

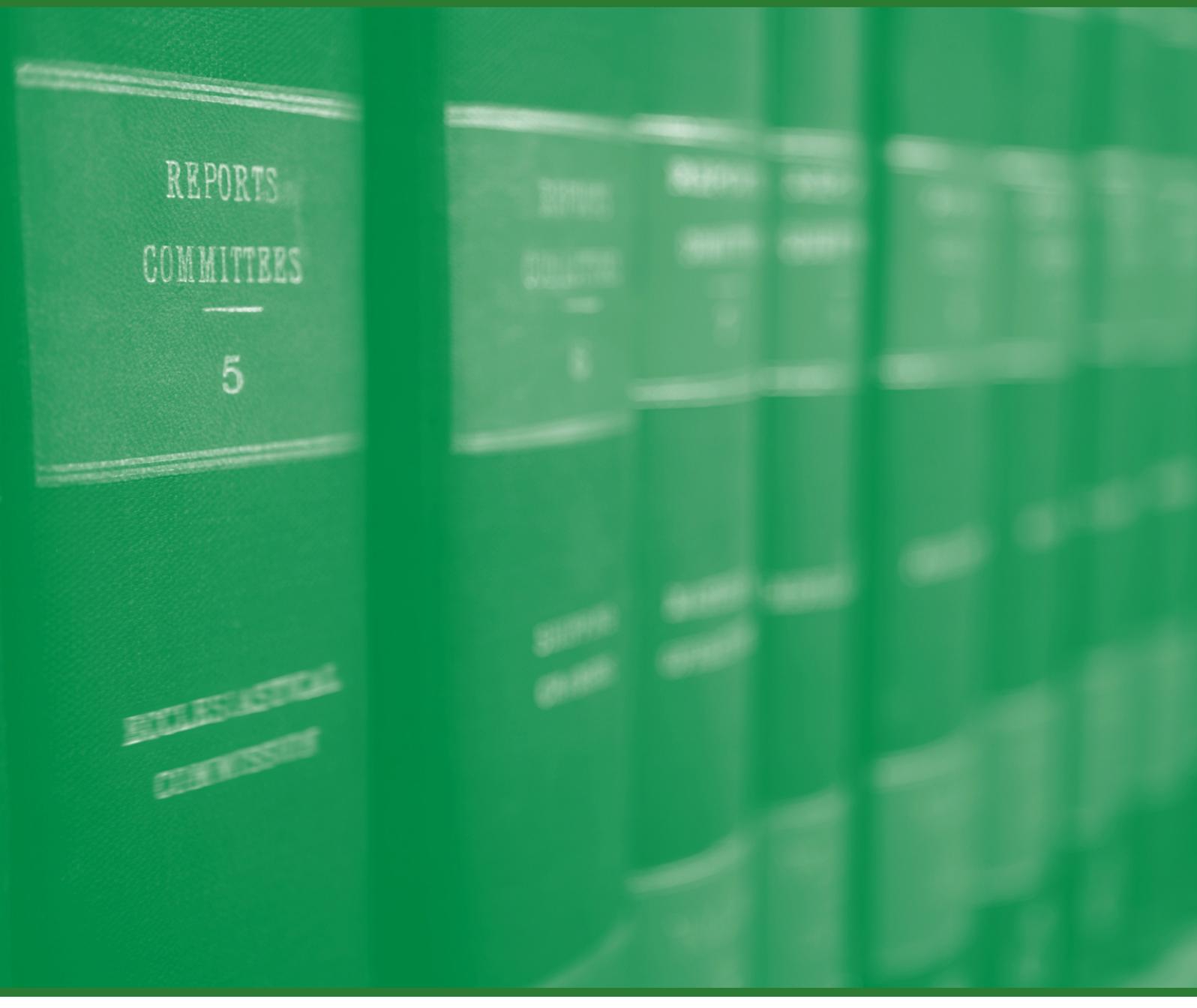


LEGISLATIVE ASSEMBLY OF NEW SOUTH WALES

Legislative Assembly Committee on Transport and Infrastructure

REPORT 2/56 – FEBRUARY 2017

PROCUREMENT OF GOVERNMENT INFRASTRUCTURE PROJECTS



New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Assembly. Committee on Transport and Infrastructure.

Procurement of government infrastructure projects / Legislative Assembly, Committee on Transport and Infrastructure [Sydney, N.S.W.] : the Committee, 2017. 1 online resource ([51] pages) (Report no. 2/56 Committee on Transport and Infrastructure)

"23 February 2017".

Chair: Mr Alister Henskens SC MP.

ISBN 9781921012433

1. Government purchasing.
2. Public contracts.
3. Infrastructure (Economics).
4. Contracting out.
5. Public-private sector cooperation
- I. Henskens, Alister.
- II. Title.
- III. Series: New South Wales. Parliament. Legislative Assembly. Committee on Transport and Infrastructure. Report ; no. 2/56

(352.538 DDC22)

The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

Contents

Membership	ii
Terms of Reference	iii
Chair’s Foreword	iv
List of Findings and Recommendations	v
CHAPTER ONE – INTRODUCTION	1
TERMS OF REFERENCE	1
CONDUCT OF THE INQUIRY	1
INQUIRY PARTICIPANTS	2
CHAPTER TWO – GENERAL FRAMEWORK	3
HOW DO GOVERNMENTS PROCURE INFRASTRUCTURE PROJECTS?	3
WHAT AGENCIES ARE INVOLVED IN PROCUREMENT?	13
ESTABLISHMENT OF A PROCUREMENT CENTRE OF EXCELLENCE	17
CHAPTER THREE – REFINEMENT OF PROCUREMENT PROCESSES	19
POSITIVE REFORMS TO PUBLIC PRIVATE PARTNERSHIPS	19
NSW GOVERNMENT SHOULD CONTINUE TO PROMOTE UNSOLICITED PROPOSALS	20
REDUCING BID COSTS	23
STANDARDISED CONTRACTS	26
APPENDIX ONE – LIST OF SUBMISSIONS	32
APPENDIX TWO – LIST OF WITNESSES	34
APPENDIX THREE – EXTRACTS FROM MINUTES	36

Membership

CHAIR	Mr Alister Henskens SC MP, Member for Ku-ring-gai
DEPUTY CHAIR	Mr Bruce Notley-Smith MP, Member for Coogee
MEMBERS	Ms Jodi McKay MP, Member for Strathfield Mr Ryan Park MP, Member for Keira The Hon. Melinda Pavey MP, Member for Oxley
CONTACT DETAILS	Legislative Assembly Committee on Transport and Infrastructure Parliament House Macquarie Street SYDNEY NSW 2000
TELEPHONE	(02) 9230 3382
E-MAIL	transportinfrastructure@parliament.nsw.gov.au
URL	https://www.parliament.nsw.gov.au/transportinfrastructure

Terms of Reference

That the Committee inquire into, and report on, world's best practice with regard to the procurement of government infrastructure projects with particular reference to:

1. the best process of gateway decision making on the efficacy of public private partnerships compared to other procurement methods;
2. the best procurement process and documentation;
3. the desirability of the standardisation of procurement processes and documentation;
4. the desirability of a standard national process and documentation for the delivery of government infrastructure within a federal structure;
5. methods to minimise the cost of contractors tendering for the supply of services with respect to government infrastructure;
6. methods to achieve optimal contestability in tendering for the supply of services with respect to government infrastructure; and
7. any other related matters.

Chair's Foreword

It has been a pleasure to chair this inquiry into the best practice for the procurement of government infrastructure.

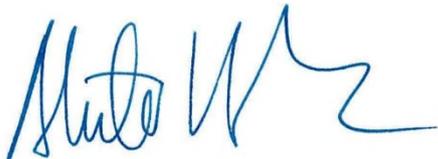
Government has many diverse roles in the community. However, the strategic importance of the provision of government infrastructure to the future wellbeing of society cannot be underestimated.

This report identifies a number of important issues and makes recommendations with regard to the better provision of government infrastructure in the future. The Committee recommends the establishment of a centre of procurement excellence in NSW and identifies areas of improved innovation, efficiency and fairness in procurement.

In arriving at our conclusions we were greatly assisted by the submissions and evidence by both industry participants and also government representatives from NSW and other jurisdictions. I thank them for their valuable time in assisting the Committee with its work.

I also wish to thank my fellow Committee members for their dedication and collegiality. It has been my pleasure to chair our meetings, to hear your contributions and to work with you to complete this report.

Finally, I wish to thank the Legislative Assembly Committee staff for the expertise and professionalism they applied to assisting the Committee and me in our work.



Alister Henskens SC MP
Chair

List of Findings and Recommendations

RECOMMENDATION 1 _____ 17

The Committee recommends that the NSW Government investigate whether it should establish a centre of procurement excellence to assist agencies with, amongst other things:

- consistent procurement practices across government;
- improving the skills and capacity of the NSW Government;
- maintaining best practice in procurement processes; and
- sharing procurement lessons learned from projects across government.

FINDING 1 _____ 19

The Committee finds that the NSW Government has implemented positive reforms to its procurement processes and encouraged increased interest and competition in the public-private partnership market.

RECOMMENDATION 2 _____ 20

The Committee recommends that the NSW Government continue to promote unsolicited proposals as a means of developing and delivering innovative ideas and that it examines ways in which unsolicited proposals may be more easily made to government.

RECOMMENDATION 3 _____ 24

The Committee recommends that the NSW Government should continue to eliminate unnecessary information requirement during bidding stages in order to reduce procurement bid costs.

RECOMMENDATION 4 _____ 25

The Committee recommends that the NSW Government provide a consistent and transparent pipeline of infrastructure projects in order to minimise procurement bid costs and increase contestability in procurement.

FINDING 2 _____ 26

The Committee finds there is scope for innovation by extending the public-private partnership procurement model to smaller infrastructure projects through bundled public-private partnerships.

RECOMMENDATION 5 _____ 26

The Committee recommends that, following a review of procurement contracts across all government agencies, the NSW Government standardise contracts where practical.

RECOMMENDATION 6 _____ 28

The Committee recommends that the NSW Government include in the NSW Public Private Partnerships Guidelines clear principles for the allocation of project risk.

RECOMMENDATION 7 _____ 29

The Committee recommends that the NSW Government assess whether contracting out of proportionate liability provisions should be prohibited across government contracts.

RECOMMENDATION 8 _____ 30

The Committee recommends that the government investigate the best possible means to ensure that in all government contracts and public private partnerships all steel used on government projects comply with the Australian standard.

Chapter One – Introduction

TERMS OF REFERENCE

- 1.1 On 19 November 2015 the Committee met and adopted terms of reference for an inquiry into the procurement of government infrastructure. The full terms of reference are included in the front of this report. The Chair, Mr Alister Henskens SC MP, announced the inquiry in the Legislative Assembly on the same day.

CONDUCT OF THE INQUIRY

Briefings

- 1.2 The Committee conducted private briefings with stakeholders in order to gather information and research on issues relevant to the inquiry.
- 1.3 On 11 November 2015, the Committee met with the following representatives from the Infrastructure and Structured Finance Unit, NSW Treasury:
- Ms Leilani Frew, Head of Infrastructure and Structured Finance Unit
 - Ms Kim Curtain, Director, Infrastructure and Structured Finance Unit
 - Ms Marina Grobbelaar, Director, Infrastructure and Structured Finance Unit
- 1.4 On 13 May 2016, members of the Committee participated in a teleconference with representatives from the Canadian government procurement agency, Public Services and Procurement Canada:
- Mr Normand Masse, Director General, Services and Technology Acquisitions Management Sector
 - Mr Jason Storm, Director, E-Procurement Acquisitions Directorate
 - Mr David Schwartz, Director General, Commercial and Alternative Acquisitions Management Sector
 - Mr Patrick Kelly, Senior Director, P3 Procurement Directorate
- 1.5 On the same day, members of the Committee also participated in a teleconference with the following representatives from the New Zealand Government:
- Ms Karen English, Acting Policy Manager, New Zealand Government Procurement, Market Services, Ministry of Business, Innovation & Employment
 - Mr Richard Ward, Auckland Co-ordinator and Lead for the National Infrastructure Plan, The New Zealand Treasury
 - Mr Brendan Herder, Senior Advisor, PPP Programme, The New Zealand Treasury

INTRODUCTION

- Ms Jen Johnson, Advisor, PPP Programme, The New Zealand Treasury
- Mr Dan Marshall, Head of PPP Programme, The New Zealand Treasury

INQUIRY PARTICIPANTS

- 1.6 The Committee advertised the inquiry on the Committee website and wrote to relevant stakeholders seeking their contribution.
- 1.7 The Committee received 28 submissions from a range of stakeholders including Australian governments, international governments, the banking industry, the construction industry and the infrastructure consulting industry.
- 1.8 A list of submissions is included at Appendix One and submissions are available to view on the Committee's website.
- 1.9 The Committee held a public hearing on Monday, 14 March 2016 at Parliament House. Sixteen witnesses appeared before the Committee.
- 1.10 A list of witnesses who appeared is included at Appendix Two and the transcript of the proceedings is available on the Committee's website.
- 1.11 The Committee thanks all those who made submissions, participated in briefings or who appeared as witnesses at the hearing for their contribution.

Chapter Two – General framework

HOW DO GOVERNMENTS PROCURE INFRASTRUCTURE PROJECTS?

- 2.1 Governments use a number of approaches to deliver infrastructure projects. Traditional delivery methods have historically been the primary method used by governments, with other approaches such as Public Private Partnerships (PPP's) becoming prevalent.¹

Traditional procurement

- 2.2 Most infrastructure projects are procured using traditional methods. For example an infrastructure project involving a train station upgrade or road widening may provide better value for money if delivered through traditional procurement.
- 2.3 Traditional procurement methods often aim to achieve cost efficiency through up front construction costs, and do not necessarily take into account the whole-of-life cost of public assets, which considers the cost of construction together with the long term maintenance cost of the asset
- 2.4 The Committee received strong evidence that it is more cost efficient in the long term to take into account not only the cost of building but also maintaining public assets. In traditional procurement methods, construction choices in design and materials are not required to take into account the long run maintenance cost to government. As a consequence, the cost of procured assets when accounting for its whole of life costs, can increase exponentially due to preventable design and material decisions made during the procurement process.²
- 2.5 It is possible to address this concern by requiring the contractor, under a traditional procurement method, to contractually include a long-term maintenance obligation.
- 2.6 The following table provides a summary of some of the traditional delivery models.

Traditional delivery models³

Contract type	Characteristics
Construct	The government designs the infrastructure and then calls for tenders to construct. Once complete the infrastructure is transferred to the government to operate and maintain
Design and construct	The government specifies the infrastructure it requires in terms of its

¹ See: <https://infrastructure.gov.au/infrastructure/ngpd/> viewed 2 December 2016; Productivity Commission, *Public Infrastructure*, Inquiry Report, No 71, 27 May 2014, p 51

² Infrastructure and Structured Finance Unit, NSW Treasury, private briefing document, December 2015

³ Productivity Commission, *Public Infrastructure*, Inquiry Report, No 71, 27 May 2014, p 442-447; Productivity Commission, *Public Infrastructure Financing: An International Perspective*, Staff Working Paper, March 2009, p 145

	functions and desired outcomes then calls for tenders to design and construct. The supplier is responsible for designing and building the infrastructure and managing any related risks. Once complete the infrastructure is transferred to the government to operate and maintain.
Managing contractor	The government appoints a managing contractor who undertakes a significant amount of the project management. The managing contractor engages sub-contractors to deliver the infrastructure. Once complete the infrastructure is transferred to the government to operate and maintain
Alliance	An agreement between the private sector and the government to share the benefits or the costs associated with project risks. The parties agree to a benchmark price, time and service level. Any benefits (or costs) achieved are shared between the parties according to a pre-agreed formula.

Public private partnerships

- 2.7 PPP's are another option the government can use to procure infrastructure. PPP's are commonly used for projects where the private sector may be required to deliver the infrastructure and then service that infrastructure over a long period.
- 2.8 Early PPP's did not always include a period of maintenance of the assets as party of the responsibility of the private provider. In this way PPP's could be built with cost-effective materials and not necessarily provide for whole-of-life cost efficiency, as described above with traditional procurement. However, for most current PPP's, governments typically seek whole-of-life innovation and efficiencies that the private sector can deliver in design, construction and operating phases of the project through long term maintenance obligations.⁴ In NSW, for any public infrastructure project with a value exceeding \$100 million, a PPP must be assessed as a potential procurement method.⁵
- 2.9 Not all infrastructure projects will suit delivery by PPP. Many will provide better value for money if delivered through traditional methods. In Australia, PPP's represent approximately 5% of investment in public infrastructure. In NSW and Victoria, it represents approximately 10%.⁶ The processes by which a procurement method is chosen for a project is discussed later in this Chapter.

Definitions and types

- 2.10 Definitions of PPP's differ across jurisdictions. The term is used to describe numerous arrangements where the public and private sector work together on a public asset or service.
- 2.11 The National Public Private Partnerships Guidelines define PPP's as:

⁴ See: <https://infrastructure.gov.au/infrastructure/ngpd/>, viewed 2 December 2016

⁵ NSW Government, *NSW Public Private Partnerships Guidelines*, August 2012, p 1

⁶ KPMG, *PPP Procurement: Review of Barriers to Competition and Efficiency in the Procurement of PPP Projects*, May 2010, p 17

... a long-term contract between the public and private sectors where government pays the private sector to deliver infrastructure and related services on behalf, or in support, of government's broader service responsibilities.⁷

2.12 The NSW PPP Guidelines include the following principal features:

- creating public infrastructure assets through private sector financing and ownership control;
- a contribution by Government through land, capital works, risk sharing, revenue diversion or other supporting mechanisms; and
- engaging the private sector for a specified period for the delivery of related services.⁸

2.13 There are different types of PPP's that operate across jurisdictions that often involve different combinations of public and private sector involvement.⁹ For PPP's in NSW, the typical contractual structures fall into two broad categories of infrastructure: economic infrastructure and social infrastructure.¹⁰

Economic infrastructure

2.14 Economic infrastructure is primarily infrastructure where the primary source of revenue is from user charges such as tolls. The NSW PPP Guidelines define economic infrastructure as:

Infrastructure where the private party derives revenue from third parties (e.g. user charges) and therefore takes on the demand risk. Typical examples of economic infrastructure are networks of roads and telecommunication facilities, airports, ports, water storage and sewerage, railways, electric power generation and distribution facilities.¹¹

2.15 Examples of recent economic infrastructure PPP's in NSW include: the Lane Cove Tunnel, the M5 South West Motorway and the M2 Motorway.

Social infrastructure

2.16 Social infrastructure is infrastructure where the primary source of revenue is in the form of service payments that the government pays to the private sector. The NSW PPP Guidelines defines social infrastructure as:

Social infrastructure projects are PPP's where the government pays the private party a service fee for the availability of a facility/social infrastructure. Examples of social infrastructure include hospitals, schools, police stations, prisons, and transport projects involving availability-style PPP.¹²

⁷ Infrastructure Australia, *National Public Private Partnerships Guidelines: Overview*, December 2008, p 7

⁸ NSW Government, *NSW Public Private Partnerships Guidelines*, August 2012, p 1

⁹ NSW Parliamentary Library Research Service, Issues Backgrounder, *Public Private Partnerships in NSW: a timeline and key sources*, August 2011, p 1

¹⁰ Infrastructure and Structured Finance Unit, NSW Treasury, private briefing document, December 2015

¹¹ NSW Government, *NSW Public Private Partnerships Guidelines*, August 2012, p 23

¹² NSW Government, *NSW Public Private Partnerships Guidelines*, August 2012, p 24

- 2.17 Examples of recent social infrastructure PPP's in NSW include: the Northern Beaches Health Service Redevelopment, Darling Harbour Live project and the Newcastle Mater Hospital Redevelopment.

Guidelines

- 2.18 In NSW the procurement of infrastructure and services through PPP's needs to comply with the *National Public Private Partnerships Policy and Guidelines* (the National Guidelines) and the NSW specific requirements in the *NSW Public Private Partnerships Guidelines*.
- 2.19 The National Guidelines are prepared and endorsed by Infrastructure Australia and the State, Territory and Commonwealth Governments.¹³ They set out the processes that authorities should follow including typical risk allocations and principles that should be adopted.
- 2.20 State and Territory governments may have their own jurisdictional requirements and these are to be read in conjunction with the National Guidelines.
- 2.21 The combination of guidelines and policies at a National and State level is designed to promote a consistent approach to PPP procurement across jurisdictions.
- 2.22 As mentioned above the NSW PPP Guidelines provide that for any public infrastructure project with a total estimated capital value exceeding \$100 million, a PPP must be assessed as a potential procurement method having regard to value for money drivers. The guidelines do not prevent an agency from bundling a group of projects in order to meet this threshold.¹⁴ As highlighted by the NSW Government in evidence to the Committee, this approach was used for the building of nine schools in 2003:
- The NSW Government pursued a PPP for a bundle of nine school projects in the New Schools Project in 2003. The total estimated net present value of the project at the time of the contract was \$131.4 million.¹⁵
- 2.23 The benefits of bundling projects to meet monetary thresholds and also reduce bid costs are discussed further in Chapter Three.

Strengths and weaknesses

- 2.24 In recent years there have been numerous reports and studies undertaken into PPP's. Many of these have identified strengths and weaknesses of using PPP's to procure infrastructure and these are summarised on the following page:

¹³ Infrastructure Australia, *National Public Private Partnerships Guidelines: Overview*, December 2008, p 1

¹⁴ NSW Government, response to further questions, p 1

¹⁵ NSW Government, response to further questions, p 1

Strengths and weaknesses of PPP's¹⁶

Strengths	Weaknesses
Opportunity to provide improved public services without adding to Government debt	Contractual complexity. It can take a long time to structure and negotiate the project contract
Significant benefits in design and quality through innovation, with an option for controls for delivery timeframe	Notional thresholds. Due to the time and cost in developing the project and contract, many jurisdictions only consider projects for PPP delivery which reach a certain minimum value
Able to draw upon the best available skills, knowledge and resources in both the public and private sectors	Higher cost of financing. The borrowing costs for the private sector is higher than the borrowing costs of government which may mean a PPP does not represent value for money
Governments can focus on core services and use the savings to expand other services	Reduced public accountability. Accountability may be reduced due to some information remaining commercially confidential
Cost effectiveness. Bundling PPP projects can provide whole-of-life cost savings and increase efficiency by delivering services of a higher quality or at a lower cost	Inflexible. PPP's are typically long contracts and inflexible to changes in government service delivery
Risk transfer	There may be some instances where the government may need to take the contract over or provide additional financial support. In these instances the transfer of risk is negligible

Phases of investment and procurement decisions

- 2.25 Before infrastructure projects are procured, using either traditional methods or by PPP, projects undergo a two-step process involving:
- **the investment decision** – this decision involves identifying infrastructure needs and obtaining approval and funding to invest in a specific infrastructure project; and

¹⁶ Adapted from the following: Infrastructure Australia, *National Public Private Partnerships Guidelines: Overview*, December 2008, p 8; NSW Parliamentary Library Research Service, Issues Background, *Public Private Partnerships in NSW: a timeline and key sources*, August 2011, p 4; Productivity Commission, *Public Infrastructure Financing: An International Perspective*, Staff Working Paper, March 2009, pp 172 - 182.

- **the procurement decision**- this stage assesses the appropriate procurement method for the project having regard to value for money drivers.¹⁷

2.26 The National Guidelines provide that in choosing the most appropriate procurement method, some of the key issues to consider include:

- **determining core versus non-core services** – core services are those which government has chosen to retain responsibility for delivering. Outside these, a range of asset-related and other ancillary services will be associated with the project and may be considered for inclusion in the scope of the private sector;
- **value for money** – this issue concerns whether private sector involvement is likely to deliver value for money;
- **analysis of market capability and appetite** – this issue concerns making a decision, on practical grounds and available data, whether or not the private sector can deliver the project and whether they have the appetite or motivation to do so; and
- **public interest** – this issue concerns public interest matters associated with the procurement approach.¹⁸

2.27 In NSW, the decision to procure a project as a PPP is made by the Expenditure Review Committee of Cabinet. This decision is based on the project’s procurement strategy report, business case, Public Interest Evaluation and any recommendations from the Cabinet Infrastructure Committee.¹⁹

2.28 The Public Interest Evaluation is a process which, according to the NSW PPP Guidelines, should be assessed as part of the procurement decision. The Evaluation should also be updated throughout the procurement process to ensure the choice of procurement method continues to be in the public interest.

PPP procurement delivery

2.29 If approval is granted to procure through PPP then a number of phases begin. The table below outlines the key stages in PPP procurement delivery. Aspects of each of the stages outlined below formed a significant part of the evidence the Committee received during the course of the inquiry. In Chapter Three the Committee makes a number of recommendations aimed at improving the processes listed below.

PPP procurement delivery stages²⁰

Procurement stage	Key steps
Project development	<ul style="list-style-type: none"> • Assemble resources including steering committee • Develop project and probity plans

¹⁷ NSW Government, *NSW Public Private Partnerships Guidelines*, August 2012, p 5

¹⁸ Infrastructure Australia, *National Public Private Partnerships Guidelines: Overview*, December 2008, p 12

¹⁹ NSW Government, *NSW Public Private Partnerships Guidelines*, August 2012, p 5

²⁰ NSW Government, *NSW Public Private Partnerships Guidelines*, August 2012, p 4

	<ul style="list-style-type: none"> • Private sector interface/market sounding • Update business cases, Public Sector Comparator and Public Interest Evaluation • Draft Expression of Interest documentation and evaluation plan
Expression of Interest (EOI) Phase	<ul style="list-style-type: none"> • Release invitation for EOI • Evaluate EOI bids and shortlist bidders • Draft Request for Proposal documentation and evaluation plans • Update Public Interest Evaluation
Request for Proposals (RFP) Phase	<ul style="list-style-type: none"> • Invite shortlisted bidders to submit RFP • RFP evaluation and selection of preferred bidder • Prepare “negotiation parameters” • Update risk allocation and Public Interest Evaluation
Negotiate and Contract Finalisation	<ul style="list-style-type: none"> • Negotiate with preferred bidder • Finalise contract • Finalise accounting treatment

PPP’s in other jurisdictions

2.30 Comparable jurisdictions to Australia, such as the United Kingdom, Canada and New Zealand, all broadly use the same multi stage procurement process for PPP’s. They each follow a process of EOI stage, then RFP stage, followed by the selection of a preferred bidder and contract negotiation and finalisation.²¹

2.31 In other aspects of PPP project delivery and process, Australia is compared favourably to other jurisdictions.²² Some key comparisons are highlighted below:

International comparison: United Kingdom²³

Timeframes	<ul style="list-style-type: none"> • Average procurement time for a PPP contract is 34 months compared with 17 months in Australia
Projects	<ul style="list-style-type: none"> • The UK closes a larger volume of PPP projects with a broader range of project values than Australia • 15% of public sector capital investment is delivered using PPP’s. In Australia this is 5%, in NSW this is 10%
Process	<ul style="list-style-type: none"> • Uses standard form contracts • Finance is not locked in prior to agreeing terms – less

²¹ KPMG, *PPP Procurement: Review of Barriers to Competition and Efficiency in the Procurement of PPP Projects*, May 2010, p 3

²² KPMG, *PPP Procurement: Review of Barriers to Competition and Efficiency in the Procurement of PPP Projects*, May 2010, p 7

²³ Infrastructure and Structured Finance Unit, NSW Treasury, private briefing document, November 2015

certainty for the state <ul style="list-style-type: none"> Up to 12 months spent, after locking in preferred bidder, negotiating terms before financial close
--

International comparison: Canada²⁴

Timeframes	<ul style="list-style-type: none"> Average procurement time for a PPP contract is 16 months compared with 17 months in Australia
Projects	<ul style="list-style-type: none"> Uses PPP's for a broad spectrum of projects including many smaller and less complex projects (\$100m-\$200m) 10-20% of public sector capital investment is delivered using PPPs. In Australia this is 5%, in NSW this is 10%
Process	<ul style="list-style-type: none"> Generally uses standard documentation which cannot be negotiated. Bidders unhappy with the standardised risk allocation profile may price these risks into bid costs Moving to more complex and economic infrastructure projects. Bid costs likely to rise as projects are unique and more expensive Losing bidders are commonly paid an honorarium which offsets their bid costs

Unsolicited proposals

2.32 An additional method by which the NSW Government procures infrastructure projects is through unsolicited proposals. As stated in the *Unsolicited Proposals: Guide for Submission and Assessment* (the Guide):

The NSW Government is continually seeking to capture value, and unique and innovative ideas from industry that provide real and tangible benefits to the people of New South Wales.²⁵

2.33 The Guide describes the key difference between procuring projects through government initiated processes and those not solicited by Government:

Government initiated procurement processes. This is the predominant form of procurement and is based on competition through tendering in order to achieve value for money in a fair and transparent manner. Such procurement is driven by the

²⁴ Infrastructure and Structured Finance Unit, NSW Treasury, private briefing document, November 2015

²⁵ NSW Government, *Unsolicited Proposals: Guide for Submission and Assessment*, February 2014, p 1

Government’s strategic and operational planning processes and allows efficient and timely delivery of Government services.

Non-Government sector initiated proposals, not solicited by Government through the process described in 1. above. The non-Government sector includes private individuals, companies, not-for-profit entities and non NSW Government owned Local Authorities such as councils. Such proposals are by definition outside the normal planning and procurement processes of Government but may offer opportunities for real value for Government.

- 2.34 Unsolicited proposals are not considered a replacement for Government initiated procurement and the usual procurement approach will be to test the market.²⁶ To this end, the Government will generally only consider unsolicited proposals which demonstrate unique attributes that others cannot deliver.²⁷
- 2.35 There are a number of guiding principles to assist in assessing unsolicited proposals. The Guide provides that the assessment of an unsolicited proposal will be based on the proposal satisfactorily meeting each of the assessment criteria.

Unsolicited proposal assessment criteria²⁸

Criteria	Description
Uniqueness	<p>Demonstration of unique benefits of the proposal and the unique ability of the proponent to deliver the proposal. In particular the following are to be demonstrated –</p> <ul style="list-style-type: none"> • Can this proposal be readily delivered by competitors? If the answer is yes, then what, if any justification would the Government have to the public for not seeking best value through a competitive tender process? What benefit(s) would the Government gain? • Does the proponent own something that would limit the Government from contracting with other parties if the Government went to tender? This would include intellectual property, real property and other unique assets. • Are there other attributes which may not necessarily stand alone as unique but, when combined, create a “unique” proposal? This may include genuinely innovative ideas, including financial arrangements or a unique ability to deliver a strategic outcome. It is possible that the Government might agree to initiate market testing of a new proposal that has merit, but is not unique.

²⁶ NSW Government, *Unsolicited Proposals: Guide for Submission and Assessment*, February 2014, p 2

²⁷ NSW Government, *Unsolicited Proposals: Guide for Submission and Assessment*, February 2014, p 2

²⁸ NSW Government, *Unsolicited Proposals: Guide for Submission and Assessment*, February 2014, pp 5-6

Value for money	Does the proposal deliver value for money to the NSW Government? What are the <i>net</i> economic benefits of the proposal (the status quo should be defined)? Is the proposal seeking to purchase a Government asset at less than its value in exchange for other services? Consideration will be given to factors such as: whole of life costs and revenue, quality, risk borne by Government, benefits gained, qualitative and whole of Government outcomes including timely achievement of objectives.
Whole of Government impact	What is the opportunity cost for Government if it were to proceed with the proposal? Is the proposal consistent with the Government’s plans and priorities? Consideration will be given to whether the proposal would require Government to re-prioritise and re-allocate funding.
Return on Investment	Is the proposed return on Investment to the proponent proportionate to the proponent’s risks, and industry standards?
Capability and Capacity	Does the proponent have the experience, capability and capacity to carry out the proposal? What reliance is there on third parties?
Affordability	Does the proposal require Government funding, or for the Government to purchase proposed services? Does the Government have these funds available or budgeted and if not what source would be proposed?
Risk Allocation	What risks are to be borne by the proponent and by the Government? Where risks can be quantified and valued they may also be considered under the value for money criteria

2.36 The assessment process for unsolicited proposals consists of three stages:

- **Stage one – initial submission and preliminary assessment.** This involves a comprehensive initial assessment of the proposal to identify potential benefit to the Government.
- **Stage two – detailed proposal.** The proponent and Government work together to develop the proposal which may involve preliminary negotiation on key issues.
- **Stage three – negotiation of final binding offer.** This involves the finalisation of all outstanding issues with a view to entering a binding agreement.²⁹

²⁹ NSW Government, *Unsolicited Proposals: Guide for Submission and Assessment*, February 2014, pp 13-17

- 2.37 In the 2015/16 financial year, the Department of Premier and Cabinet received 21 unsolicited proposals. Eighteen proposals were assessed and none proceeded to stage 2 of the assessment process.³⁰ The main reasons as to why the proposals did not progress included uniqueness; value for money; and inconsistent with Government policy.³¹
- 2.38 The Committee discusses the unsolicited proposal process further in Chapter Three.

WHAT AGENCIES ARE INVOLVED IN PROCUREMENT?

- 2.39 In NSW there are three main government bodies whose functions include procurement advice, oversight and management:
- Infrastructure NSW;
 - NSW Treasury's Infrastructure and Structured Finance Unit;
 - NSW Procurement Board.
- 2.40 Infrastructure Australia provides federal oversight and advice.

Infrastructure NSW

- 2.41 In 2011, the Government introduced the *Infrastructure NSW Act* which established Infrastructure NSW (INSW).
- 2.42 INSW primarily functions as an oversight body for major infrastructure procurement projects and provides advice to the Premier on strategic infrastructure planning for the future.
- 2.43 INSW also has the responsibility for coordinating State infrastructure funding submissions to the Commonwealth Government and other bodies, and for reviewing completed infrastructure projects and provide feedback to the Premier.
- 2.44 INSW is governed by the Board of Infrastructure NSW, comprised of
1. the chairperson appointed by the Premier;
 2. no more than five experts in infrastructure planning, funding and delivery, also appointed by the Premier; and
 3. the heads of the Department of Premier and Cabinet, Treasury, Department of Trade and Investment, Regional Infrastructure and Services, and the Department of Planning and Infrastructure.³²
- 2.45 Due to INSW's chief function in preparing and advising on strategic NSW infrastructure projects, all government agencies are required to cooperate with

³⁰ See: <https://www.nsw.gov.au/your-government/unsolicited-proposals/case-studies> viewed 1 December 2016

³¹ See: <https://www.nsw.gov.au/your-government/unsolicited-proposals/case-studies> viewed 1 December 2016

³² *Infrastructure NSW Act 2011*, section 5

INSW on any actions that may impact adversely on the current 5-year infrastructure plan.³³

Projects NSW

- 2.46 In late 2015, a specialist unit, Projects NSW, was established within INSW to manage the procurement and delivery of selected major, complex or high risk infrastructure projects on behalf of nominated agencies.³⁴
- 2.47 The first projects that are being managed by Projects NSW are:
- a new correctional centre at Grafton (being delivered as a public private partnership);
 - the redevelopment of the Walsh Bay Arts Precinct;
 - the new Western Sydney Stadium;
 - the upgrade of the Anzac Memorial at Hyde Park (on behalf of the Anzac Memorial Trustees); and
 - the completion of Darling Harbour's transformation.³⁵

Infrastructure and Structured Finance Unit, NSW Treasury

- 2.48 The Infrastructure and Structured Finance Unit (the ISFU) is a unit within NSW Treasury to provide advice on PPP's and to ensure that agencies adhere to the processes set out in the National Guidelines and NSW PPP Guidelines.
- 2.49 The IFSU is the first point of contact in NSW for PPPs. IFSU assists agencies with commercial/financing advice on PPPs through the preparation of required documents, the Public Sector Comparator (PSC) and participating in the tender and negotiation process.
- 2.50 An experienced member of the Infrastructure Financing Unit will also be a member of the steering committee for each project. The level of assistance provided by Treasury will vary according to the procuring agency's level of relevant experience.³⁶

NSW Procurement Board

- 2.51 The NSW Procurement Board (Procurement Board) was established under Section 164 of the *Public Works and Procurement Act 1912*. The legislation gave government agencies the authority to manage their procurement activities in accordance with accreditation issues by the Procurement Board.³⁷
- 2.52 The key role of the Procurement Board is to oversee procurement, by setting policy and ensuring compliance across the public sector. The Procurement Board

³³ *Infrastructure NSW Act 2011*, section 5, p 8

³⁴ Submission 15, NSW Government, p 2

³⁵ See: <http://www.infrastructure.nsw.gov.au/projects-nsw.aspx> viewed 2 December 2016

³⁶ NSW Government, *NSW Public Private Partnerships Guidelines*, August 2012, p 2

³⁷ Office of Finance and Services, *2014-15 Annual Report*, October 2015, p. 38

is also able to monitor the progress of agency compliance in regard to procurement practice.³⁸

- 2.53 It is important to note that while the Procurement Board has the authority to issue directions to agencies about the conduct of procurements, or authorise them to carry out specific procurements, it does not have the power to enter into contracts.³⁹
- 2.54 The Board is subject to the direction and control of the Minister and the Minister may direct the Board to comply with a specified Government-wide procurement policy. In order to remain transparent, any direction given by the Minister to the Board must be included in its annual report.⁴⁰

ICT Board

- 2.55 The NSW Procurement Board has delegated the governance of procurement of information and communication technologies (ICT) goods and services to the ICT Board.⁴¹ This delegation is designed to ensure that the ICT policies and strategies endorsed by the ICT Board are implemented with the right mix of procurement activity and contracts.
- 2.56 ICT goods and services include hardware, services, networking, software, and telecommunications.
- 2.57 For the purposes of this inquiry, the Committee did not consider best practices for the procurement of ICT goods and services.

Infrastructure Australia

- 2.58 In 2008, the Australian Government introduced the *Infrastructure Australia Act* which established Infrastructure Australia.
- 2.59 The primary functions of Infrastructure Australia include conducting audits to determine the adequacy, capacity and condition of nationally significant infrastructure, and to provide independent research and advice to all levels of government.
- 2.60 Under the Act, Infrastructure Australia has responsibility to develop 15-year rolling Infrastructure Plans that specify national and state level priorities.
- 2.61 A table briefly summarising some of the key roles and differences between infrastructure governing agencies is on the following page.

³⁸ *Public Works and Procurement Act 1912*, sections 171-172

³⁹ Office of Finance and Services, *2014-15 Annual Report*, October 2015, p. 39

⁴⁰ *Public Works and Procurement Act 1912*, section 166

⁴¹ See: <https://www.procurepoint.nsw.gov.au/policy-and-reform/nsw-procurement-board/about-nsw-procurement-board> viewed 30 November 2016

Comparison of infrastructure procurement agencies

Infrastructure body roles				
Role	Infrastructure NSW	Infrastructure Australia	Infrastructure Ontario	Partnerships Victoria
Advise the Minister	Yes	Yes	Yes	Yes
Assist government bodies with project management	Yes	No	Yes	Yes
Audit infrastructure	No	Yes	No	No
Evaluate projects to ensure conformity with Government policy	No	Yes	No	Yes
Obtain finance	No	No	Yes	No
Oversight of Infrastructure funding	Yes	No	Yes	No
Prepare strategic plans	Yes	Yes	No	No
Produce PPP policy	Yes	Yes	Yes	Yes
Project management	Yes	No	Yes	No
Provide loans for public bodies	No	No	Yes	No
Recommend long-term land reservations	Yes	No	No	No
Set priorities	Yes	Yes	No	No

ESTABLISHMENT OF A PROCUREMENT CENTRE OF EXCELLENCE

RECOMMENDATION 1

The Committee recommends that the NSW Government investigate whether it should establish a centre of procurement excellence to assist agencies with, amongst other things:

- **consistent procurement practices across government;**
- **improving the skills and capacity of the NSW Government;**
- **maintaining best practice in procurement processes; and**
- **sharing procurement lessons learned from projects across government.**

2.62 During the course of the inquiry the Committee received evidence concerning the importance of public sector agencies having relevant skills and capacity in procurement. The Institute of Public Works Engineering Australasia (IPWEA) submitted:

Fundamental to any improvement or reform in procurement is recognition of the need for skills and capacity within the public infrastructure sector.⁴²

2.63 Similarly Mr James Phillis, Consult Australia, raised concerns that the trend of outsourcing projects has led to a shortage of relevant skills and capacity in the public sector. Mr Phillis commented:

Across almost every Government department that is delivering some kind of technical project there has been a reduction in the number of professionals employed in those organisations. More and more of the work that they do is outsourced. From an industry perspective, what we really desire is good, strong, competent clients.⁴³

2.64 Mr Phillis additionally stated that not all agencies adhere to consistent processes:

Some of the agencies are fantastic. Roads and Maritime services gives us a briefing on anything that we want at any time once we have gone through the project. Other agencies promise it but do not deliver it – it just becomes so hard that you never actually get there to have the meeting or the discussion with them.⁴⁴

2.65 In their submission Consult Australia argued that a whole of government focus on procurement skills would benefit agencies responsible for procurement.⁴⁵ They promoted the concept of a Centre for Procurement Excellence which would have,

⁴² Submission 5, Institute of Public Works Engineering Australasia, p 3

⁴³ James Phillis, Chair, NSW State Division Committee, Consult Australia, transcript of evidence, Monday 14 March 2016, p 4

⁴⁴ James Phillis, Chair, NSW State Division Committee, Consult Australia, transcript of evidence, Monday 14 March 2016, p 4

⁴⁵ Submission 24, Consult Australia, p 32

amongst others functions, the task of providing skills training and development for public sector procurement officers. Consult Australia submitted:

The creation of this concept is not without precedent. Already, the United Kingdom Government has created a Commissioning Academy that has broadly the same mandate in terms of sharing best practice and improving procurement skills. Given the reluctance of government to create new agencies, a Centre for Procurement Excellence could easily sit within an existing agency established to support the development of infrastructure or procurement skills.⁴⁶

2.66 Mr Paul Oppenheim, the Plenary Group similarly supported the establishment of a single body to support best practice procurement. He stated:

I think the first point to say is you do have very good pockets of individuals. So there are good individuals within transport, there are good individuals in Treasury and so on. But at the moment, as you say, there does not exist a single body or a single unit that is set up to drive improvement and processes, as a centre of excellence really, to drive best practice procurement.

2.67 The Committee acknowledges the work of existing government bodies that have functions related to the procurement of infrastructure, however the Committee is persuaded that a single agency dedicated to sharing best practice across agencies procurement would be beneficial. This is particularly so in the area of training and development and monitoring the consistent application of procurement processes.

⁴⁶ Submission 24, Consult Australia, p 32

Chapter Three – Refinement of procurement processes

POSITIVE REFORMS TO PUBLIC PRIVATE PARTNERSHIPS

FINDING 1

The Committee finds that the NSW Government has implemented positive reforms to its procurement processes and encouraged increased interest and competition in the public-private partnership market.

- 3.1 At the outset, the Committee commends the diligence of the NSW Government for reviewing and improving its procurement practices. The Committee received evidence from many stakeholders on a range of issues relating to procurement, and was pleased to learn that the NSW Government had identified many of these concerns and was working with stakeholders to come to an acceptable solution.
- 3.2 The NSW Government has taken proactive steps to review the procurement process both internally and with industry stakeholders. For example, in 2015 the Government consulted with the market to identify areas of industry concern and potential reform in PPP procurement. The aim of the consultation was to find ways to reduce costs for industry participants, without compromising procurement objectives.⁴⁷
- 3.3 Following the consultation, the NSW Government collated feedback from industry stakeholders which identified possible areas for improvement in the procurement process, documentation and establishment of the project team. The outcomes from this consultation are currently being incorporated into the NSW PPP policies and guidelines.⁴⁸ According to the Bank of Tokyo-Mitsubishi, these efforts ‘reduce uncertainty in procurement processes and save considerable time and cost for bidders in PPPs.’⁴⁹
- 3.4 The Committee received strong evidence throughout the Inquiry that reducing bid costs would in turn reduce barriers for industry entry into the PPP market, a conclusion also reached by the NSW Government.⁵⁰ Stakeholders proposed various methods for reducing bid costs, including bid cost reinvestment to increased flexibility for project guidelines to standardisation of documents.⁵¹
- 3.5 In considering methods to reduce bid costs, the NSW Government reported a shift in approach in procurement practices. The Government has moved away from an input specified approach with tightly defined Government requirements over the scope of the construction and delivery of projects, which instituted many constraints on bidders. After examining procurement practices across

⁴⁷ Submission 15, NSW Government, p 4

⁴⁸ Submission 15, NSW Government, p 4

⁴⁹ Submission 6, Bank of Tokyo-Mitsubishi, p 2

⁵⁰ Submission 15 NSW Government, p 2

⁵¹ Mr Patrick Lauren, Executive Director, Plenary Group, transcript of evidence, 14 March 2016, p 39

international and other jurisdictions such as the United Kingdom and New Zealand, the Government has moved towards an outcomes specified approach, which identifies the overall objective of a project, and allows more flexibility and innovation in delivering the project.⁵² According to Plenary group:

Obviously, [an outcome-based approach] saves costs there...but it really opens the innovation for the tenderers to be able to come up with particular ways of doing things which might be lessons from overseas that will add value and so on to the process and the project....To be open, New South Wales procurements in recent months have started to make steps in the right direction...⁵³

- 3.6 The NSW Government has also reported other initiatives taken to improve the efficiency of the procurement process, including; development of a standard project documentation and project 'toolbox.' And additionally, the recent establishment of the NSW Government Procurement Board and Projects NSW.
- 3.7 Although the reforms implemented by the NSW Government have been positively received by the industry, the Committee also heard evidence that there is room for improvement.⁵⁴
- 3.8 These areas include:
- information and documentation
 - communications about upcoming projects
 - bundling of smaller projects
 - standardisation of contracts
 - risk allocation; and
 - proportionate liability.

NSW GOVERNMENT SHOULD CONTINUE TO PROMOTE UNSOLICITED PROPOSALS

RECOMMENDATION 2

The Committee recommends that the NSW Government continue to promote unsolicited proposals as a means of developing and delivering innovative ideas and that it examines ways in which unsolicited proposals may be more easily made to government.

- 3.9 The Committee considered the purpose of unsolicited proposals in procurement practice, and found that it leads to greater innovation than is possible under

⁵² Ms Leilani Frew, Head, Infrastructure and Structured Finance, NSW Treasury, briefing held on

⁵³ Mr Patrick Lauren, Executive Director, Plenary Group, transcript of evidence, 14 March 2016, p 43

⁵⁴ Ms Megan Motto, Chief Executive Officer, Consult Australia, transcript of evidence, p 2; Mr Simon Humphrey, Chief Executive Officer, Keolis Downer, transcript of evidence, p 22; Mr Patrick Lauren, Executive Director, Plenary Group, transcript of evidence, p 44

current PPP and traditional procurement practices. The guidelines and history of unsolicited proposals is examined in greater depth in Chapter One.

3.10

The Committee received evidence from a number of infrastructure stakeholders that strongly supported unsolicited proposals because they encourage innovation, timeliness and cost efficiency for projects that would benefit the public. For example, Transurban referred to the project NorthConnex as an example of a successful unsolicited proposal in its submission.⁵⁵ A case study is provided below.

CASE STUDY: NorthConnex

Transurban and Westlink M7 shareholders (infrastructure and development stakeholders) partnered to submit an Unsolicited Proposal to the NSW Government in March 2012.

The proposal, known as NorthConnex, outlined plans for twin tolled motorway tunnels 9km in length, linking the M1 Pacific Motorway (former the F3 Freeway) at Wahroonga to the Hills M2 Motorway at West Pennant Hills.

The Unsolicited Proposal, valued at \$2.9 billion, was considered against the appropriate criteria and was awarded in January 2015, with the Australian and NSW Government contributing \$405 million each. The expected completion date is late 2019.

Transurban identified the following benefits of the NorthConnex proposal:

- **Earlier award of contract:** Transurban estimates that the traditional procurement process would have taken nine months longer than the unsolicited proposal
- **Elimination of change proposals:** as the original design was approved, there were no additional costs associated with changing plans in accordance with the appropriate planning authority
- **Maximises innovation by industry:** as there was no reference design, all the tenderers' design teams had maximum flexibility to innovate and receive feedback from the client to ensure the overall objectives were met
- **Design costs are reduced:** Transurban was not required to provide a reference design in addition to a tender design typically required in the traditional procurement process, thus reducing design costs
- **Better relationships:** increased interactions with the successful tenderer, in comparison to shared interactions with multiple tenderers

⁵⁵ Submission 3, Transurban, pp 2-3

- 3.11 The Committee also received evidence supporting unsolicited proposals as being an effective approach to innovative infrastructure delivery. However, caution was expressed against the ‘inconsistencies in policy and approach between government organisations...’⁵⁶ which can lead to confusion for stakeholders. A more unified approach to unsolicited proposals across jurisdictions was recommended.⁵⁷
- 3.12 According to the NSW Government, the chief aim of creating guidelines for unsolicited proposals was to capture the benefits of innovative infrastructure and service delivery solutions.⁵⁸
- 3.13 Unsolicited proposals or similar procurement practices are not unique to NSW but also observed in three other States and the ACT.
- 3.14 In fact, according to the 2016 Auditor-General’s Report, *Managing unsolicited proposals in New South Wales*, ‘the NSW Guide has been used by several other jurisdictions to inform the development of their own guidelines.’⁵⁹
- 3.15 The table below outlines the Australian jurisdictions which manage unsolicited proposals and their variations from the NSW unsolicited proposal practice.

Australian Jurisdiction	Unsolicited proposal scheme
Tasmania	There is a minimum threshold for unsolicited proposal consideration of \$10 million of private investment contribution or the creation of a minimum of 100 direct jobs in Tasmania ⁶⁰
South Australia	There is a minimum threshold for unsolicited proposal consideration of \$3 million, with an investment construction value of \$3 million or greater; or \$1 million minimum threshold for non-infrastructure proposals ⁶¹
ACT	In its guidelines, the unsolicited proposals framework is oriented towards projects with a minimum value of \$10 million, but ‘may also apply to smaller projects.’ Also, other methods of procurement beside direct negotiation (unsolicited proposal) are considered as part of the assessment approach. ⁶²
Victoria	Other methods of procurement beside direct negotiation (unsolicited proposal) are considered as part of the assessment

⁵⁶ Submission 20, Name suppressed, p 5

⁵⁷ Submission 20, Name suppressed, pp 5-6

⁵⁸ See: “<https://www.nsw.gov.au/your-government/unsolicited-proposals>” viewed 29 November 2016

⁵⁹ NSW Auditor-General, *Managing unsolicited proposals in New South Wales*, performance audit, March 2016, pp 10-11

⁶⁰ See: “http://cg.tas.gov.au/home/unsolicited_proposals” viewed 30 November 2016

⁶¹ See: “http://www.sa.gov.au/_data/assets/pdf_file/0006/130002/Unsolicited-Proposals-Guidelines.pdf” viewed 30 November 2016

⁶² See: “http://apps.treasury.act.gov.au/_data/assets/pdf_file/0010/886771/Guidelines-for-Unsolicited-Proposals-September-2016.pdf” viewed 30 November 2016

approach. Also, Victorian guidelines refer to other governance and assurance processes that should be applied due to other government policy.⁶³

- 3.16 The following unsolicited proposals were approved since the NSW Government launched its *Guide for Submission and Assessment of Unsolicited Proposals* in January 2012:
- Sale of the Queen Mary Building, Camperdown, to the University of Sydney on 10 October 2013, for the purpose of affordable student accommodation
 - Barangaroo development into casino, reserve and office park
 - NorthConnex development linking the M1 and M2 Motorways via twin tunnels
 - Wynyard Place development into a transit hall and public concourse at Wynyard Station with an entrance from George Street
 - Partial long term lease of Ausgrid⁶⁴
- 3.17 The Department of Premier and Cabinet received 21 unsolicited proposals, of which 18 did not proceed to the next stage of the procurement process in the last financial year.⁶⁵
- 3.18 The Committee considers that unsolicited proposals are an effective way to encourage innovative approaches to procurement in NSW. The Committee received evidence that the infrastructure industry is receptive and enthusiastic about the opportunities provided through the unsolicited proposals process in NSW.
- 3.19 The Committee notes the importance of maintaining an appropriate level of price comparators for large infrastructure procurement in order to ensure best value for money. However, after reviewing the number of unsolicited proposals received by the Department of Premier and Cabinet, in comparison to the number of unsolicited proposals approved, the Committee considers there is scope for the Government to relax the criteria for unsolicited proposals to make them more easily approved thereby encouraging more innovation driven by the private sector.

REDUCING BID COSTS

- 3.20 The Committee considers three ways in which the NSW Government can reduce bid costs and encourage more industry stakeholders to engage in the PPP process:

⁶³ Government of Victoria, viewed on 30 November 2016, <

⁶⁴ See: “ <https://www.nsw.gov.au/your-government/unsolicited-proposals>” 29 November 2016

⁶⁵ See: “ <https://www.nsw.gov.au/your-government/unsolicited-proposals>” viewed 29 November 2016

- The first recommendation is focused on eliminating unnecessary information required throughout the PPP process.
- The second recommendation supports a more consistent and transparent pipeline of projects, which would aid in the planning process for industry stakeholders.
- And lastly, the Committee found that bundling smaller infrastructure projects may result in more projects meeting the threshold for PPP consideration.

The requirement for unnecessary information should be eliminated

RECOMMENDATION 3

The Committee recommends that the NSW Government should continue to eliminate unnecessary information requirement during bidding stages in order to reduce procurement bid costs.

- 3.21 In consideration of this recommendation, the Committee heard evidence from stakeholders that unnecessary information required in the procurement process is often costly, and can ultimately lead to increased bid costs, which are then passed on to the Government.⁶⁶
- 3.22 A bid cost is the amount of capital required for a potential private partner to organise and submit a viable proposal for a NSW Government project that has been released for tender. It comprises the costs associated with assembling teams of experts to create an Expression of Interest and Request for Proposal. Bid costs are directly impacted by the amount of information required by the Government.⁶⁷
- 3.23 Plenary Group advised the Committee that more documentation is required in New South Wales than compared to other international jurisdictions, adding:
- ...I think the same issue does apply to most other States in Australia. Perhaps part of the rationale is that there is quite an advisory industry that exists in Australia around projects. So there is the capacity that the more you ask for the more that has to be evaluated and the more people required to participate in the process.⁶⁸
- 3.24 Transurban also supported any move to ‘simplify’ the procurement process, which it says, represents ‘a significant cost and presents a barrier’ to industry stakeholders.⁶⁹

⁶⁶ Submission 3, Transurban, p 1;

⁶⁷ Infrastructure and Structured Finance Unit, NSW Treasury, briefing to the Committee, 11 March 2015

⁶⁸ Mr Paul Oppenheim, CEO, Plenary Group, transcript of evidence, 14 March 2016, p 40

⁶⁹ Submission 3, Transurban, p 1

The NSW Government should provide a consistent and transparent pipeline

RECOMMENDATION 4

The Committee recommends that the NSW Government provide a consistent and transparent pipeline of infrastructure projects in order to minimise procurement bid costs and increase contestability in procurement.

- 3.25 The Committee considers that more consistent and transparent project pipelines would ultimately lead to lower costs for infrastructure projects. Pipelines are the plans for upcoming Government projects that will be open for bidding in the future.
- 3.26 According to Keolis Downer, it is the uncertainty of project pipelines that poses the largest costs for stakeholders; specifically 'long lead times' and 'high burn rate' when assembling bid teams and international resources.
- 3.27 In its submission, Keolis Downer provided the example of the Sydney Light Rail project:
- ...the communication of release of RFP [Request for Proposal] was 4 hours before the actual release, despite discussions with the State the week prior on the need for lead time to mobilise an international team. This meant 1-2 weeks were lost in an 18 week bid period, which ultimately increased costs due to the need to insert additional resources to try and catch up. Communication and regular updates is all that is required, and to the extent possible certainty on timelines to work to.⁷⁰
- 3.28 Plenary Group advised that international jurisdictions, such as Ontario, have a 'greater' and more consistent pipeline of infrastructure projects. The reliability of the pipeline in turn allows stakeholders to better plan and provide competitive pricing.⁷¹
- 3.29 Following its 2015 market consultation, the NSW Government advised that there were 'competing views' regarding stakeholders' approach to infrastructure pipelines:
- One was that they [stakeholder] want lots of information early but the other was that they do not want the information until we can give them a clear message. Because they go off and start putting consortiums together and if then the message changes, they have started down a path that wasn't the right path. So it is a bit of a balancing act between the quality of the information and the timelessness of the information, to not send the wrong messages, which is a difficult one and every project needs to juggle what is right for the project.⁷²
- 3.30 On balance, the Committee considered a consistent and transparent pipeline, when possible, would benefit procurement practices for both stakeholders and the Government.

⁷⁰ Submission 1, Keolis Downer, p 2

⁷¹ Mr Patrick Lauren, Executive Director, Plenary Group, transcript of evidence, 14 March 2016, p 37

⁷² Ms Kim Curtain, Director, Infrastructure and Structured Finance Unit, New South Wales Treasury, transcript of evidence, 14 March 2016, p 64

Should smaller infrastructure projects be bundled?

FINDING 2

The Committee finds there is scope for innovation by extending the public-private partnership procurement model to smaller infrastructure projects through bundled public-private partnerships.

- 3.31 In the Committee's view, there is scope for encouraging innovation by extending the public-private partnership procurement model to smaller infrastructure projects bundled together to meet the \$100 million threshold for PPP consideration, when on their own, they would not qualify.
- 3.32 According to Engineers Australia, the 'packaging of projects' can 'deliver a more transformational outcome,' especially at the inception of the procurement process, when the goal is good value for cost.⁷³
- 3.33 Mr Paul Oppenheim, CEO of the Plenary Group discussed the benefits of bundling small projects for infrastructure procurement as an improved time efficiency that results in reducing costs and increasing contestability.⁷⁴ He advised that Western Australia and Victoria are currently bundling smaller projects together with success, as are international jurisdictions such as Pennsylvania in the United States.⁷⁵
- 3.34 In May 2013, the Victorian Government announced reforms that extended the PPP framework to include small-scale projects, which 'currently lack the scale required to attract private sector interest' when they are bundled.⁷⁶
- 3.35 It is worth noting that the NSW procurement guidelines do not prevent agencies from considering a group of bundled projects from being assessed within the PPP framework.⁷⁷

STANDARDISED CONTRACTS

Standardised contracts

RECOMMENDATION 5

The Committee recommends that, following a review of procurement contracts across all government agencies, the NSW Government standardise contracts where practical.

- 3.36 In the Committee's view, standardising contracts would improve procurement practice by encouraging more industry stakeholders to tender for projects and also making it easier for them to do so. Thus making it more cost effective for the Government.

⁷³ Mr Greg Ewing, General Manager, Sydney Division, Engineers Australia, transcript of evidence, 14 March 2016, p 32

⁷⁴ Mr Paul Oppenheim, CEO, Plenary Group, transcript of evidence, 14 March 2016, p 38

⁷⁵ Mr Paul Oppenheim, CEO, Plenary Group, transcript of evidence, 14 March 2016, p 38

⁷⁶ VIC Department of Treasury and Finance, *Partnerships Victoria Requirements*, May 2013, p 3

⁷⁷ NSW Government, response to further questions, July 2016, p 1

3.37 According to Consult Australia, the procurement process is a delicate balancing act between Government transparency and obtaining the best value for money. And one which is impacted from the beginning by required documentation and contracts:

The procurement process, including the documentation and contracts surrounding it, is really what sets the tone of the relationship and the behaviour of the parties. It is those two things that have the biggest impact on project outcome and value for money outcome for the taxpayer as opposed to any definitivity of technical expertise or knowledge.⁷⁸

3.38 The NSW Government agreed and said that the benefits of standardising procurement processes and documents 'is to improve the efficiency of procurement, reduce procurement costs for the NSW Government and bid costs for the private sector.'⁷⁹

3.39 Consult Australia also advised the Committee that analysing contracts for each new project is a difficult and laborious process:

...this inconsistency and reinventing the wheel creates a huge amount of waste in the system and it created a huge amount of distrust between the parties because we do not really know what the playing field rules are; they are always changing, they are always shifting.⁸⁰

3.40 According to the Bank of Tokyo-Mitsubishi '...variance across jurisdictions is one aspect of the Australian market that foreign participants find confusing when seeking to do business here.'⁸¹

3.41 Bank of Tokyo-Mitsubishi discussed specific aspects of the procurement process which would benefit from standardisation, notably:

- Market sounding
- Expressions of interest
- Request for proposals
- Evaluation
- Preferred bidder
- Financial close⁸²

3.42 It is important to note that NSW Government has developed standardised documentation, in the form of what it calls a 'standard toolbox for PPPs,' which includes templates for:

⁷⁸ Ms Megan Motto, CEO, Consult Australia, transcript of evidence, 14 March 2016, p 2

⁷⁹ Submission 15, NSW Government, p 2

⁸⁰ Ms Megan Motto, Chief Executive Officer, Consult Australia, transcript of evidence, 14 March 2016, p 2

⁸¹ Submission 6, Bank of Tokyo-Mitsubishi, p 2

⁸² Submission 6, Bank of Tokyo-Mitsubishi, pp 2-3

- Appointment of advisors
- Expression of Interest (EOI) documents
- Request for Proposal (RFP) documents

And evaluation plans for:

- The evaluation of advisory, EOI and RFP responses⁸³

3.43 However, the Government does encourage agencies to use the standards 'whenever possible' but it is not a requirement.⁸⁴

There should be clear PPP procedures for the allocation of project risk

RECOMMENDATION 6

The Committee recommends that the NSW Government include in the NSW Public Private Partnerships Guidelines clear principles for the allocation of project risk.

3.44 The Committee considers that clear PPP principles for the allocation of project risk are essential to attract private sector engagement in the PPP process and to provide an appropriate measure of transparency.

3.45 The Australian Constructors Association advised that a lack of clarity regarding the allocation of risk is enough to deter some private sector companies for bidding:

a lot of major contractors will not bid because they will simply say 'Well, the rate of return that we would get on this project, compared to the risk and compared to what we think would be an appropriate cost that you could build into the project to address that risk, just does not make it rational or economical for them to take it...'⁸⁵

3.46 Consult Australia emphasises that allocation of risk is rarely compromised between the private sector and the Government. Rather, it is used in bargaining by the Government, which generally has more power in the negotiation:

...risk is being allocated according to bargaining power and usually it is away from the client [Government], to remove the client from all risk – or as much risk as possible – even if it is an illusionary risk allocation, in the case of unlimited liability, which does not necessarily exist in real life, to the party with the least bargaining power.⁸⁶

⁸³ Submission 15, NSW Government, p 3

⁸⁴ Submission 15, NSW Government, p 2

⁸⁵ Mr Lindsay Le Compte, Executive Director, Australian Constructors Association, transcript of evidence, 14 March 2016, p 16

⁸⁶ Ms Megan Motto, CEO, Consult Australia, transcript of evidence, 14 March 2016, p 3

- 3.47 It should be noted that while the allocation of risk is discussed in the National Public Policy Partnerships and Guidelines in full,⁸⁷ there are no clear allocation principles provided in the NSW guidelines.

The NSW Government should assess whether to prohibit contracting out of proportionate liability provisions

RECOMMENDATION 7

The Committee recommends that the NSW Government assess whether contracting out of proportionate liability provisions should be prohibited across government contracts.

- 3.48 In the Committee's view, the NSW Government contracting out of proportionate liability may be preventing stakeholders from entry to procurement, due to the high degree of risk involved. Concerns about proportionate liability did not form a significant part of this Inquiry, however, there should be further assessment about the impact of proportionate liability in terms of infrastructure procurement.
- 3.49 Consult Australia advised that proportionate liability provisions are contracted out by the Government "80 to 90 per cent of the time,"⁸⁸ and deeply disincentivises industry stakeholders in participating in the procurement process.⁸⁹
- 3.50 According to the Australian Constructors Association, risk is often transferred from the Government to the constructor, and if the risk is 'not appropriate' it is then transferred down the line 'onto other parties in the supply chain.'
- 3.51 Proportionate liability is provided for under Section 34 of the *Civil Liability Act 2002* (the CL Act), for the purposes of infrastructure procurement, apportions liability between multiple parties (or contributors) according to the contribution to loss made by each, which is determined by a court.⁹⁰
- 3.52 Section 3A of the CL Act permits parties, such as the Government, to 'contract out' of the proportionate liability regime, so that a clause can be included in a contract, providing that the proportionate liability regime will not apply.⁹¹
- 3.53 Tasmania and Western Australia also permit 'contracting out' of proportionate liability,⁹² while Queensland prohibits it.⁹³ The legislation of other Australian jurisdictions is silent on this matter.

⁸⁷ Department of Infrastructure and Regional Development, Australian Government, *National Public Private Partnership Guidelines: Volume 7: Commercial Principles for Economic Infrastructure*, February 2011, p 17

⁸⁸ Mr James Phillis, Chairman, NSW State Division Committee, Consult Australia, transcript of evidence, 14 March 2016, p 5

⁸⁹ Submission 24, Consult Australia, p 18

⁹⁰ *Civil Liability Act 2002* (NSW), s 35

⁹¹ *Civil Liability Act 2002* (NSW), s 3A (2)

⁹² *Civil Liability Act 2002* (TAS), s 3A (3); *Civil Liability Act* (WA), s 4A

⁹³ *Civil Liability Act 2003* (QLD), s 7(3)

Australian standard steel should be used in government contracted projects

RECOMMENDATION 8

The Committee recommends that the government investigate the best possible means to ensure that in all government contracts and public private partnerships all steel used on government projects comply with the Australian standard.

3.54 The Committee recommends that the Government investigate the best possible means to ensure that in all Government contracts or public private partnerships, the steel used on Government contracts complies with the Australian standard.

3.55 Although not the original intent of the inquiry, the Committee received evidence about the importance of Australian standard steel in infrastructure projects, and the impact of imported steel on the steel industry and on the quality of construction.⁹⁴ In particular, the Bureau of Steel Manufacturers noted the 'most concerning consequence of construction product failure is its impact on safety.'⁹⁵

3.56 The NSW Government advised that in the bid and requests for proposal process there are specific policies and standards of steel quality that need to be met.⁹⁶

3.57 However, according to the Australian Steel Institute, the steel certification process is imprecise, and third party accreditation should be required:

It is unclear whose responsibility it is ultimately to sign off that standard has been met, and sometimes in today's environment I think the pressures that come to bear in some of those countries means that, after the fact, they have to go back and do rectification and rework, and that puts the local chain at a disadvantage at pre-tender stage when they have built that into their pre-conforming bid.⁹⁷

3.58 The Australian Workers Union raised concerns about the life of the product if sub-standard steel is used in its construction:

... we have seen examples of things that just do not last as long as they are projected to. So the whole of life cost element being brought into consideration is important when we look at compliant product and noncompliant product...Also a lot of the time the work has to be redone or repurchased. So there is definitely scope there in the compliance sense.⁹⁸

3.59 The Australian Workers Union (AWU) argued that 'Australia is not on a level playing field with other steel-producing nationals around the world,'⁹⁹ due to the influx of foreign imported steel, which is often sold at a lower cost. Inability to compete, according to AWU, has led to the closure of steel manufacturing companies and resulted in significant job losses in the steel industry.

⁹⁴ Submission 28; Submission 25; Submission 23; Submission 22; Submission 21; Submission 19

⁹⁵ Submission 21, Bureau of Steel Manufacturers of Australia, p 3

⁹⁶ Ms Kim Curtain, NSW Government, transcript of evidence, 14 March 2016, p 64

⁹⁷ Mr Tony Dixon, CEO, Australian Steel Institute, transcript of evidence, 14 March 2016, p 46

⁹⁸ Mr Misha Zelinsky, Vice President, Vice President, Australian Workers Union, transcript of evidence, 14 March 2016, p 56

⁹⁹ Mr Daniel Walton, Assistant National Secretary, Australian Workers Union, transcript of evidence, 14 March 2016, p 52

- 3.60 The Australian Steel Institute commended South Australia for having ‘the most robust system’ that requires ‘all taxpayer funded projects or substantially funded or federally funded projects enacted by the South Australian Government will have to be specified to the Australian Standard.’¹⁰⁰
- 3.61 The Committee notes that on 1 December 2016 after lengthy debate in Federal Parliament, the *Building and Construction Industry (Improving Productivity) Act* (BCI Act) 2016 commenced. The BCI Act requires that industry stakeholders bidding on government projects valued at more than \$4 million must provide the following information:
- the amount of domestically sourced and manufactured building materials used to undertake the project
 - whether the construction materials to be used comply with Australian standards
 - The project’s impact on local employment and skills growth, and
 - Whole-of-life assessment of the project¹⁰¹

¹⁰⁰ Mr Tony Dixon, CEO, Australian Steel Institute, transcript of evidence, 14 March 2016, p 49

¹⁰¹ *Building and Construction Industry (Improving Productivity) Act* 2016, s 34 2A

Appendix One – List of Submissions

1	Keolis Downer
2	Government of Canada
3	Transurban
4	GEO Group Australia
5	Institute of Public Works Engineering Australasia NSW Division
6	Bank of Tokyo-Mitsubishi UFJ
7	Mr David Smith
8	IFM Investors
9	Regional Development Australia Illawarra
10	SMART Infrastructure Facility
11	Queensland University of Technology
12	Confidential
13	Engineers Australia
14	Confidential
15	NSW Government
16	Australian Government, Department of Infrastructure and Regional Development
17	Agilience
18	BuildingSMART Australasia
19	Australian Manufacturing Workers' Unions NSW Branch
20	Name Suppressed
21	Bureau of Steel Manufacturers of Australia Limited
22	Australian Constructors Association
23	Australian Steel Institute
24	Consult Australia

PROCUREMENT OF GOVERNMENT INFRASTRUCTURE
LIST OF SUBMISSIONS

25	The Australian Workers' Union
26	Allens Linklaters
27	Plenary Group
28	Illawarra and other Australian Businesses

Appendix Two – List of Witnesses

MONDAY 14 MARCH 2016, WARATAH ROOM, PARLIAMENT HOUSE

Witness	Position and Organisation
Ms Megan Motto	Chief Executive Officer Consult Australia
Mr James Phillis	Chair, NSW State Division Consult Australia
Mr Lindsay Le Compte	Executive Director Australian Constructors Association
Ms Diana Burgess	Adviser Australian Constructors Association
Mr Simon Humphrey	Strategy and Commercial Director Keolis Downer
Mr Greg Ewing	General Manager, Sydney Division Engineers Australia
Mr Ian Waters	Director, Cambewarra Engineering Senior Project Engineer, K&R Fabrications
Mr John Doyle	Senior Project Manager K&R Fabrications
Mr Jason Leussink	Leussink Engineering
Mr Paul Oppenheim	Chief Executive Officer Plenary Group
Mr Patrick Lauren	Executive Director Plenary Group
Mr Tony Dixon	Chief Executive Officer Australian Steel Institute
Mr Misha Zelinsky	National Vice President Australian Workers' Union

PROCUREMENT OF GOVERNMENT INFRASTRUCTURE
LIST OF WITNESSES

Mr Daniel Walton	Assistant National Secretary Australian Workers' Union
Ms Kim Curtain	Director, Infrastructure & Structured Finance Unit NSW Treasury
Ms Marina Grobbelaar	Director, Infrastructure & Structured Finance Unit NSW Treasury

Appendix Three – Extracts from Minutes

MINUTES OF MEETING NO 3

4:47pm, Wednesday 11 November 2015
Room 1254, Parliament House

Members present

Mr Henskens, Mr Notley-Smith, Ms McKay

Apologies

Mr Park, Mrs Pavey

Officers in attendance

Jason Arditi, Emma Wood, Jacqueline Linnane

1. Minutes of previous meeting

Resolved, on the motion of Ms McKay, seconded by Mr Notley-Smith: That the minutes of meeting no 2 held on 27 October 2015 be confirmed.

2. Potential inquiry into the procurement of government infrastructure

The Chair invited the following representatives from NSW Treasury to the meeting to brief the Committee on government infrastructure procurement:

- Ms Leilani Frew, Head of Infrastructure and Structured Finance Unit
- Ms Kim Curtain, Director, Infrastructure and Structured Finance Unit
- Ms Marina Grobbelaar, Director, Infrastructure and Structured Finance Unit

The Chair thanked the representatives for attending the meeting and for their presentation.

The Chair adjourned the meeting at 6:05pm to a time and date to be determined.

MINUTES OF MEETING NO 4

10:31am, Thursday 19 November 2015
Room 1043, Parliament House

Members present

Mr Henskens, Mr Notley-Smith, Ms McKay and Mr Park

Apologies

Mrs Pavey

Officers in attendance

Jason Arditi, Emma Wood, Jacqueline Linnane

1. Minutes of previous meeting

Resolved, on the motion of Mr Notley-Smith, seconded by Ms McKay: That the minutes of meeting no 3 held on 11 November 2015 be confirmed.

2. ***

3. Potential inquiry into the procurement of government infrastructure

a) Terms of reference

The Chair circulated draft terms of reference for the Committee's consideration.

Discussion ensued.

Resolved, on the motion of Mr Henskens, seconded Mr Notley-Smith: That the Committee on Transport and Infrastructure inquire into, and report on, world's best practice with regard to the procurement of government infrastructure projects with particular reference to:

1. the best process of gateway decision making on the efficacy of public private partnerships compared to other procurement methods;
2. the best procurement process and documentation;
3. the desirability of the standardisation of procurement processes and documentation;
4. the desirability of a standard national process and documentation for the delivery of government infrastructure within a federal structure;
5. methods to minimise the cost of contractors tendering for the supply of services with respect to government infrastructure;
6. methods to achieve optimal contestability in tendering for the supply of services with respect to government infrastructure; and
7. any other related matter.

b) Inquiry timeline

The Chair circulated an indicative timeline for the inquiry.

Discussion ensued.

Resolved, on the motion of Ms McKay, seconded Mr Park: That the Committee adopt the indicative inquiry timeline.

c) Call for submission and advertising

The Chair circulated a draft list of stakeholders to invite to make a submission.

Discussion ensued.

Resolved, on the motion of Mr Notley-Smith, seconded Mr Park: That the Committee advertise the call for submissions on the Committee website and write to relevant stakeholders inviting them to make a submission with a closing date of 12 February 2016.

d) Media

Resolved, on the motion of Mr Notley-Smith, seconded Ms McKay: That the Chair releases a media release announcing the inquiry and it be placed on the Committee website and distributed to media outlets.

The Chair adjourned the meeting at 10:41am to a time and date to be determined.

MINUTES OF MEETING NO 5

5.01 pm, Wednesday 24 February 2016
Room 1254, Parliament House

Members Present

Mr Henskens, Mrs Pavey, Mr Park, Ms McKay

Apologies

Mr Notley-Smith

Officers in attendance

Jason Arditi, Emma Wood, Jacqueline Linnane, Abigail Turingan

1. Minutes of previous meeting

Resolved on the motion of Ms McKay, seconded by Mr Park: That the minutes of meeting no 4 held on 19 November 2015 be confirmed.

2. Inquiry into the procurement of government infrastructure projects

a. Correspondence received for information

The Committee noted the following correspondence received:

- Letter from Dr Lynne Williams, Chair, Victorian Government Purchasing Board, dated 4 December 2015, indicating they will not be making a submission to the inquiry.
- Letter from Mr Tony Ferrall, Secretary, Department of Treasury and Finance, Tasmanian Government, dated 3 December 2015 indicating they will not be making a submission to the inquiry.
- Letter from Ms Dionysia Hatzi, Manager, Strategic Sourcing, Government of South Australia, dated 6 January 2016 indicating they will not be making a submission to the inquiry.
- Letter from Mr Steve Murphy, Assistant State Secretary, AMWU NSW, dated 7 January regarding conducting public hearings in regional NSW.

b. Submissions

Resolved, on the motion of Mrs Pavey, seconded by Mr Park: That the Committee authorise the following:

- publication in full of submissions numbered 1-5, 7-11, 13, 15-19, 21-27;
- partial publication of submissions no 6
- publication with name suppressed of submission no 20;
- submissions numbered 12 and 14 be treated as confidential.

c. Consideration of potential witnesses to appear at public hearings on Monday 14 March and Friday 18 March 2016

Resolved, on the motion of Mr Park, seconded by Mrs Pavey: That the Committee conduct public hearings and invite the following witnesses and others to be circulated by email:

- Consult Australia
- Australian Constructors Association
- Keolis Downer
- Transurban
- GEO Group Australia
- Allens Linklater
- Plenary Group
- Australian Workers' Union
- Australian Steel Institute
- Mr Ian Waters, K&R Fabrications
- IFM Investors
- Bank of Tokyo-Mitsubishi
- Australian Government, Department of Infrastructure and Regional Development
- NSW Government

The Chair adjourned the meeting at 5:10 pm until 14 March 2015 to a time to be determined.

MINUTES OF MEETING NO 6

9:49 am, Monday 14 March 2016
Waratah Room, Parliament House

Members Present

Mr Henskens, Mr Notley-Smith, Mrs Pavey, Mr Park, Ms McKay

Officers in attendance

Jason Arditi, Emma Wood, Jacqueline Linnane, Abegail Turingan

1. Deliberative Meeting

1.1 Confirmation of minutes

Resolved on the motion of Mrs Pavey, seconded by Mr Notley-Smith: That the minutes of meeting no 4 held on 19 November 2015 be confirmed.

1.2 Inquiry into the procurement of government infrastructure projects

1.2.1 Correspondence received for information

The Committee noted a letter from James Cameron, Executive Director, Australian Construction Industry Forum, dated 25 February 2016, endorsing the recommendations contained in Consult Australia's submission to the inquiry.

1.2.2 Submissions – consideration of and approval for publication

Resolved on the motion of Ms McKay, seconded by Mr Park: That submission No. 28 be approved for publication.

1.2.3 Pre-hearing orders

1.2.3.1 Media Orders

Resolved on the motion of Mrs Pavey, seconded by Mr Notley-Smith: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 14 March 2016, in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

1.2.3.2 Answers to questions taken on notice

Resolved on the motion of Mr Park, seconded by Ms McKay: That witnesses be requested to return answers to questions taken on notice and supplementary questions within 2 weeks of the date on which the questions are forwarded to the witnesses.

1.2.3.3 Publication orders

Resolved on the motion by Mr Notley-Smith, seconded by Mrs Pavey: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

2. Public hearing – Procurement of government infrastructure

Witnesses and the public were admitted. The Chair opened the public hearing at 9:52am and after welcoming the witnesses made a short opening statement.

Ms Megan Motto, Chief Executive Officer, Consult Australia, and Mr James Phillis, Chair, NSW State Division Committee, Consult Australia were affirmed and examined.

Ms Motto made a brief opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

Mr Lindsey Le Compte, Executive Director, Australian Constructors Association and Ms Diana Burgess, Adviser, Australian Constructors Association were affirmed and examined.

Mr Le Compte made a brief opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The Committee took a short adjournment at 11:34am and resumed the public hearing at 11:50am.

Mr Simon Humphrey, Strategy and Commercial Director, Keolis Downer was affirmed and examined.

Mr Humphrey made a brief opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

Mr Greg Ewing, General Manager of the Sydney Division, Engineers Australia was affirmed and examined.

Mr Ewing made a brief opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The Committee took a lunch adjournment at 12:50m and resumed the public hearing at 2:20pm.

Mr Ian Waters, Director, Cambewarra Engineering and Senior Project Engineer, K&R Fabrications, and Mr John Doyle, Senior Project Manager, K&R Fabrications were sworn and examined.

Mr Jason Leussink, Leussink Engineering was affirmed and examined.

Resolved on the motion of Mr Notley-Smith, seconded by Ms KcKay: That the Committee hear evidence from Mr Ian Waters, Mr John Doyle and Mr Jason Leussink in-camera.

The public withdrew.

The hearing proceeded in-camera.

The public hearing resumed and the public was readmitted.

The Committee re-commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

Mr Paul Oppenheim, Chief Executive Officer, Plenary Group and Mr Patrick Lauren, Executive Director, Plenary Group were affirmed and examined.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

Mr Tony Dixon, Chief Executive Officer, Australian Steel Institute was sworn and examined.

The Committee commenced questioning the witness. Evidence concluded and the witnesses withdrew.

The Committee took a short adjournment at 4:05pm and resumed the public hearing at 4:20pm.

Mr Misha Zelinsky, National Vice President, Australian Workers Union and Mr Michael Dalton, Assistant National Secretary, Australian Workers Union were affirmed and examined.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

Ms Kim Curtain, Director, Infrastructure & Structured Finance Unit, New South Wales Treasury and Ms Marina Grobbelaar, Director, Infrastructure & Structured Finance Unit, New South Wales Treasury were affirmed and examined.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 5:30pm.

3. Post-hearing deliberative meeting

The Committee commenced a deliberative meeting at 5:30pm.

3.1 Acceptance and publication of tendered documents

Resolved on the motion of Mr Park, seconded by Mr Notley-Smith: That the Committee accept and publish the documents tendered during the hearing:

- Australian Constructors Association – How Australia can achieve success in the new world of mega-projects

Resolved on the motion of Mr Park, seconded by Mr Notley-Smith: That the photographs tendered by Mr Ian Waters be treated as confidential.

4. Next meeting

The Committee adjourned at 5:31pm to a time and date to be determined.

MINUTES OF MEETING NO 7

2:01 pm, Thursday 9 June 2016

Room 813, Parliament House and via teleconference

Members present

Mr Henskens (in person)

Mr Notley-Smith; Mrs Pavey; Ms McKay; and Mr Park (via teleconference)

Officers in attendance

Jason Ardit, Emma Wood, Jenny Whight and Jacqueline Linnane

1. Minutes of previous meeting

Resolved, on the motion of Mrs Pavey, seconded by Mr Notley-Smith: That the minutes of meeting no 6 held on 14 March 2016 be confirmed.

2. ***

3. Inquiry into the procurement of government infrastructure projects

Resolved on the motion of Mr Notley-Smith, seconded by Mrs Pavey: That the Committee's current inquiry into the procurement of government infrastructure projects be placed on hold to be resumed upon completion of the new inquiry.

The Chair adjourned the meeting at 2:13pm to a time and date to be determined.

MINUTES OF MEETING NO 11

4.01 pm, Tuesday 18 October 2016
Room 1043, Parliament House

Members Present

Mr Henskens, Mr Notley-Smith, Ms McKay, Mr Park, Mrs Pavey

Officers in attendance

Jason Ardit, Emma Wood, Jacqueline Linnane, Jenny Whight, Abigail Turingan

1. Confirmation of minutes

Resolved on the motion of Ms McKay, seconded Mr Park: That the minutes of the deliberative meeting of 23 August 2016 be confirmed.

2. ***

3. Inquiry into procurement of government infrastructure projects

The Committee discussed the inquiry into procurement of government infrastructure projects and agreed to consider the timeframe for completion of the inquiry at a later date.

The Committee adjourned at 4.07 pm to a date and time to be determined.

MINUTES OF MEETING No 12

3.43 pm, Wednesday 22 February 2017
Room 1043, Parliament House

Members Present

Mr Henskens, Mr Notley-Smith, Mrs Pavey

Apologies

Mr Park, Ms McKay

Officers in attendance

Jason Ardit, Jacqueline Linnane, Abigail Turingan

1. Confirmation of minutes

Resolved on the motion of Mr Notley-Smith, seconded Mrs Pavey: That the minutes of the deliberative meeting of 18 October 2016 be confirmed.

2. Inquiry into workplace arrangements for the point to point transport industry

2.1 Answers to questions on notice and additional questions

Resolved on the motion of Mrs Pavey, seconded Mr Notley-Smith: That the Committee authorise the publication in full of the following response to questions taken on notice and additional questions:

- 2 June 2016, Keolis Downer
- 9 June 2016, Consult Australia
- 9 June 2016, Engineers Australia
- 16 June 2016, Public Services and Procurement Canada
- 22 July 2016, NSW Treasury

2.2 Consideration of Chair's draft report

The Chair tabled his draft report, which have being previously circulated, was taken as being read.

Resolved on the motion of Mr Notley-Smith, seconded by Mrs Pavey: That the report be considered *in globo*.

Resolved on the motion of Mr Henskens that the following words be omitted at paragraph 3.10

'Minimised environmental impact: the planning team provided advice throughout the planning process to achieve acceptable environmental impacts without compromising the commercial deal

Resolved on the motion of Mr Notley-Smith, seconded by Mrs Pavey: That the report be adopted as amended.

Resolved on the motion of Ms Pavey, seconded Mr Notley-Smith:

That the report as amended be the report of the Committee, and that it be signed by the Chair and presented to the House.

That the Chair and Committee staff be permitted to correct stylistic, typographical and grammatical errors; and

That, once tabled, the report be posted on the Committee's website.

The Committee adjourned at 3.54 pm to a date and time to be determined.