement of services under the PFP contract, and covers only "soft services" such as catering, cleaning, materials management, helpdesk and general services. The Interim Agreement provides for transition (ie spreading out and staging) activities so as to minimise change impacts, with new work practices established prior to the new facilities coming on line.[372]

11.33 Regarding the Labour Services Agreement, Mr Bob McGregor, Deputy Director-General, Department of Health, told the Committee:

> I think if we were to attempt to do what we had done five years ago, I do not believe the private sector would be that responsive. However, it was made a condition of the arrangement that they enter into this labour agreement with us, which has the effect of ensuring that the clinical staff will provide the clinical services within the facilities, so they will be our staff. In terms of what we have called the back of house services, the cleaning and other arrangements, they will still be our employees but they will be managed by the private sector. So all the rights and conditions of our employees are protected; they are not transferred to the private sector as occurs in the UK model. We

[368] Mr Gary Sturgess, Executive Director, Serco Institute, Transcript of Evidence, 19 October 2005, p 6
[369] United Services Union submission No 10, p 5
[370] *ibid,* p 5
[371] Mr Garry Payne, Director-General, Department of Local Government, Transcript of Evidence, 16 February 2006, p 20
[372] NSW Treasury, submission No 24, p 35

> have no issues around superannuation, union membership and different rates of pay because they are all in the same award. The unions do not formally accept that because they do have an issue around PPPs generally, but we have had extensive negotiations with the Trades and Labour Council and the health unions here, and learning again from the experience of Port Macquarie where there was a lot of staff dissatisfaction about the arrangements there, I believe we have actually struck an ideal model. It is yet to be tested as we move forward over time, but I think it is an interesting model.[373]

11.34 The Committee noted that, under the Agreement, staff would be managed by delegation to a private organisation, which will determine the number and rosters of persons on site. Those that do not wish to work on site or are not needed will be offered the opportunity to work elsewhere in the Area Health Service. The Committee noted that while the delegated authority could recommend termination of staff, it would have no power to effect termination.[374]

11.35 The Committee notes the unusual nature of this agreement and considers this to be one of those issues worthy of close monitoring and evaluation over the life of the project. It could have broader implications if adopted as the model for labour arrangements in other PPPs.

11.36 In its submission and in evidence to the Committee, Unions NSW expressed concern about the effects of PPPs on public sector employment and, in particular, upon skills acquisition and retention. Mr Matt Thistlethwaite, Deputy Assistant Secretary of Unions NSW told the Committee that:

> We believe that the economy at the moment in New South Wales is facing a deficit in relation to skills retention in a number of important sectors in the economy and one of those is construction, where public private partnerships tend to be quite prevalent and we have no doubt that an increase in contracting out in the public sector [through] public private partnerships has had a correlated effect on skills retention in the public sector.[375]

11.37 The Unions NSW submission documents a progressive decline in the number of State Government apprentices from 1989 to 1996, and indicates the potential adverse effect of this on the supply of skilled trades labour in key areas such as the building, electrical and metal trades. While noting an increase in annual apprentice commencements in the last three years, the submission concludes that apprentice numbers:

> … for 2004 at 16,300 and also the estimated 2005 figure of 18,200 are still significantly below the peak of 21,147 in 1989.[376]

11.38 Unions NSW suggests that the NSW *Working with Government* Guidelines are deficient in relation to employment impacts. It proposes their refinement to:

- Take into account the impact on apprentice and trade positions during the term of a contract;

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[373] Mr Bob McGregor, Deputy Director-General, Department of Health, Transcript of Evidence, 17 February 2006, p 10

[374] *ibid*, p 11

[375] Mr Matt Thistlethwaite, Deputy Assistant Secretary, Unions NSW, Transcript of Evidence, 2 December 2005, p 38

[376] Unions NSW, submission No 13, pp 84-87

- Designate ratios of apprentice-tradespersons within contracts; and
- Define 'local content' to include local labour content.[377]

RECOMMENDATION 24: That the amended *WWG* Guidelines take into account the impact on apprentice and trade positions during the term of a contract; designate ratios of apprentice-tradespersons within contracts and define 'local content' to include local labour content.

Hospital Car Parks

11.39 One particular aspect of PPPs relating to hospitals which attracted the Committee's interest concerned hospital car parks. The Committee sought information regarding the risk on patronage and how fees are determined. Mr McGregor indicated that the risk in terms of patronage resides with the bidder or contractor, although historical information about patronage would be available. Car parking fees are determined by the Department.[378]

11.40 Mr McGregor also indicated that the Department and the unions share concern about equity in regard to fees across hospital car parks for employees and visitors.[379]

11.41 This is also a matter of concern for the Committee, which feels that public interest considerations need to apply in relation to fees charged in hospital car parks for parties including employees, visitors and outpatients undergoing treatment.

RECOMMENDATION 25: That in instances where hospital car parks are constructed through a PPP process, a public interest test should be applied to take into consideration the needs of parties such as hospital employees, visitors and outpatients in the setting of car park fees.

Environmental Considerations

11.42 Due to the types of infrastructure delivered through PPPs, including the need to meet statutory requirements, the specification of environmental outcomes for projects has been more commonplace or has received more attention than the specification of social outcomes. Also, as previously reported, environmental outcomes have been specific inclusions in NSW alliancing projects. However, the Committee was pleased to note the availability of materials in the international arena to assist agencies to ensure inclusion of environmental considerations for PPPs. The Office of Government Commerce in the UK has a guidance note on how to include environmental considerations within PPPs and PFIs. It states:

> The emphasis on whole life costs means that public sector contracting authorities are required to take account of all aspects of cost, including running and disposal costs, as well as the initial purchase price of an asset. The reference to 'quality to meet the customer's requirement' enables contracting authorities to specify what they need to do

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[377] Unions NSW submission No 13, p 92

[378] Mr Bob McGregor, Deputy Director-General, Department of Health, Transcript of Evidence, 17 February 2006, p 16

[379] *ibid*, p 16

to meet their own operational and policy objectives while contributing to the Government's objectives on environmental matters.[380]

11.43 The guidance note includes a series of high-level questions to enquire about the environmental objectives and impact of a project, as well as a series of practical examples to improve the success of a PPP in environmental terms. The guidance note refers agencies to the *Framework for Sustainable Development on the Government Estate* for specific information about Government commitments, objectives and targets.[381]

11.44 The Committee notes that in NSW, evaluation of PFP bids take into consideration technical aspects, operations, maintenance, legal and commercial aspects, social outcomes and financial aspects. However, they do not explicitly take environmental factors into consideration.[382] As previously indicated, the planning approval assessment process includes land use and environmental implications for projects, but it is clear this is an approval process as distinct from a process to encouraging PPP projects, themselves, to establish environmental objectives.

11.45 The Committee considers that there is merit in encouraging agencies to take into greater account the adoption of environmental outcomes as part of PPP project assessment, planning and management. For example, some projects currently specify key performance indicators to maintain or improve air and water quality, reduce or improve impacts on local habitat and reduce or recycle waste over the life of the project.

11.46 The Committee welcomes these observations, and considers that the issues they raise are worthy of greater attention in the PPP policy framework.

RECOMMENDATION 26: That NSW Treasury, agencies and private sector partners in PPP bids be required to address social and environmental considerations more fully in project objectives at the commencement of PPP contracts and reflect these considerations in project specifications and monitoring of outcomes.

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[380] Office of Government Commerce, *Green Public Private Partnerships,* July 2002, p 6
[381] *ibid,* p 14
[382] NSW Treasury submission No 24, p 17

Chapter Twelve - Intellectual Property

12.1 One of the Terms of Reference for this inquiry was to assess how well agencies are managing intellectual property (IP) issues. This relates to IP belonging both to private sector proponents of projects and public sector agencies with extensive experience in design and construction.

12.2 The Committee received no evidence in submissions or hearings to indicate the management of IP issues in the PPP context was at all a concern for agencies. No submissions from the private sector indicated any significant concerns about the management of their IP.

12.3 In its submission, Planning Workshop Australia said that there appears to be an implicit tension between intellectual property and transparency:

> Guidelines have been developed to protect IP, however, these must be considered against the public interest and disclosure of terms and conditions that directly or indirectly affect the interest of 'third parties'.[383]

12.4 The Premier's Department introduced a mandatory IP framework for public sector agencies in March 2005. Key features for the management of IP are:

- Agencies should adopt a risk management approach for implementation of the Framework;
- Management of IP should be a high priority within agencies;
- The agency's IP policy should be communicated to everyone in the agency; and
- The agency should develop a system to record, report on and evaluate IP.[384]

12.5 The Premier's Department Framework lists IP principles and includes a Better Practice Checklist and IP 'Advisory Signposts' to assist agencies in implementation of the policy.

12.6 Earlier in this Report, the Committee noted the advice of Professor David Richmond that new draft NSW Treasury Guidelines for the Public Disclosure of Information arising from NSW Government Tenders and Contracts are in the process of being implemented. This is welcome, as the guidelines will provide more certainty in terms of defining commercial-in-confidence material and limiting commercial-in-confidence to specific areas. The Committee is pleased to note the intent of the guidelines, as described by Professor Richmond, is for *all* contract information to eventually be released, while allowing agencies some flexibility in the timing of the release of certain information which may affect critical commercial negotiations on similar or related projects.[385]

[383] Planning Workshop Australia, submission No 20, p 7
[384] Premier's Department, *Intellectual Property Framework for the NSW Public Sector,* 2005, pp 8, 9
[385] Professor David Richmond, Transcript of Evidence, 16 February 2006, p 33

12.7 NSW Treasury summarised the Government's policy on intellectual property in the context of PFPs as follows:

- It is considered important for service agencies to clearly identify IP aspects of proposals to ensure IP protection. An agency is expected to manage IP issues during all discussions and develop competitive bidding processes which protect the private sector's IP rights where direct negotiations are not used (i.e. in a majority of cases).
- It is also essential for service agencies to identify key phases of a project open to market testing to ensure the Government achieves value for money without compromising IP rights.
- Unsolicited proposals will generally be market tested to ensure the Government achieves value for money. Direct negotiations on unsolicited proposals will only be undertaken if market-tested.
- Where a proposal is to be market tested, the NSW Government makes every effort to avoid compromising the IP and confidentiality rights of the proponents when preparing a Request for Tender.
- However, in order to achieve this outcome, the NSW Government relies heavily on the proponent to clearly indicate all intellectual property and confidentiality rights. Existing guidelines on IP therefore require unsolicited proposal to include an inventory of significant IP, owner and registration details and other relevant information.[386]

12.8 In terms of the management of the Department's extensive IP, the Department of Education and Training told the Committee that it used a 'data room' in which Departmental intellectual property regarding school design and facility standards was made available to all project proponents.[387]

12.9 The Committee applauds this innovate approach to the management of intellectual property which allowed a fair and unbiased means of all project proponents accessing intellectual property, ultimately contributing to improved value for money for the Government in the project delivery.

[386] NSW Treasury, submission No 24, p 38

[387] Mr Terry Whyte, Project Director, Department of Education and Training, Transcript of Evidence, 17 February 2006, p 5

Appendix 1 – List of Submissions

The Committee received submissions from the following individuals and organisations.

1. **Mr David Cumming**
2. **The Hon Tony Kelly MLC, Minister for Justice**
3. **Australian Constructors Association**
4. **Ms Linda English, Senior Lecturer, Discipline of Accounting and Business Law, University of Sydney**
5. **Combined Pensioners and Superannuants Association of New South Wales Inc.**
6. **Confidential**
7. **Australian Council for Infrastructure Development Limited**
8. **Confidential**
9. **Maddocks Lawyers**
10. **United Services Union**
11. **Professor Graeme Hodge, Centre for Regulatory Studies, Monash University**
12. **Leighton Contractors Pty Ltd**
13. **Unions NSW**
14. **SERTEC Ltd**
15. **Council of Social Service of NSW (NCOSS)**
16. **Professor John Quiggin, Federation Fellow, School of Economics, University of Queensland**
17. **Babcock & Brown Limited**
18. **Association of Professional Engineers, Scientists and Managers Australia**

19. Confidential

20. Planning Workshop Australia

21. Infrastructure Partnerships Australia

22. The Hon Kerry Hickey MP, Minister for Local Government

23. The Hon Carl Scully MP, Minister for Police, Minister for Utilities

24. NSW Treasury

25. PriceWaterhouseCoopers

26. Sydney Water Corporation

27. Ms Annette Schmiede

Appendix 2 – List of Witnesses

Wednesday 19 October 2005

Mr Gary Sturgess	Executive Director Serco Institute

Friday, 18 November 2005

Mr Jim Barrett	Executive Director Australian Constructor's Association
Mr David Hudson	Vice President Australian Construction Association
Mr Andrew Council	Commercial and Contracts Task Force Australian Construction Association
Mr Mark Snape	Commercial and Contracts Task Force Australian Construction Association
Mr Gary Moore	Director Council of Social Service of NSW (NCOSS)
Mr Dev Mukherjee	Senior Policy Officer Council of Social Service of NSW (NCOSS)
Mr Morrie Mifsud	State President Combined Pensioners and Superannuants Association
Mr David Skidmore	Policy Officer Combined Pensioners and Superannuants Association
Mr Dennis O'Neill	CEO AusCID
Mr Graham Geldart	Consultant
Mr Ben Kruse	Manager, Legal and Industrial United Services Union
Ms Lyn Fraser	Research Officer, United Services Union
Mr Bob Sendt	Auditor-General
Mr Tony Whitfield	Deputy Auditor-General

Friday, 2 December 2005

Mr Christopher Kelly	Partner, Maddocks
Mr Gregory Campbell	Partner, Head of Construction and Major Projects Maddocks
Mr David Baird	Managing Partner, Maddocks
Ms Annette Schmiede	Individual
Professor Graeme Hodge	Co-Director Centre for Regulatory Studies, Faculty of Law, Monash University
Mr David Roseman	Executive Director, Infrastructure Australia and New Zealand Macquarie Bank
Mr Ross Cameron	Consultant, Macquarie Bank
Mr John Pierce	Secretary NSW Treasury
Ms Kerry Schott	Executive Director, Private Projects and Asset Management NSW Treasury
Mr Danny Graham	Director, Privately Financed Projects NSW Treasury
Mr Matt Thistlethwaite	Deputy Assistant Secretary Unions NSW
Mr Nick Lewocki	Secretary, Rail, Tram and Bus Union
Professor Bob Walker	Consultant to Unions NSW
Ms Betty Con Walker	Consultant to Unions NSW

Thursday 16 February 2006

Mr Peter Hicks	Corporate Manager, Infrastructure and Investment Leighton Contractors P/L
Ms Linda English	Senior Lecturer School of Business, University of Sydney
Professor James Guthrie	Professor, School of Business University of Sydney
Mr Garry Payne	Director-General Department of Local Government
Mr Ross Woodward	Deputy Director-General Department of Local Government
Mr Tony Poulter	Global Head of Project Finance PriceWaterhouse Coopers
Prof. David Richmond AO	Special Adviser, Infrastructure Implementation Group, Premier's Department
Mr Ron Quill	General Manager, Asset Solutions Sydney Water Corporation

Friday 17 February 2006

Mr Terry White	Director, Privately Financed Projects Department of Education and Training
Mr Mike Cush	General Manager, Asset Management Department of Education and Training
Mr Bob McGregor	Deputy Director-General, Health System Support NSW Health
Mr David Gates	Director, Asset and Contract Services NSW Health
Ms Elsie Choy	Associate Director, Joint Sector Development NSW Health
Mr Glenn Monckton	Project Director, Long Bay Forensic and Prison Hospitals PPP Project

Appendix - 2

Appendix 3 – International Study Tour

The Vice-Chairman of the Committee, Mr Paul McLeay MP and Mr Richard Torbay MP undertook a study tour of international jurisdictions in August 2005. They were accompanied by Senior Committee Officer, Ms Jackie Ohlin,

Over seven working days, the delegation held meetings with 16 organisations in the United Kingdom and United States of America. These organisations included government agencies, private sector organisations, peak bodies, community organisations, accounting firms and local government.

Due to the late departure of a flight from Heathrow, a meeting with the United States General Accounting Office had to be cancelled. However, officers from the GAO provided a series of publications to assist the Committee with its inquiry.

Thursday 18 August 2005

Travel: The delegation left Sydney.

Friday 19 August 2005

Travel: The delegation arrived in London.

Meeting with: PPP Forum
Participants: Ms On-Yee Tai, Director, PPP Forum
Mr Cameron Smith, Partner Ashurst
Description of organisation:

The PPP Forum was established in 2001 by private sector organisations to promote the benefits of PPPs and to engage with Government departments in developing private finance initiatives. There are now 103 organisations as members (most are global companies, but some of these are UK-based). PPP Forum regards itself as a peak body rather than a lobby organisation. PPP Forum comprises approximately one-third financial institutions, one-third advisors and one-third developers, all from the private sector.

Main points of discussion:

- Under EU regulations, there can be no preference given in the awarding of PPP contracts to UK companies (or local/regional companies). The view given is that with more players in the market, there is less potential for collusion
- The government discusses issues with the PPP Forum collectively rather than going to individual members. Both sides see this as an advantage because from a Forum perspective, issues such as those concerning tax or insurances can be discussed frankly without them being attributed to a particular party, and from a Government perspective, it can talk about standard-form contracts or take market soundings
- The PPP Forum has Policy Groups which meet quarterly
- Members are more comfortable with not having Government representation, because of the potential loss of competitive advantage, although there are occasional 'consultative' exchanges (such as a recent meeting of the Waste Management Policy Group to which Government Ministers and officials were invited), and an exchange took place on Government initiatives, and what the Forum expected of those initiatives

- Since the time of the establishment of the PPP Forum, PPPs are no longer regarded as a political football
- The Forum was designed to try and remove the suspicion surrounding PPPs. It liaises with media in this regard, for example, in relation to concerns from unions about the way in which services are being delivered (that is, the perceived threat to pension rights)
- The concern over workers' rights resulted in a Code of Practice being developed, which addresses two-tiered workforces, whereby legally, employers must offer the same or similar worker rights to employees from either the public or private sectors working on a PPP (regardless of whether workers 'transfer over' to the private sector), but the Code only applies to existing employees. Pension rights are excluded from this process
- The Forum noted that the Code also addresses the issue of where a public employee does not want to 'transfer over' to a private employer, and indicated that, increasingly, one way in which this is being handled is through secondment
- When asked about what occurs when a PPP 'goes bad', the representatives indicated that there has been a good 'strike rate' with 450 PFIs in the UK over the last 12-14 years, and only a handful of projects with problems. Their view is that if there are problems 'everyone hears about it'
- The representatives indicated that there were some problems on early projects in that because of a skills shortage on the public sector side there was a sense that 'the wheel was constantly being reinvented'. They gave the example of the Norfolk and Norwich hospital, which took three and a half years to complete, because it was 'new ground' for the officials, and there was uncertainty about risk allocation, and so on
- The representatives indicated that the health sector is now well equipped in having both a standard form of contract and a central unit to assist hospital Trusts to handle PPPs
- They felt, however, processes are not so advanced in the Waste Management sector, for although local authorities will have local lawyers to assist with PPPs, as a sector it still needs project finance skills, and skills in developing and negotiating deals
- The representatives noted that a prerequisite for projects to obtain PFI credits is to use standard form contracts, and that this has been a useful development
- The representatives noted that a popular view is that people assume PFI is the first route taken for delivery of a project, whereas only a small percentage of projects use this approach
- Value for Money (VFM) is the main driver for choosing PFI as the method, although the representatives indicated their belief that this line has 'softened' considerably
- Their view was that PFIs work well for delivering hospitals, roads, accommodation and Government buildings. However, they indicated concern that once things like clinical services are introduced, the process becomes difficult. Further, the delivery of 'high-tech' services can be controversial. For example, the Ministry of Defence has tried for years to consider the delivery of a Strategic Air Tanker under a PFI, and this has proven to be difficult to arrange, primarily because of specialised service requirements
- The representatives indicated that, in their view, PPPs work well in the UK because firms want to maintain their good reputation. They said that, if there is a 'deal flow' (where firms envisage they are in a strong position to be eligible for future contracts) every effort will be made to ensure the PPP works
- They indicated that considerable expertise has been developed in specialised areas. For example, one consortium working for about 8 years on how to deliver PPPs for

prisons has managed to understand most of the 'traps' and the service provision 'edge', leading to considerable efficiencies in the areas of construction and operations. Further, they suggested that as part of the tender process, designers, operators and tenderers work together to problem-solve the big issues

- They noted initiatives in other countries throughout Europe: the Spanish Government is undertaking effective PPPs in the health area; in Portugal, the PPP focus is on roads, and The Netherlands has engaged in Eurostar PPP projects. They felt that in Italy, PPPs have been hampered by Italian laws dictating the amount of private investment that is permissible in a project. They had a view that PPPs are 'easier' in common law countries.

Meeting with: Coin Street Community Builders

Participants: Mr Iain Tuckett, Group Director
Ms Louise King, Communications Director

Description of organisation:
Coin Street Community Builders is a group of local people who sought to have the South Bank of London redeveloped for a mix of low-income housing, public open space and commercial activity – the view being that it was important for the City to retain or attract back to the inner city a population of 'service workers' and artists. It is a company limited by guarantee.

Main Discussion Points:

- The delegation received a brief introduction to the history of the Coin Street site. The South Bank of London was traditionally regarded as an 'unsavoury' area. In 1951 the site was cleared for the Festival of Britain and County Hall was also built on part of the site. The area also flooded regularly. By the 1070s, there were several large buildings, occupied by companies such as Shell. The residential population has dropped to 4,500 and schools and shops were closing
- When Coin Street Community Builders formed, it put a proposal to the Council in support of redevelopment for a mix of low-income housing, public open space and commercial activity. Council approved both this plan and an alternate plan by developers for extensive office development. This enabled Coin Street to seek finance. It borrowed 1m GBP to commence the project.
- The first non-office development commenced in the area in 1988. Housing designers were selected by competition
- Coin Street brought in marketing expertise from arts bodies to assist in developing the area and defining the area
- The Greater London Council allowed 100,000 GBP to be spent on design of the initial project (to be added to the value of the project if it succeeded). It was felt this was critical to the project's success
- A current challenge is the development of appropriate recreational facilities – this will be achieved through development of 360 high rise housing flats and commercial facility with recreational facilities (such as a swimming pool) included
- Key lessons learned by Coin Street were:
  - developing high quality public open space initially, as a means of attracting investors raising the profile of the development
  - effecting a high level of local control for players over decisions

- keeping land values realistic, and keeping the value 'trapped' for reinvesting (there is cross-subsidisation agreed by the Board to areas such as community facilities)
- developing long-term relationships and engaging with parties in the business community, local community and Government on generally shared objectives.

Monday 22 August 2005

Meeting with: 4Ps

Participant: Mr Brian Standen, Director, Gateway Reviews

Description of organisation:

4Ps is the body providing local government advice on PFIs. It acts as a broker between Local Government and central government in their development. It is owned by the Local Government Association, funded by Local Government (but with a top-up allocation by Central Government). It employs about 35 staff.

Main Discussion Points:

- 4Ps assists Local Governments in 4 areas: Project Support, Skills Development, Gateway Reviews and Know-how. Expertise is drawn from lawyers, accountants, project managers/mentors, network groups and brokers
- In the area of Project Support, 4Ps recognises that sometimes it has to win the faith of Local Governments, but it draws boundaries around what it is prepared to do (for example, it will not get into discussions about which Local Governments should get which funds)
- Mr Standen noted that local authorities in 'districts' are more likely to be undertaking standard PPPs (through Trusts)
- In the area of Skills Development, 4Ps conducts training courses to enable politicians and senior officers to develop a business plan (this focuses particularly on roles and the setting of strategies)
- The key roles among these players are: Champion (Executive), Scrutiny (Senior Managers), Detail (Technical staff)
- The training also focuses on team development and staged delivery
- 4Ps has found there is a need to facilitate group action, focussing on the specifics of the project
- In the area of Helping Projects to Deliver (The Gateway), 4Ps facilitates a peer review process where all issues are shared and the process is confidential in nature. It is undertaken to support the project team, to assist them in managing risks. It uses a template to review the process at three monthly intervals, and uses three or so peers (who are in the main serving LG officers, and about one-third are consultants who have undertaken projects elsewhere)
- The 'gates' are key decision-points in the project
- The review is a three day process, focussing on the right resources, the right project structure/team, the use of guidebooks, interviews with key stakeholders. Stakeholders include: the Project leader, Project Owner, portfolio holder(s), Opposition parties, CEO, Head of Service, private sector individuals, and others as appropriate
- The results of the review are written up immediately, into a report about 10 pages in length, and provided to the Project Manager (the Head of the Board or the CEO). Usually, that person will share the report with the Project Board
- Central government mandates Gateway Reviews for larger projects; they are still voluntary for Local Government

- Gateway Reviews must be performed at no charge – 4Ps funds them from its Capacity-Building Fund. It is estimated they cost in the thousands of GBPs to produce, but return tens of millions in value
- 4Ps noted that the UK PAC has, on a number of occasions, requested to see Gateway Review Reports, but it has been refused access to these, on the basis of the confidential nature of the reports
- 4Ps has found situations where stakeholders have not considered all the options, but these were exposed through the review process
- it was noted that Primary Care Trusts have a lot of interface with Local Governments. One area of concern identified was the LIFT trusts, concerning the co-location of doctors' surgeries and clinics, which committed the Trust to place infrastructure development for the next 10 years with the private sector. 4Ps was not involved in the design of the process, but observed that it has caused conflict between Local Government and central government
- In contrast, 4Ps decided to participate with central government in design of the New Schools Program, discussing at an early stage what is most appropriate for Local Government
- A total of 19 billion GBP of PFI credits have been let by central government for projects undertaken or to be undertaken from 1997/98 to 2007/08. This includes 7 billion of new credits in 2004
- 150 local authorities are involved in PFIs (Central Government has undertaken approximately 1000)
- If PFI credits are made available, they apply to the capital element of procurement – grants are no longer available for capital projects
- The PFI path accounts for only 20% of total Government projects
- In the area of Development of 'know-how': 4Ps indicated that this leads to 'lessons learned', which are presented in case studies, extranets, panels of advisors and procurement packs (for example: the Standard Contract for PFI and the Standard Streetlighting Procurement Pack).

Meeting with: HM Treasury

Participants: Ms Victoria Robb and Mr Danny Daniels, PFI Financing Advisor
Description of organisation:
HM Treasury has the lead role for the Government in relation to Public-Private Partnerships policy.

Main Discussion Points:

- The officers indicated that one of the most sensitive areas to be dealt with in relation to PFIs is labour relations (workers rights) of those affected by the transfer between the public and private sectors
- They noted that the Best Value Code ensures that pensions are dealt with as a separate issue
- The officers indicated that the 2003 report of HM Treasury: 'PFI – meeting the investment challenge' provides a good overview of the government's approach to PFIs
- They described PartnershipsUK as a PPP with Treasury. It was established in 2000, and transferred for a while to Commerce, but for accountability reasons was 'outposted'

- The officers felt that, because PFI has a high profile with politicians, and, because it (PFI) was being likened to privatisation, it gave the private sector more reassurance. Treasury could better scrutinise where investment decisions were going by having PUK separated
- The officers noted that the government has stopped using PFIs for information technology procurement because of the mercurial nature of the industry and because these are often very small deals
- The officers noted that with standardisation, there is a process of trying to force lawyers out of the process and to drive costs down and make PFIs more accessible to smaller projects
- They indicated that there is an ongoing concern to increase transparency and flexibility, while at the same time reducing bidding fees and time involved – an example was given of running up 8 m GBP of bidding fees on a 16 m GBP project
- They noted that, now, with the issue of a Standard Contract, parties must come to Treasury for permission if they want to derogate from the standard
- They suggested that there is not much room left for innovation in projects, for example: in schools and health care the technical design aspect of buildings is well-established and there is not much room for innovation in financing terms either. They noted that the current emphasis is on replacing expensive equity with cheaper debt
- They remarked that there are now 560 PFI projects closed, and of these, there are concerns about the longer term viability of around 15-20. Treasury will have to check in approximately 10 years time to determine whether these projects are worth 'rescuing' (understood by the delegation to mean 'returned to the public sector')
- They noted that, at the start of PFIs, the government was looking only at the affordability of infrastructure. Now there is an attempt to level the conditions so that there is no suspicion the government is promoting PFI on affordability grounds
- In terms of methodology, at an early stage, Departments do a VFM assessment study of PFI versus conventional funding. This is a qualitative assessment which looks at alternative public funding
- The Project Review Group, chaired by Treasury, examines projects that get PFI credits. This process is designed, in part, as a prudential borrowing regime for local authorities
- The officers indicated that there is not an issue with unsolicited PPPs, because ideas are put out to a market consultation, and there are funding competitions run for larger projects (for example, a funding competition for the HM Treasury Building project resulted in a quarter of a percent being taken off the cost of capital for the building (250 m GBPs)
- The challenge that Treasury is currently dealing with is how to benchmark without having any project oversight. There is a view that there should be Departmental oversight at a much earlier stage than is currently the case. Central units are now to have more monitoring of PFIs. The officers noted that the NAO plays a critical role and the private sector treats the PAC seriously
- The officers also noted that refinancing of projects stopped following the NAO criticism of Health Department contracts, and extra resources have been provided to the NAO to look at VFM in PFI (this now has a 5 person team).

Meeting with: PricewaterhouseCoopers
Participant: Mr Paul Cleal, Partner, Corporate Finance

Description of organisation:
PricewaterhouseCoopers is a global accounting firm with a major interest in public-private partnerships through its work with clients in both sectors. The projects in which it is involved are principally in the areas of housing and rail.

Main Discussion Points:

- Mr Cleal noted that refinancing of PPPs is an area of current activity for PWC, as funding can be provided on competitive terms
- PWC's view is that Governments benefit from a stable market (banks are understanding PPPs better). On individual projects, as projects are refinanced, there is a sharing mechanism that is more favourable to both parties. By allowing refinancing, the Government can take some of the cash benefits out of the project. Mr Cleal explained that refinancing can be achieved by extending the contract (similar to extending a mortgage) or by bank margins (ie a bond deal) or by not arranging a fixed interest rate
- He noted that refinancing does not fundamentally alter the risk profile of the project going forward because risk is shared between the Government and the shareholder
- He felt that the attraction of the refinancing option is partly about affordability. For example some Health Trusts have incurred a large debt and need to reduce this. He indicated that improvement of year on year affordability at the expense of value-for-money is of concern to Central Government and the attraction for banks is that they can make money on advisory fees more so than on the ongoing servicing of debt
- He said that the market has matured to now recognise two different roles, that of contractor and Special Purpose Company (as equity investor). The clarity of these roles, he felt, leads to greater transparency. The contractor is contractually bound into delivery (ie gives strong parent company guarantees), where the risk stays with the construction company because the bank insists on insurance bonds which act as an incentive for the building
- Mr Cleal indicated that a lot has been learned, at two levels, about where risk is allocated. He noted that Treasury and PUK now have standardised contracts and guidance about risk allocation and, over time, Treasury doctrine has developed about risks that can be transferred and those that cannot (an example of those that cannot be transferred is the discovery of antiquities)
- Mr Cleal felt that there is possibly less innovation or 'interest' in projects now, as a result of standardisation but there is a better understanding of pricing. He said there are many companies whose entire business is PFI, who have been attracted by the 'deal flow'. He indicated that one result of standardisation is that you should have to pay lawyers less, get the job done quicker and have the design better understood
- He indicated that one view is that skills development in the public sector has been adequate, but suggested that continual staff turnover in the public sector in the area of PPP negotiation caused concern for the private sector, particularly in terms of building relationships and understanding about PPPs
- He indicated that there is recognition of public procurement projects that previously 'went out of control' (the Scottish Parliament was mentioned as an example), but he noted that the view is that what the Government did well was to recognise the problem, learned from it and so ensured better project planning. He suggested that, as a result, projects are now 'nailed down' under PFIs, without penalties for variations
- He suggested that there are also synergies between building and operations processes (prisons are an example, where the operator plays a major role in the design, so whole of life costs are included and very different prisons are being built. However, he felt

that a similar approach becomes difficult in hospitals, where hospital staff are still within the public sector. In this situation, he felt, project success relies upon the Government getting the specification right and integrating users in the design process. For example, if there are four bidders, they all have to talk with the doctors in the hospital. By building relationships with local Trusts, contractors do not have to price in items they do not need. As a result they have been able to 'value engineer' costs

- Mr Cleal suggested that PFIs work best where more of the operations are handed over, and work least well where there is a lot of change going forward (for example, information technology)
- He also thought that, in principle, it is possible to undertake reporting on outcomes and benchmarking at key intervals in the process.

Meeting with: Serco Institute
Participant: Mr Gary Sturgess, Executive Director
Description of organisation:
The Serco group is a UK-based international company, delivering government services in areas such as health and transport (including financing, building and operation) through innovative partnerships. It has more than 600 contracts in 36 countries. The Serco Institute is Serco's research and policy unit.
Main Discussion Points:

- Mr Sturgess noted that Serco is a provider of public sector services, and 90% of its business is in this area. It is interested in PPPs from a service perspective. Services range from helicopter simulation training and joint officer training to prisons, the traffic control centre for England and Wales, a science centre and light rail projects
- He described a great diversity in the 'models' used for PPPs, from a defence training college in Oman to a non-infrastructure PPP in Canada (which undertook secondary testing for driving, in Ontario)
- Mr Sturgess noted that Serco has a $AUS 5b annual turnover and 40,000 employees
- He outlined the heavy commitment by the UK to building of infrastructure through PPPs (noting that over half of the hospitals were built under a charitable model, before 1900 and were overdue for replacement)
- Mr Sturgess indicated that he believes there has been too much concern about price and not enough about the quality that can be gained via a PPP
- He also suggested that the 'lead' party in the PPP consortium will be critical to the outcomes
- Mr Sturgess said that contracts need to be set up so that they are clear about dealing with workers decently
- He indicated that three issues have been the drivers for PFIs: a response to the optimism bias of agencies who underestimated costs and overestimated benefits of public sector management of projects; the capacity of PFIs to introduce 'whole of life' asset management; and the opportunity to begin a debate about the management and carriage of risk
- Mr Sturgess suggested that some consider that you can get better and hopefully cheaper social infrastructure through the threat of competition. He noted that the benefit of PFIs is the bringing together of a larger cluster of services (and that this offers the opportunity for real economies of scale)
- Mr Sturgess considered that companies valued their reputation in the delivery of PPPs and reflected this in their service models. In the area of prisons, for example, the Independent Inspectorate, which reports publicly, has a big impact on reputation.

Tuesday 23 August 2005

Meeting with: National Audit Office
Participant: Dr James Robertson, Director, PFI and Health Value for Money
Description of organisation:
The National Audit Office undertakes a similar role to that of the Audit Office of NSW in reviewing the performance of government projects procured under Privately Financed Initiatives. Because of the UK's longer history of involvement with these initiatives, the NAO has developed a considerable body of experience in this work.
Main Discussion Points:

- Dr Robertson advised that the NAO has undertaken 52 reports on PFIs. There are 3 streams of output: those that address the 'deals' themselves (that is, is it a good deal for the public sector?); the effectiveness of deals in their operational phase; and the overall assessment of general methodology (or value for money)
- He noted that by the end of the year, the NAO hopes to publish a report on the first wave of hospitals under PFI, compared with existing hospitals
- He confirmed that the latest Treasury Guidance (2003) excluded IT from PFIs. However, replacement of medical equipment is part of some health PFI deals, so he felt that it should not be assumed that contracts for 'high-tech' purchases cannot be undertaken through a PFI. In fact, exclusion is not because of the 'high-tech' nature of the projects but because of their high risk
- Dr Robertson noted that projects under 20m GBP are now being 'bundled up', so that one contractor can do 5-6 schools
- He noted that, of 130 prisons in total, most were conventionally procured
- And in the area of Health, the engineering, maintenance and building are being 'bundled' but not clinical services, although cataract and hip replacement operations are being increasingly contracted out. He felt that this has introduced some competitive pressure on the public system, which is now being forced to find out how much such a procedure has cost. However, the systems are not in place to do these costings. In this example, direct contracting has assisted development of a contestable market
- While the rigour inherent in a PFI was noted, Dr Robertson was asked whether PFIs have demonstrated savings. He indicated that a combination of PFI and contracting has brought a clarity in minimising the cost of the asset over the life of the asset. There has been no effective difference in the cost of servicing debt under a PFI to conventional debt servicing
- He said that, because the risks were unknown in early PFIs, these were priced quite generously and these have now been refinanced on good terms (providing a 56% return for shareholders in some cases)
- He indicated that the Public Sector Comparator (PSC) is not a good instrument for working out whether PFI is a good option. It has traditionally been calculated so as to be marginally more expensive than provision by the private sector. Accordingly, the weighting that Treasury has put on the PSC has been reduced as an assessment tool
- He noted that, as PFIs mature, rather than the PSC, there is now the 'Should Cost' model being applied, which requires that projects bring in advisors to calculate what the project actually should cost if provided by the private sector
- He indicated that bid costs are an issue as, increasingly, the market has become reluctant to participate if they are used. He felt that the view is that standardisation is the way forward, including standardisation of designs to reduce costs. Another

approach would have the public sector subsidise the bid costs, but this could be a high risk strategy for the public sector

- Dr Robertson noted that Treasury has spent a lot of effort on achieving standardisation in arrangements, with derogations where needed also to be negotiated
- He noted that there have been occasions where, if a disgruntled bidder is unsatisfied with the bidding process, it has been taken up with the NAO and examined. If the NAO has found evidence of fraud, this has then been referred to the Police
- He noted that the PAC has a 'proper Conduct of Public Business' statement to address the bidding process.

Meeting with: PartnershipsUK
Participant: Mr Michael Gerrard, Deputy Chief Executive
Description of organisation:

- PartnershipsUK is the public sector 'joint venture' that bridges the gap between the public and private sectors, from the public sector perspective, providing support to the Government in areas such as contract standardisation and good practice. PartnershipsUK grew out of a team of practitioners brought together to help the Government negotiate difficult contracts. In 1997-98 there were 12 members of a Task Force (including bankers, engineers, etc). PUK was set up through legislation. It created an institution that became part of the landscape for the foreseeable future, providing both confidence and a career structure. There are 50 people employed permanently, mostly late career individuals: 50% funded by Treasury and 50% by the City of London. PUK has the operational freedom to take risk positions to get projects ready for market. It retrieves this investment if the project is signed. Its ongoing support role includes quality control and a helpdesk.

Main Discussion Points:

- The team has been developing standardised contracts and training since 1999
- The architectural profession was quite hostile to the approach being developed by the team, viewing designs as 'lacking aesthetics'. Subsequently, a Code of Conduct has been developed, so that now PFI and good design coexist
- The private sector takes on a 25 year risk on 'fitness for purpose' of a public building in PFIs
- Of approximately 700 PFI contracts issued, only two have had to be cancelled for contractor default, one for convenience and two where the contractor became insolvent
- Small to medium-sized contractors are hostile to PFIs because they are used to old design/build models, which were traditionally small and local. Now, it is not possible to specify 'local'. The terms of a contract may, however, indicate the 'need for a contractor to show a good-sized local office with a 24 hour presence'
- Examples of successful PUK projects include a 3 billion GBP joint venture partnership with Health and a 10 b GBP joint venture for schools. These would not have developed if the project development had still been with Treasury. PUK considers it is 'not visible', however, believing that, in terms of a media profile, only the *Financial Times* would know about the organisation
- PUK believes that public scepticism about PFIs is almost insoluble. PUK suggests the general strategy has been one of promoting 'no news' and 'don't mention the PPP word'. It considers, for example, that messages about why the cost of capital is higher are subtle, and Ministers cannot 'land punches' in the public mind
- PUK noted that the standardising of contracts has helped to bring project costs down

- Regarding appeals processes if a contractor loses a bid, Michael Gerrard noted that it is left to the individual authorities to publish the results. This is done, for example, by the Department of Health, but less so by other sectors and by Local Government, probably not at all. The runner-up to a bid can get a full debrief. If a contractor appeals, they can quite often get some compensation
- Michael Gerrard noted that there is no obligation on any part of the public sector to contact PUK but local authorities must come through the Gateway process if they wish to use PUK
- The Gateway process is regarded as 'one of the best bits of policy enactment, practically and behaviourally, for all Government procurement'. The general view is that it has 'professionalised' procurement.

Wednesday 24 August 2005

Travel: The delegation travelled from London to Washington. Due to the late arrival of the aircraft, a meeting with the General Accounting Office had to be cancelled. The GAO subsequently forwarded several relevant publications for the Committee's use.

Wednesday 25 August 2005

Meeting with: World Bank

Participants: Mr Paul Noumba Um, Lead Infrastructure Specialist, Finance and Public Sector Division
Mr Ellis J Juan, Manager, Infrastructure Economics and Finance Department

Description of organisation:

The World Bank provides financial and technical assistance to developing countries around the world. It has a Public-Private Partnership in Infrastructure Team undertaking analytical work on PPP projects internationally, with particular regard to the effect of projects on reducing poverty.

Main Discussion Points:

- In briefing the delegation, the representatives noted that the Bank's clients are developing countries. They indicated that most countries have massive infrastructure needs for which the public sector's capacity to fund is limited, and the capacity of countries to absorb grant funding is also limited
- They indicated that the PPP balancing act is to be more creative in leveraging the private financing that is available
- The Bank is proposing a framework that helps build the capacity of countries to manage financing, transactions and contracting and decentralise the project implementation. The Bank is funding five years worth of consulting expertise to achieve this framework
- Central Units in Ministries of Finance of participating countries can set up criteria to better manage public money. However, it was noted that Ministries of Finance and sector ministries within many countries are traditionally at loggerheads.
- The representatives gave an example of one country in which land acquisition is a big problem, where all risk is currently allocated to the private sector. The World Bank is working with that country to set up a Land Acquisition Fund, whereby the government can acquire the land needed for development

- The Bank has the expertise of people who are good at fiscal design, but it is now also obtaining the services of lawyers. The Bank is currently focussing on contingent liabilities and investing a lot of effort in addressing that issue
- The representatives noted that, while the Bank's previous fiscal approach was very quantitative, there is now an increased emphasis on quality and level of service
- There is also recognition that support for the proposed framework is needed through a strong champion in the Government of a participating country
- The Bank's database on private investment in infrastructure and private provision of infrastructure, in all developing countries, indicates that private investment in infrastructure is decreasing, and has been since the 1980s. Telecommunications accounts for 60-65% of private sector investment, but investment, even in this sector of the market is decreasing
- However, the Bank noted that, while there is a decrease in global investors, there has been an increase in local investors. It is thought that this is because local investors have the cash, understand the risk and the players more closely and still have not been hit by a crisis
- It was indicated that, in many ways, developing countries are far away from an international standard regarding the management of PPPs. There has been little scrutiny of contracts and processes until now and little competitive tension has existed. The Bank also recognises that the chances of PPP contracts being 'relinquished' is very high, so it believes that it is important to commence building the in-country process for the re-negotiation of contracts (because the huge arbitration and litigation costs far exceed the cost of a renegotiation process)
- The Bank is also using 'smart' subsidies or targeted subsidies to leverage investment. It recognises that 45% of projects are 'distressed' (ie under contention or bankrupt) and it believes that many of the problems with these projects could have been solved through using targeted subsidies. For example, the Bank now has output-based aid, whereby it pays subsidies on the basis of delivery by a contractor. The Bank defines the output more closely. The Bank indicated that it intends to increase the use of this approach through a $50m Trust Fund to 'make the delivery of services to the poor a good business'
- There were indications of concern about the role of some countries which are cash-rich and wanting to exercise maximum control over PPP deals. The Bank's concern is that, where deals are highly political or where bidding is seen to be closed, there might be two or three deals that occur, but ultimately, investors will be deterred
- The Bank noted that the UK played a key role in helping set up the South African PPP Unit within central government, which is now regarded as an exemplary model, along with Uganda
- The representatives suggested that the PPP path is the only way developing countries can achieve investment in infrastructure.

Meeting with: National Council for Public-Private Partnerships
Participants: Mr Rick Norment, Executive Director
Mr Peter G Casals, Manager, Programs and Membership Development
Description of organisation:
The National Council for Public-Private Partnerships is an association of private and public organisations, with a mission of education, to teach people about how PPPs can work and where they will not. It advocates and facilitates the formation of PPPs at federal, state and local levels.

Main Discussion Points:

- The NCPPP believes that in a good partnership, there needs to be a good, strong level of public control. Policy development and monitoring needs to be done by the public sector
- Mr Norment observed that there is a resistance to PPPs based on the notion that 'profit is evil' and fuelled by accounts of private sector profligacy. He believed that this perception has to be dealt with
- He noted that the NCPPP has 250,000 hits per month on its website, it receives about 60% of its funding from dues, about 25% from meetings and it does some consultancy work for US Government Departments (for example, through case studies and convening meetings)
- The delegation heard that the US system is very different from the UK in relation to PPPs. There are historic reasons for this:

  (a) as the US began as 13 separate countries, with independent legislatures, currencies, statutes and so on, the States retained a large amount of authority regarding matters such as procurement, management of water, waste water, and education;

  (b) there was also a strong reliance on private sector funding of infrastructure, but with strong public sector control (for example: railroads, where five million 'concessions' were sold off to the private sector by the Federal Government, the first toll road in 1782, and the Erie Canal)
- The difference between State laws was described as an enormous problem for private companies. Among other States, Illinois has few statutes regarding procurement, Texas is regarded as 'mature', Virginia is 'mature but evolving'. The *Virginia Transportation Act*, with performance specifications for infrastructure, is a model that others are following. It was also noted that the State of Virginia disallows PPPs on social services
- In the historical development of infrastructure, by the end of World War II, the Government had assumed responsibility for a large proportion of infrastructure. For example, water systems are now 50% publicly owned, with private maintenance
- With corporate excesses more recently, there was a tightening of controls, for example through Anti-Trust Laws. Mr Norment commented that the US is now seeing a reversal of the distrust of the last 10 years, with the private sector undertaking financial investment to address a backlog in the provision of infrastructure and doing this by spreading the capital investment over 20 years. The tax laws have been changed in this process to allow for longer amortisation
- He noted that the Transportation Centre project in Boston (the Big Dig) is described as the most expensive PPP ever at 500% over budget
- He referred to the $25b transportation link from metropolitan Washington to the Airport - a private sector consortium proposal whereby for a 50 year lease, the consortium will give the State of Virginia $1b up front and will build the rail line and manage the road. The project came as an unsolicited proposal. NCPPP believes that the public sector has to set the priorities for unsolicited proposals. In the situation of an unsolicited proposal, other potential bidders have 120 days to respond
- Mr Norment described the steps of 'Requests for Information' and 'Requests for Qualification' as processes which tend to define the number of companies with the

capacity to undertake a project. These prequalification steps reduce the number of non-competitive bids

- The representatives noted that increasingly, PPPs have been used as a way of dealing with underutilised municipal buildings. For example, in Washington DC, a school property of two and a half acres was underutilised because the old buildings at the front of the lot were condemned. At the time, the city assessed the whole property value at $23,000. Now, a proposal has emerged for a 220 unit apartment building to be built on the site in exchange for a tax-exempt deal whereby the developers will make a payment in lieu of taxes to build a new school.

Meeting with: International Monetary Fund
Participant: Mr Richard Hemming, Senior Officer, Fiscal Affairs Department
Description of organisation:

The International Monetary Fund is an organisation of 184 member countries. It was established to promote international monetary cooperation, exchange stability, economic growth and high levels of employment; and to provide temporary financial assistance to countries to help ease balance of payments. It recently developed a paper, which describes the characteristics and economics of PPPs and examines particular issues such as risk transfer and fiscal accounting and reporting by parties in the PPP process.

Main Discussion Points:

- Mr Hemming noted that the IMF started working on PPPs a couple of years ago, because of the decline in public investment in Latin America
- He indicated that the IMF considers it is dealing with a lot of countries that are not institutionally sophisticated
- The IMF looks at characteristics of good and bad PPPs, and it concluded that PPPs are well suited to core infrastructure provision, especially when user charges can apply. However, it was stressed, projects must also be worthwhile
- Mr Hemming said that the IMF believes that good project appraisal is essential- the question must be asked 'Does the project pay for itself in its own right?' Then the public sector comparator must be applied before a decision is taken to proceed. He did not believe this process had occurred in a lot of countries
- The IMF has concluded that, as the move is made into other areas of infrastructure provision, it is not at all obvious that there are benefits from PPPs. It feels that this is true for social infrastructure, especially if the private sector does not provide the principal service
- Mr Hemming felt that the application of a standard risk matrix is important. In his view, using PPPs as a way of avoiding the inclusion of debt in the state's balance sheet effectively means that, in accounting terms, the apportionment of risk is skewed to the private sector in these countries. In other words, countries are letting accounting practices drive their procurement decision
- He noted that as part of deals, countries are giving things that reduce value-for-money just to get PPP projects off-budget. The result is that you get a bad PPP
- Mr Hemming indicated that the problem, in accounting terms, is that the result is binary (ie '0-1'on or off), whereas the IMF believes there needs to be an approach to accounting which is much more sensitive. In such an approach, cost and risk would be reflected in public sector balance sheets. He believes there is no difficulty in getting agreement among parties that PPPs involve Governments committing for a very long time to buy services and that the Government is

committing to risk. However, it is difficult to get accountants to address or change their accounting treatment

- He indicated that the UK has decided that on the basis of risk transfer, entities can put imputed debt on the balance sheet (this is also the case in Australia). He said that the UK has a debt limit which is 40% of GDP and that, from now on under European Union (EU) rules, it will have to count liability as debt
- The IMF concern is that people should be transparent about fiscal implications, ie that the PPP is not a free good
- Mr Hemming noted a particular concern among the 'accession' countries in Europe, which are under fiscal pressure and desiring to join the EU. The IMF feels that there should not be a PPP if countries do not have the institutional capacity to manage their fiscal programs. However, it has noted that there positive signs, for example countries such as South Africa, which has followed the UK PPP model. Mr Hemming noted that Ireland has done some work to help build the capacity of local governments to run PPPs and that there are a number of companies with expertise, particularly Israeli companies, taking the running on PPPs
- Mr Hemming also considered that the question of who runs the consortium should not affect whether a PPP should proceed.

Travel: The delegation left Washington for New York.

Thursday 26 August 2005

Meeting with: Department of Housing, Preservation and Development

Participants: Mr Shaun Donovan, Commissioner
Mr Ibo Balton, Director of Planning, Manhattan, Queens and Staten Island
Ms Syreeta McFadden, Director, Multi Family New Construction

Description of organisation:

The Department of Housing, Preservation and Development is the primary New York City housing agency focussing on housing preservation and the development of new housing stock. It has been a partner in affordable housing projects and neighbourhood revitalisation in high need areas across the City.

Main Discussion Points:

- The Department has a significant role in the enforcement of codes, where inspectors issue violation notices against owners who fail to maintain rental properties. The HPD works in close association with the NYC Housing Development Corporation, a community housing agency that has been able to build up reserves to reinvest in affordable housing
- The Federal Government provides tax exemptions and tax credits to provide housing. Under the *Federal Tax Act 1986* there must be a private entity to sell the tax credits to, and there is a review mechanism. Each State gets a per capita allocation of credits it can distribute more broadly
- In terms of direct provision, the City stopped building new public housing 30 years ago
- Now, the tools are interventions in financial markets (for example, Fannie Mae and Freddie Mac), a form of insurance which lessens the risk for private lenders. Under these arrangements the housing provider pays for the insurance but can earn fees for providing the insurance. Representatives assured the delegation that it is a profitable enterprise

- They noted that there is a view that it is too profitable: critics arguing that the 'mission orientation' for providers should be increased, that is to make them provide more affordable housing
- There are also a lot of direct interventions in financial or mortgage markets to provide more affordable housing. A powerful means is through leveraging (they indicated that the Federal Housing Agency makes $3-4b pa through this mechanism)
- Another related way this occurs is through renewal. Under the *Community Re-Investment Act* (CRA), banks must undertake a certain amount of lending for affordable housing in a geographic area. The representatives noted that all banks in New York City are aware that Federal banking regulators will rate a bank on their CRA response. While it is hard to quantify the effect this has on banks' behaviour, the observation recently is that banks have been more willing to make loans for affordable housing than in the past. There is also a good deal more expertise generated in banks about putting CRAs into effect
- The HPD has also done a lot of thinking about how to subsidise not-for-profit housing providers (from small, community-based, often Church organisations to very large non-profit national organisations)
- One tool used for this purpose is Section 8 vouchers – there are 2m of these issued around the country. Renters with very low incomes can rent in the private market. The voucher pays the difference between 30% of their income and market rent up to a limit
- There are also all kinds of subsidies paid to private owners, including low income tax credits. Over 1.2m apartments have been produced via this means
- In NYC, low or no-interest loans have been found to be very effective, and these are combined with private funds – the banks provide a market rate mortgage and this is blended with a government mortgage (sourced from City funds). It provides a flexible tool to customise the amount of the subsidy to a housing (property) owner. The City imposes limits on how much the rent can increase per year. A State agency enforces the rent control
- In these programs, the City does not restrict the owners as to the types of renters moving in. Rather it seeks a balance regarding the achievement of an objective
- Two-thirds of all housing in NYC is rental (it was noted that this is the reverse of the rest of the country). There has, however, been a substantial increase in ownership in the city recently. Current City administration has expanded home owner assistance, for example, through the 'Down Payment Assistance Program'. The program requires people to go through a counselling process before they can become home owners. This is regarded as necessary because amounts as small as 1-3% of the cost are required as a down as a down payment and counselling is seen as one way of reducing the risk of default
- There has been an explosion of not-for-profit organisations in this area, for example LISC. These organisations do the technical assistance, putting together investors and acting as brokers with agencies and not-for-profit housing providers. The representatives noted that a whole industry of 'syndicaters' has developed
- The representatives noted that, initially, they found it hard to believe that the purchase of tax credits was sustainable. They were 85c on the dollar, and are

over $1 currently. Credits, however, are only one of the tax advantages investors can enjoy.

The Department of Housing, Preservation and Development organised a comprehensive tour of developments in the borough of Harlem, to provide the delegation with a clear picture of the range of developments occurring, including those being undertaken as PPPs.

Meeting with: New York City Housing Development Corporation
Participants: Ms Emily Youssouf, President
Mr Gary Rodney, Vice-President
Description of organisation:
The NYC Housing Development Corporation is a community housing agency that invests in affordable housing using a reserve of funds it accumulates for this purpose. The HDC is a public benefit organisation.
Main Discussion Points:

- The Housing Development Corporation operates like a mortgage bank and charges a service fee. The HDC has $5b in mortgages and about $2.4b in debt
- The HDC only undertakes cooperatives and multi-home loans, and it lends to developers through private activity bonds
- It has assured that investment is going into affordable housing through monitoring both rental agreements and regulation
- The HDC tries to leverage its reserves for maximum benefit
- It also leverages skills from both the private sector in general and the financial sector in particular to undertake affordable housing.
- Bonds for affordable housing are issued nationally.
- The HDC representatives suggested that, if there was interest in private sector investment in affordable housing within New South Wales, it would be worthwhile to talk with the Mortgage Bank Security Departments of both Standard and Poors and Moodys about the issuing of bonds.

Meeting with: New York City Economic Development Corporation (NYCEDC)
Participants: Ms Laure Aubuchon, Senior Vice-President
Mr Brian Murphy, Executive Vice-President
Ms Venetia Lannon, Vice-President
Ms Susan Goldfinger, Senior Vice-President
Description of organisation:
The NYCEDC is a not-for-profit organisation which buys and sells property on behalf of the City of New York. NYCEDC does not issue bonds, but charges a fee on putting groups together. It sees itself as the 'business attraction and retention arm' of an enterprise. NYEDC conducts such services as financial services, media and real estate.
Main Discussion Points:

- The NYCEDC sees itself as trying to attract development and finance in an increasingly competitive environment
- The representatives noted that NYEDC is looking at large, and long-term investment in energy, telecommunications, rail, road and sanitation
- It undertakes capital projects using City finance and where there is vacant or underutilised land. The NYCEDC then offers these properties at fair market value. The property goes back onto the tax roll when it is issued and the developer then pays the tax on it

- NYCEDC issues Requests for Proposals (RFPs) to enable this to occur – the clearer the RFP, the better the outcome
- The process of arriving at an RFP involves noticing the lack of investment in and potential for a site and listening to the business community. But the process also originates from the Mayor's leadership
- In some cases, NYCEDC will sell the land, and sometimes it will provide a 99 year ground lease
- NYEDC also collects rent and manages properties
- Within NYCEDC, there is a strategic planning group looking at major areas in the five Boroughs. The group puts together vision plans to change the value and interest in a given area. It has, for example, identified the need for a new CBD in Brooklyn. Significant parkland and infrastructure investment is occurring to assist this process
- Asked about risk-sharing, the NYCEDC representatives said they believed that the real estate market is so strong there is no need to 'share risk'
- They commented that New York City has the largest sanitation operation in the country. NYCEDC believes it is undertaken efficiently and effectively. NYEDC is currently working on a proposal for long-term waste exporting. It is also developing a PPP with Sims for a recycling recovery facility at a disused pier in South Brooklyn.

Monday 29 August 2005

Meeting with: International Federation of Accountants (IFAC)

Participants: Mr Ian Ball, Chief Executive
Mr Matthew Bohun, Technical Manager

Description of organisation:

IFAC is the worldwide organisation for the accounting profession. It promotes adherence to high quality international standards in accountancy practice.

Main Discussion Points:

- By way of introduction, Ian Ball noted that he was based in the New Zealand Treasury at the time the United Kingdom began PPPs, when shifting the debt off-balance sheet was the incentive for adopting them. He observed that, as a result, the development of PPPs spread around the world occurred in the countries where the UK had influence. This, largely, did not include the United States
- The IFAC representatives suggested that there are two reasons for bad value PFPs: (i) their use in shifting debt off the balance sheet and (ii) that they involve complex, long-term events and outcomes which are generally not anticipated or allowed for contractually. Motorways were cited as an example which seemed simple, but governments could expose themselves by not allocating risks appropriately, especially unforseen risks
- If the intent is to engender public trust in the financial statements of NSW relating to PPPs, there needs to be an awareness that the origins of the process may not be regarded as transparent
- They noted that there are principles established in the IFAC Handbook, and a provision in the IFAC Workplan to establish a Standard for PPPs. IFAC has been working with the IMF Government Finance Statistics Unit to this end. They indicated, however, that they would not anticipate a great deal to change to the UK Standard FRS5 as a result of deliberations
- They anticipate that an exposure draft will be available next year and a Standard the year after. This work is being done in conjunction with the IASB. The representatives

indicated that they have some key differences from IASB in this regard, which are a long way from resolution

- The principal concern is that IASB is suggesting that the public sector always controls or owns the asset, and IFAC's concern is that this may result in the asset being accounted for nowhere
- IFAC is concerned that the current discussion about the Standard is not adequately taking account of public sector issues, which it feels are complex.
- They noted that an issue for the Auditor-General in relation to PFIs will be to ensure adequate access to relevant documentation
- Mr Bohun noted that the Standard on leases (IPSA 13, 17) addresses some issues relating to PFIs, but also indicated that the International FRS on the management of financial instruments may be useful.

Meeting with: Office of the Comptroller

Participants Mr Eng-Kai Tan, Bureau Chief
Mr Richard S Simon, Deputy General Counsel
Mr Michael W Stern, Director of Debt Management
Ms Kathy Martino, Director, Economically Targeted Investments
Dennis J Hochbaum, Director, Quality Assurance

Description of organisation:

- The Comptroller's Office monitor's the City's finances, debt-incurring power and the National and City economies, and informs the public and the City Council of the results of that monitoring. Its role is prudent oversight – that is, to ensure the City meets its policy requirements. The Office is a statutory role. The Office has 700 employees to the City's 300,000 employees

Main Discussion Points:

- Among its responsibilities, the Office oversees the Economically Chartered Investments (5 pension funds). It seeks to invest 2% of funds in New York City (close to $2 billion annually)
- The representatives noted that the largest core program run by the Office is a Rehabilitation Fund involved in the construction of affordable housing. The partners are the Pension Funds, banks and not-for-profit organisations
- The mission is to ensure low/middle income housing provision ($60,000 is the median income)
- They noted that the most inexpensive house in New York City (through a cooperative) would be at an entry level of around $300,000
- With the increase in demand and value in recent years, they noted, rebuilding is now occurring with much higher density
- They indicated that the Pension Plan Program has been used to identify areas in the City requiring re-investment. They said that financing is occurring in areas that, in 1980, no bank on earth would want to touch. They noted that the City has undergone a tremendous renaissance in the last 2 decades
- The main advantage was that the Pension Funds were willing to commit at the commencement of construction (where most investors were unwilling)
- The Pension Funds succeed because the City receives insufficient income through taxes to undertake this type of service provision. The representatives indicated the City is $60b in debt. They said this indicates that the City therefore needs the private sector, which in turn needs the City, to keep business going

- The representatives noted that there is a constitutional debt limit. The City can borrow up to 10% of the value of real estate in the City, and there are a number of borrowing entities in the City to help achieve this aim
- The Office meets regularly with investors and briefs them concerning the Budget Program (1, 4 and 10 year Budget Programs are developed). They indicated that there is full disclosure
- Investors who invest in bonds have the option of receiving assured bonds. These can help to balance their portfolios
- Mr Simon noted that the Counsel's Office oversees developmental contract information
- The Counsel's Office seeks to ensure full disclosure while adequately protecting the City's interests. It reviews the 'underlying business deal' to maintain a fair balance of risks if the developer fails to meet obligations
- The representatives noted that the Securities Industry is the biggest and most important industry in New York City. They said that there is an enormous rebuilding program going on downtown because the City sees the Securities Industry as an 'anchor' tenant
- Another major project is the City's effort to develop a portion of the Westside rail yards. The City is playing a role in the zoning, to encourage higher tracts of development and provision of physical infrastructure, such as the extension of the Subway. A quasi-independent body will be selling bonds for the Hudson Yards Redevelopment. The role of the Office throughout this process has been to review documentation and assess open-ended guarantees and to influence the process to improve the transparency and the City Council's consideration of financing
- The representatives felt that there is occasional criticism for getting too close to policy but, as a practical measure, the Office seeks to make sure the deal process is prudently done
- It is considered that there is a tremendous amount of disclosure in New York City: through the Annual Financial Statements; independent studies on various issues; and the Mayor's Report on Operations (issued annually and benchmarked against itself). Everything is made available on the internet. The representatives felt that this gives investors confidence
- They noted that the Office may assign an auditor to a particular project. For example, the Office routinely audits the amount of money coming in to the City from tennis matches at White City, to see if it is getting its fair share of the deal
- They also noted that millions of dollars have been recovered in relation to the management of leases for sporting venues
- The representatives explained that the Mayor and Comptroller are from different political parties. The Mayor serves an 8 year term, the Comptroller's Office is concerned about issues spanning out some 30 years
- While the Mayor's Office negotiates contracts, each of these has to be registered in the Comptroller's Office, which checks such issues as whether the contract is in the proper form, that there is money set aside for overtime, that the contractor has ensured full disclosure, and so on). If there are claims for additional monies later in the project, the process would be that the contract must be examined at again. The Comptroller has a major independent role in overseeing the contract
- The representatives said that because some 25-30% of the City's budget is for contracted services (the budget totals $50b annually), contract compliance auditing is routinely used

- The Office has the right to co-sign on borrowings. It also has its own subpoena powers.

Travel: The delegation left New York.

Wednesday 31 August 2005

Travel: The delegation arrived in Sydney.

Appendix - 3

Appendix 4 – Key Documents from Study Tour

Organisation	Publication
Coin Street Community Builders, South Bank, London	1. *There is Another Way,* (undated, post 2002) Story and description of the transformation of the Coin Street area of South Bank, London, from largely derelict land to a mixed development of social housing, a park and managed workshops and leisure activities.
Coin Street Community Builders, South Bank, London	2. *So You Think you Know South Bank, (undated)* Description of projects under construction or planned for the South Bank
Iroko Housing Cooperative, South Bank, London	3. *Iroko Housing Cooperative* (undated, circa 2000) Brochure outlining role of cooperative and housing types offered for potential cooperative members
PPP Forum	4. *Annual Review 2005* Outlines objectives and activities of the PPP Forum
4Ps	5. *Procurement Support for Local Authorities,* (undated) Outlines role, strategies and networks of 4Ps, the local government procurement advisory body.
HM Treasury, UK	6. *PFI: meeting the investment challenge*, July 2003 Explains the PFI program's role in the delivery of Government investment plans for public services. Includes research on the performance of PFI, and steps to improve partnerships and service delivery.
PriceWaterhouse Coopers	7. *Developing Public Private Partnerships in Europe*, 2004 Outlines proposed use of PPPs to meet identified 'infrastructure gap' in Europe. Includes recommendations to improve knowledge about and capacity to develop and deliver PPPs, and financing options for PPPs.
Serco Institute	8. *Good people, good systems*, Emma Reddington, 2004 Describes learning from managers who have delivered services in both public and private sectors
National Audit Office, UK	9. Annual Report 2005
General Accounting Office, USA	10. *Public-Private Partnerships: Pilot Program Needed to Demonstrate the Actual Benefit of Using Partnerships,* July 2001 Discusses hypothetical partnership scenarios for government buildings and concludes PPP could be one of a suite of management tools for problems in deteriorating federal buildings
General Accounting Office, USA	11. *Military Housing: Opportunities That Should Be Explored to Improve Housing and Reduce Costs for*

	unmarried Junior Service Members, June 2003 Explores the option of privatisation for the housing of unmarried military personnel
General Accounting Office, USA	12. *Public Private Partnerships: Key Elements of Federal Buildings and Facility Partnerships*, February 1999 Explores types of partnerships that could apply to development and/or management of federal buildings
General Accounting Office, USA	13. *Budget Issues: Alternative Approaches to Finance Federal Capital*, August 2003 Examines the full range of financing approaches used by federal agencies, including PPPs
General Accounting Office, USA	14. *Capital Financing: Partnerships and Energy Savings Performance Contracts Raise Budgeting and Monitoring Concerns*, December 2004 Full, long-term costs were not required to be reported as part of PPP contracts. The GAO concluded this approach may favour PPP financing over conventional financing of assets.
World Bank Institute	15. *Accounting for Poverty in Infrastructure Reform: Learning from Latin America's Experience,* 2002 Addresses the political challenge that infrastructure services provided through PPPs should be as affordable. Transparent and able to embrace creative solutions in tariff and subsidy design, as well as using local alternative providers. Further, Governments need to be more involved in managing PPPs.
World Bank Institute	16. *Granting and Renegotiating Infrastructure Concessions: Doing It Right*, J Luis Guasch, 2004 Studies over 1000 state-owned companies privatised in Latin America and the Caribbean since the late 1980s.
World Bank Institute	17. *Public-Private Partnership in Infrastructure* (undated) Pamphlet outlining role of the Finance and Private Sector Development Group
National Council for Public Private Partnerships, USA	18. *Critical Choices: The Debate Over Public-Private Partnerships and What it Means for America's Future,* 2003 Describes the use of PPPs in the USA from an historical perspective and the level of government control over PPPs necessary to deliver a good project.
Urban Land Institute	19. *Ten Principles for Successful Development Around Transit,* 2003 Describes benefits of development in major cities which have encouraged development around their extensive transit networks.

New York City Housing Development Corporation	20. 2004 Annual Report
New York City Department of Housing, Preservation and Development	21. *Harlem Neighbourhood Tour,* Spring 2004 Provides examples of low and middle income housing built through various programs administered by the NYCHPD
New York City Economic Development Corporation	22. *Introduction to The New York City Economic Development Corporation*, August 2005
New York City Economic Development Corporation	23. *Requests for Proposals: Former Queens Family Courthouse*, June 2004
New York City Economic Development Corporation	24. *Requests for Proposals: Development of Willets Point,* November 2004
New York City Economic Development Corporation	25. *Requests for Proposals: East River Science Park,* November 2004 Seeks investment in biotech laboratories
New York City Economic Development Corporation	26. *Hugo Neu Recycling Facility South Brooklyn Marine Terminal,* (current) Describes background to choice of a location for and environmental benefits of multi-purpose recycling facility
International Federation of Accountants	27. *International Public Sector Accounting Standards Board Draft Work Plan 2005*
International Federation of Accountants	28. Correspondence re IFRIC draft interpretations on Service Concessions Arrangements
International Federation of Accountants	29. *Handbook of International Public Sector Accounting Pronouncements*, 2005 edition
International Federation of Accountants	30. *Challenges and Successes in Implementing International Standards: Achieving Convergence to IFRS and ISAs,* September 2004
International Federation of Accountants	31. *Governance in the Public Sector: A Governing Body Perspective*, Study 13, August 2001
INTOSAI	32. *Working Group on Financial Audit Guidelines* (undated)
IASB	33. *IFRIC Update,* August 2005
City of New York	34. *Comprehensive Annual Financial Report of the Comptroller*, June 2004