

REPORT OF PROCEEDINGS BEFORE

COMMITTEE ON TRANSPORT AND INFRASTRUCTURE

**INQUIRY INTO PROCUREMENT OF GOVERNMENT
INFRASTRUCTURE**

At Sydney on Monday 14 March 2016

The Committee met at 10.00 a.m.

PRESENT

Mr A. Henskens (Chair)

Ms J. McKay
Mr B. Notley-Smith
Mr R. Park
Mrs M. Pavey

CHAIR: Good morning everybody and thank you for attending the public hearing of the Committee on Transport and Infrastructure. Today we are hearing evidence from a range of stakeholders for our inquiry into the procurement of government infrastructure projects in New South Wales. The terms of reference are 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 seven matters. First, the best process of gateway decision-making on the efficacy of public-private partnerships compared to other procurement methods; secondly, the best procurement process of documentation; thirdly, the desirability of the standardisation and procurement processes and documentation; fourthly, the desirability of a standard national process and documentation for the delivery of government infrastructure within a Federal structure; fifthly, methods to minimise the cost of contractors tendering for the supply of services with respect to government infrastructure; sixthly, the methods to achieve optimal contestability in tendering for the supply of services with respect to government infrastructure; and seventhly, any other related matter. I now declare the hearing open.

MEGAN MOTTO, Chief Executive Officer, Consult Australia, and

JAMES PHILLIS, Chair, NSW State Division Committee, Consult Australia, affirmed and examined:

CHAIR: Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

WITNESSES: No.

CHAIR: I thank you both for the very detailed submission you have given us on behalf of your organisation. Would you like to make an opening statement before the commencement of questions?

Ms MOTTO: Yes, I would, thank you very much. Just in very brief, Consult Australia is the industry association representing the consulting community that is designing most of the major infrastructure projects in this State and around not just the country but globally. This inquiry is a very important inquiry; it is an enormous agenda and very wide-ranging in terms of the terms of reference, but it is critical for a number of reasons: firstly, because infrastructure is now, as we know, a major driver of productivity. So getting it right is incredibly important not just from a government efficiency point of view but also from a productivity point of view and a liveability and competitiveness point of view. So it is a very important agenda from that perspective.

But it is also an important inquiry because the landscape has changed significantly really with regards to two fundamental elements. The first is that infrastructure is now being delivered more by the partnering arrangements for the private sector than it used to be in terms of public sector delivery. The private sector now being the contingent workforce, if you like, of the public sector in delivering these projects means that you need a much more partnered and collaborative approach with the private sector rather than a command and control approach.

The second reason it is really important is because there is a renewed era, if you like, on these projects of accountability and fiscal responsibility from government's perspective and there is an expectation, because of the media cycle and community expectation of value for money, of efficiency, of driving really good project outcomes. So from those perspectives it is absolutely important that we have a renewed emphasis overall on efficiency and also on collaboration, and I think most of my comments come from that particular perspective, because in both of those areas, relationships are absolutely key. Rather than the technical expertise, which we know absolutely exists in the country, there are no problems with the technical knowledge and capability of the workforce to deliver, but there is an issue with regards to the way that the relationships are formed and set at the onset, and of course that is where procurement comes into play.

Overarchingly, I think the most important imperative from this Committee hearing is to find a few tangible outcomes that can be actioned and delivered upon, because there are more than 30 reports spanning more than two decades about procurement and the way that it is handled and infrastructure, including the productivity inquiry. I will not list them because there are too many to list, but they have all come to fairly similar conclusions and yet the dial does not seem to change. Potentially that is because it is such a complex area and there are no silver bullets, but what we would like to see are a few tangible outcomes from this inquiry that are actioned in real life and delivered to see if we can change the dial in terms of how those relationships are formed. 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 deficit of technical expertise or knowledge.

We would contest that New South Wales procurement is done fairly well in some instances, but there is quite a bit of room for improvement. There is a number of areas where there is great inconsistency between not just States in Australia but between agencies, between individual contracts, between the advice that is given, and a perfect example of that is the advice that is given between the GC21 contract, for example, and the procurement advice of the Procurement Board of NSW, where they contradict each other with regards to the use of proportionate liability legislation, and this inconsistency and reinventing the wheel creates a huge amount of waste in the system and it creates 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.

The biggest issue, of course, affecting this delivery price and relationship is the way that risk is treated on projects. We would contest that, historically, risk has been and should be allocated according to Abrahamson principles, that is that risk should be managed by the party or held by the party best able to manage that risk. But we would contend that that is no longer the case, that the risk is being allocated according to bargaining power and usually it is away from the client, to remove the client from all risk—or as much risk as possible—even if it is an illusory risk allocation, in the case of unlimited liability, which does not necessarily exist in real life, to the party with the least bargaining power. That is not good for project outcomes because it means risk is arbitrarily shifted, rather than embraced and managed.

The understanding of risk is also a problem because we have seen a shift of skill sets, due to demographic changes, people retiring and moving out of system and the movement of people between the public sector and the private sector. We have seen a gutting of the procurement skill set within the public sector and that is creating also some of these inconsistencies and poor decisions. Because of the separation between the private and public sectors there are a number of elements where the communication between the two entities is not good and the understanding of the other's positions is not well understood. A perfect example of that is the knowledge of insurance. The public sector, by and large, does not understand how insurance works to protect the private sector.

So we have highlighted a number of recommendations. We would like to see, first and foremost, more standardisation in contracting. This rewriting the rules every time, for every single project and for every single agency is just not good efficiency practice. We would recommend the adoption of the Australian Standard 4122-2010 which we negotiated with the public sector and with the contractors and industry, for adoption on an if-not-why-not basis. We are not recommending, simplistically, that one contract can be used for absolutely everything, but a common-sense approach would dictate that it could probably be used for about 85 per cent of projects.

Failing that, we would definitely like to see, first and foremost, whatever contracts are used, government prohibition on contracting-out of proportionate liability legislation. And also the illusory concept of unlimited liability should be absolutely prohibited because it is an illusory concept in real life anyway and it makes insurance particularly difficult for our industry and also referencing inappropriate standards of care and other onerous conditions.

Thirdly, we recommend that the Government invest in the procurement skills of the workforce, so that we have an informed client that is able to properly partner with the private sector to deliver best project outcomes. I think that is probably our opening statement taken care of. I am happy to answer questions.

CHAIR: Can I start with the concept that you introduced of the Government as a model client. I am familiar with the principles of the Government as a model litigant, through my background as a lawyer. So I think it is a good idea. The principles of the Government as a model litigant, there are about ten easy principles set out that the Government is supposed to comply with. Have you thought of reducing your concept of government as a model client to a small number of principles?

Ms MOTTO: We can certainly do that. We in fact established a model client award in our awards program for exactly this reason. The concept of the government being a model litigant assumes that we are going to be moving to litigation, which is an unfortunate outcome for any project. We do know that, for example, litigation in the building and construction industry equals a quantum of around \$7 billion a year through disputation. We would like to see the Government be a model client and we have, for our awards process, come up with four or five clear criteria regarding clarity of documentation, best practice relationship building, best practice contracting, for example in risk allocation and management. So there are a number of categories which we could, at a pinch, formalise and propose.

CHAIR: We will ask you some questions in writing but if you could address that. It seems to me that the principles of the Government as a model litigant, one of its benefits is, it is literally only a page and a half of very broad—you do not want to get it too detailed. You want it to be very high order. If you could give us your thoughts on that, that might be helpful.

Ms MOTTO: We could.

Mr BRUCE NOTLEY-SMITH: You compare the two documents on best practice procurement for government infrastructure, is that the one you had? And what was the agency?

Ms MOTTO: The GC21 is the general conditions of contract for contracting.

Mr BRUCE NOTLEY-SMITH: So the inconsistency between these two documents, whereabouts in either the executive or the bureaucracy did they part ways?

Ms MOTTO: I cannot tell you specifically. I am not going to comment on the inner workings of the bureaucracy.

CHAIR: Where do you assume? It was specifically with regard to proportionate liability was the example you raised.

Ms MOTTO: We would like to see, for example, contracting out prohibited for proportionate liability legislation. It was introduced for the purpose of minimising the insecurity in the insurance market and therefore providing more certainty for project outcomes, because of the insurance that would sit behind a particular client or a particular consultant. What we have seen is the outsourcing of risk management decisions to private sector lawyers, who will advise on contracts. They will invariably seek loopholes where you can contract out of even your Common Law rights or Common Law legislation, in terms of shifting risk away from their client. And that is appropriate for private sector lawyers to do so, but it is not necessarily driving the best commercial outcomes. We find that there are a lot of inconsistencies, not just in the New South Wales Government but across governments, because the devolution of authority on procurement decision-making can cause some inconsistencies. But it is mainly because when you speak to one level of bureaucracy that is not necessarily the level of bureaucracy that is letting the contracts and overseeing the projects.

Mr PHILLIS: From an industry perspective every agency that you deal with tends to have something different. From their perspective it is in their best interests to do so. The contracting out to private law is fine. We are very supportive of that. What you happen to find, and it goes back to the Government as a model litigant, is that they are taking a private sector view into a public sector environment. Therefore, you have to question what is the role of the public sector as a model client in this particular perspective, rather than obtaining advice from the lawyers, who are doing their job—which is, in their minds, to provide the best risk outcome for that particular client. But it is not the best risk outcome for the industry. Because they are advising each of the agencies separately, they are advising different outcomes depending on their perception of the risk profile. So what happens is that in every single instance we end up dealing with something that is different. We understand each agency, and there is a general consistency within each agency about their contracts and the way they approach it, but across agencies it is always different. So we are continually revisiting these issues.

CHAIR: Are any of your members lawyers?

Ms MOTTO: Our member firms are not lawyers, but within the engineering firms there are now swathes of lawyers.

CHAIR: I understand that.

Mr RYAN PARK: He is well aware of that.

CHAIR: If any legal firms were your members then presumably they would love the uncertainty.

Ms MOTTO: It is very interesting. We have negotiated some of these contracts with, for example, the Law Society and the Law Council. What we find with the law fraternity is that they will often write a contract for a client that they would not sign themselves. They will happily shift risk to the private sector, to our members—providing a professional service, in a way—that they would not sign themselves.

CHAIR: I remember when I was a young lawyer the firm would have a standard form of contract if it was acting for a vendor and a standard form of contract if it was acting for a purchaser. They were completely skewed either way.

Ms MOTTO: It is a different risk profile.

Mrs MELINDA PAVEY: You are giving away the secrets of your former profession.

CHAIR: I have a follow-up question. You say quite a bit about proportionate liability. From the consultant point of view, is the problem with proportionate liability that the bargaining power of consultants is very weak, so there is a tendency for the people who are engaging the consultants to shift the risk elsewhere?

Mr PHILLIS: Typically we are at the end of the line. Therefore, the risk that is placed upon the organisation is almost a case of: "You must take this risk. You must take this contract or we will go to someone else."

CHAIR: How often are proportionate liability provisions contracted out?

Mr PHILLIS: The majority of the time.

Ms MOTTO: Most of the time.

Mr PHILLIS: It is 80 to 90 per cent of the time.

CHAIR: So it is a widespread practice.

Mr PHILLIS: It is a very widespread practice across the industry. It is one that we battle against. I do not think there are many instances where we say, "Just accept that." We always battle against it, but we almost inevitably lose.

Ms MOTTO: It is not necessarily just because the consultant is at the bottom of the supply chain. It is also because the consultant has access to a professional indemnity [PI] policy. Often it is a very large policy. The expectation of the client is often that that PI policy is there for their protection. It is not for the client protection; it is there for our members' protection. That is a fundamental lack of understanding about how PI works.

CHAIR: If the consultant, though, is a member of a limited liability scheme, their liability is capped at \$1.5 million or about \$1 million per claim.

Ms MOTTO: There is no such scheme for the consulting engineering industry. We have explored the option over more than a decade, to the nth degree. It is not a possibility for our industry, largely because of the multidisciplinary service way that our industry delivers its outcome, its advice. We have been negotiating with the Professional Standards Councils for more than a decade to move through the multidisciplinary nature of the occupational association legislation that our members are bound by. To this date, even with the advice of Crown law, we have not been able to set up a scheme for our members.

CHAIR: What you are advocating, which is the abolition of being able to contract out of proportionate liability, will have implications beyond the kinds of contracts that we are talking about. If we were to make a recommendation that it be more limited, that there be a more limited change to the ability to contract out of proportionate liability, how would we tailor that to deal only with large infrastructure projects or construction projects? Could we specify that? What would be the way in which you would recommend a narrowing amendment to the current law that would deal with your concerns?

Ms MOTTO: We would recommend that you prohibit it in all cases, as in the Queensland legislation. We have not seen major failures in Queensland, due to the contracting out prohibition in the Queensland legislation. I would be very interested to hear James's perspective on this, but the issue with limiting it to major projects, for example, is that often there is a lot of concentration of top expertise on major projects. It is the smaller projects that have a high risk of failure at times. I think that a threshold approach might be somewhat dangerous, in fact.

Mr PHILLIS: There are myriad instances where parties are contributing small amounts to projects, be they small, medium or large sized projects, yet they are put in a situation where they have to wear the entire liability of the project. It would be very hard to put definitions on that.

Ms JODI McKAY: You talked about the gutting of procurement and then you talked about the need for upskilling within government. What are some of the skills that you would require, and where have you seen the demise of procurement within government? For instance, one of the submissions that the Committee has received talks about giving engineers the ability to work across a wider area than they have done traditionally.

Ms MOTTO: I will provide a top line response from my perspective, but James will have particular insight on this. Through largely demographic shifts and the change of the bulk of the work being delivered by the private sector over time and the private sector pinching the skills from the public sector for that purpose—

Ms JODI McKAY: It can go the other way as well.

Ms MOTTO: It can. That is right.

Mr PHILLIS: And it is.

Ms MOTTO: It is. The real issue there is the grassroots construction project management expertise. We see the risk on a project being understood in the context of a procurement compliance tick-a-box approach, as opposed to really understanding the grassroots of construction risk.

Ms JODI McKAY: And the Treasury.

Ms MOTTO: For Treasury it is exacerbated, although Treasury can attract some fairly high-level skill sets. James, would you like to talk about general procurement skills?

Mr PHILLIS: Yes. 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. We need good clients who can really challenge us. We are getting to the situation where some of the skills are lowering beyond the level of challenge. We are seeing tenders being analysed and awarded based on a tick-box mentality: "Have you provided this? Have you provided that? Did you give me three of those blue ones and two of those red ones?" The approach should be: "What is this organisation offering? What is its capability? Is it actually going to deliver me the project outcomes that I need?" In order to make those assessments you need a certain level of skill. Unfortunately, many bureaucracies are losing those skills to the private sector because they are outsourcing them. It really challenges us to understand. Part of the recommendation was that we get full debriefs on the projects to understand why it is that decisions are being made.

Mrs MELINDA PAVEY: What is the level of interaction now?

Mr PHILLIS: It is mixed.

Mrs MELINDA PAVEY: So it depends on the agency?

Mr PHILLIS: Some of the agencies are fantastic. Roads and Maritime Services [RMS] 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. Other agencies deliver it but you do not get anything of value out of it because the level of detail is hard to understand. So it is quite mixed. Some have good intentions and some, I suspect, do not have the capacity to do it because they do not have the resources or the time to do it, for instance. Others just do not see it as valuable.

Mr RYAN PARK: I am interested in the standardisation of contracts processes, and I have been for a long time, because I think it is a sleeper in terms of where a lot of money is wasted, to be blunt. My experience in the bureaucracy taught me the same thing. If you were in the shoes of the Committee collectively, where do you think that type of standardisation should be driven from? I am assuming it is a Treasury type thing, given that our friends in Treasury can make this process simple or difficult depending on what they want to do. Is that where it should be driven from?

From my experience in the hard infrastructure agencies that I have worked for it is a case of everyone doing their own thing. When I was in transport, they had their own set. If you go to RMS, you find that they have a different set; and heaven knows why they are different to transport. This was a common thing. I then spent time within the police and it was completely different there again. That was largely because in the police sector they predominately outsourced nearly everything, because governments of all persuasions have made sure that essentially the focus there is on the front line and they have a very lean back office. Therefore it was

completely different again. In your view is this something that, if the Committee took this up as a recommendation, should be driven through the Treasury? I do not want to put words in your mouth.

Mr PHILLIS: Yes

Ms MOTTO: Yes, absolutely.

Mr RYAN PARK: That is my view on this and I want to see what you think because you are dealing with this every day.

Ms MOTTO: Yes, absolutely; and there are a number of reasons for that. First of all, there needs to be a recognition that that sort of standardisation is driven by a value for money outcome reason.

Mr RYAN PARK: That is what I am saying. There is a reason why we would look at doing this and it is an economic one.

Ms MOTTO: Correct. So the first reason is that Treasury can drive it for the right reasons. The second reason it needs to be driven out of Treasury in our opinion is that there needs to be a whole of government approach and Treasury has the right gravitas amongst agencies to be able to corral the different agencies around that particular issue. For example, what we recognised when we went to the procurement board or to the CCC Construction Consultative Committee [CCC], when it existed, and negotiated an outcome was that they had great difficulty driving that outcome consistently across agencies because they did not have the authority to do so.

Mr RYAN PARK: Yes, and we do know that large infrastructure agencies carry with them large authority within government.

Ms MOTTO: Correct.

Mr RYAN PARK: Therefore if they are not driven, with the greatest of respect, by an agency like Treasury then it starts to get loose. People say, "Well, no-one is telling me this anyway." In your model, as I have read it and discussed it with Ms Motto and others, it is a case of "if not then why not". So there will be cases where we cannot standardise, for whatever reason, but your argument is that in that case there has to be a clear articulation by the agency, whether it is transport, RMS, the police, health or whoever it is, back to the central agency—and in the case of your recommendation that is the Treasury—to say, why they cannot use a standardised version. It is a pressure test and it puts the onus back on the agency to justify a non-standardisation process. Is that correct?

Mr PHILLIS: That is absolutely correct. It also would assist in clarifying the objectives and outcomes that the agency is expecting as a result of that contract, because they can clearly articulate why it is that they want to change the standard form of the contract; therefore they can better define the risks that they are trying to manage, where that risk should more appropriately sit and why it should sit there. If the risk sits in the right place then your ability to manage it become so much better. Whereas we are seeing many situations now where the risk is forced upon members of our organisation—where they are simply in no position whatsoever to manage that risk. So it comes back to this issue of culture and establishment; and not setting up a confrontational contract at the very beginning without fully appreciating it and then wondering why some of these things go wrong.

Ms MOTTO: A perfect example of that is third-party indemnities, where our members are being required to take a liability for the actions of a third party where there is no contractual relationship, and nor sometimes even a knowledge of who those third parties are. That clearly cannot be managed by our members.

Mr PHILLIS: Oftentimes it is a case of not having any knowledge of who those parties are and yet being expected to provide your guarantees to those particular individual organisations because someone has decided that they want to escape from some particular risk.

Ms JODI McKAY: Is that even where there is no identification of a third party?

Ms MOTTO: Yes.

Mr PHILLIS: Correct. Absolutely. It happens quite often.

Ms JODI McKAY: So there may not even be a third party?

Ms MOTTO: It is known or unknown?

Mr PHILLIS: Some of our member organisations will not actually contract under those circumstances. Some will try to adapt the form of contract to better manage that risk.

Ms MOTTO: Some will price the risk in.

Mr PHILLIS: Some will price the risk in. Some of them actually will not understand the risk, to be honest, because we have a very wide range of members.

Mrs MELINDA PAVEY: I have a couple of questions. NSW Procurement sits under finance at the moment. Are you saying that you would like to see that moved to Treasury?

Ms MOTTO: I do not know that we are making that suggestion.

Mr PHILLIS: I am not sure that we need to move it. It is the ability of the organisation to have the influence across the whole of government that is the most important thing from our perspective. It is hard to imagine that any others apart from Treasury can have that influence. Does that mean shifting it? I am not sure, to be honest.

Mrs MELINDA PAVEY: You mentioned that Victoria has made some changes to their procurement policies in the area of unsolicited proposals. Could you give us a rundown on that? You mentioned that Queensland is good on the legal stuff, and Victoria has done some good stuff on the unsolicited proposals. Who is doing it the best?

Ms MOTTO: No-one. There is a variety. I would not point to any one jurisdiction that has all of the answers figured out. As we have noted in our submission, procurement is a continually moving feast and the golden egg ultimately has not been laid yet.

CHAIR: Just for my benefit, what are the changes in Victoria to unsolicited proposals that you think are particularly worthwhile?

Mr PHILLIS: Ms Motto probably knows this better than I do.

Ms MOTTO: I might take that on notice because then we can get the Committee some more information on it.

CHAIR: Sure, and if you could identify how it is different in New South Wales, and how those changes would work within the Independent Commission Against Corruption [ICAC] framework that applies here in New South Wales, that would be helpful.

Mrs MELINDA PAVEY: Did you have anything more to say on those questions?

Mr PHILLIS: No, not at the moment.

Mrs MELINDA PAVEY: I am the member for Oxley, an electorate on the mid North coast in which there is currently \$3.2 billion of expenditure underway with the Pacific Highway duplication. We have just finished a new hospital and work is about to start on a new hospital at Macksville. So there is a lot of procurement going on and a lot of busyness in the electorate of Oxley. I refer to recommendation No. 21 in your submission in relation to the collection and integration of built environment data. Some RMS people on the ground are saying that it has been a real challenge getting some of the environmental approvals in place in a timely way. It is a very complicated process. What are your thoughts on how we should be doing that better?

Ms MOTTO: I think it is now a broadly recognised truism that better data and understanding of the data can drive better processes—for example, more efficient collection of the data. So there is a number of things that could be done with regards to the more efficient collection and retention of data. One of the things

we would also like to see is more data captured, for example, around the delivery mechanisms used on different projects and project outcomes so that the end-of-project data could be fed into Treasury decision-making for future projects. So, for example, we could start to see under which contracts better project outcomes or better delivery for money outcomes come from different procurement methodologies or delivery methodologies. I know, for example, that Treasury would be interested in more delivery data, and certainly more input data would also help. I think it is in the efficiency with which that data is collected that we could make some positive strides.

Mr PHILLIS: And it is about cross agency issues as well. The Hon. Melinda Pavey talked about a hospital and a highway project in her electorate. Those are two completely different projects and they will be delivered in complete isolation from each other. The agencies will not share any information I believe.

Mr RYAN PARK: I have a quick question on that matter. Governments of all persuasions have had projects not delivered or not go well, or projects that have blown out and that have been delivered very well. Again from my own experience—and I never got a reasonable answer when I was inside the bureaucracy—are learnings ever shared when a contract is delivered either well, efficiently and sometimes under budget—the normal headline sort of stuff, and conversely when it is delivered poorly?

Mrs MELINDA PAVEY: The normal headline sort of stuff?

Mr RYAN PARK: The normal headline sort of stuff. From my experience I am assuming that whether it is a hospital, a railway line or road infrastructure, there are common steps along the way that normally lead either to a positive or to a negative outcome. I know it is discussed internally within each agency but I am not sure whether there are forums where that is shared with the public sector and the private sector.

Mr PHILLIS: You are correct. Within each of those agencies they definitely do try to share their learnings. Within the organisations, members of our organisation participate in forums, probably on an inconsistent basis, with those agencies trying to share learnings and develop better understandings of them. I am not aware of anything that goes across agencies but I have seen attempts at that occasionally done by some other organisations at times, but it is not strongly pursued.

Mr RYAN PARK: Is it a good idea?

Mr PHILLIS: Yes, absolutely.

CHAIR: I think one of the submissions recommends that, as the Premier set up a leadership academy in the public sector, there was a suggestion that there be a procurement centre.

Ms MOTTO: That was our suggestion, a procurement centre of excellence.

CHAIR: Yes.

Ms MOTTO: It is not just between agencies in New South Wales but agencies across jurisdictions in the country.

CHAIR: You said nationally it was desirable but we should at least start with New South Wales.

Ms MOTTO: That is right, particularly for pieces of legislation like proportionate liability legislation where the Government has a recommendation. Even though agencies within that will interpret those recommendations differently and contract effectively very ad hoc in the way that those recommendations are delivered, learnings for example from jurisdictions like Queensland where there is a prohibition on contracting out, would be enormously helpful I would imagine for a government agency. What are you afraid of? Where have the problems occurred? What do you need to be careful of? What are the loopholes that exist? How are they used? Those types of learnings would be incredibly important. But what we are talking about here is also sharing of the upfront theory and contracting behaviour of projects. I think to your question specifically, you are talking about post-project review.

Mr RYAN PARK: Yes, that is right.

Ms MOTTO: That is not well done and the incentive, for example, of reviewing holistically and honestly a project where the outcome was not optimal is obviously problematic for a number of reasons.

Mr RYAN PARK: Sure.

Ms MOTTO: And the sharing of those, in my understanding, next to never happens. On best practice projects you will get some sharing of information but it is largely anecdotal because no data is captured from the project outcomes.

Mr RYAN PARK: The clear example from my experience is when you have an agency, let us say education, that does not necessarily deliver major projects every day of the week, like road, rail or whatever.

CHAIR: Obviously they are doing schools and things.

Mr RYAN PARK: From my understanding I think even the Minister for Finance and Services has come on board recently and given them some additional resources to help out. You can see a classic example of where, regardless of who is in government, an agency like that can easily make mistakes through inexperience and a lack of knowledge of the area as they are not doing it every week. Transport and roads can make a lot of those mistakes and they are doing these things at a far more frequent rate. I do not think any of us have ever seen—I have never seen it—agencies have some upfront dialogue, for example, "If you are procuring IT let me tell you where we got it wrong." I am not saying that we should have a public forum about it; I am just saying they need the ability to regularly have some formal dialogue not just internally where we all know someone gets their head kicked in, or whatever.

Ms MOTTO: That is right.

Mr RYAN PARK: I do not see that happening. Maybe it does now but it certainly was not happening when I was floating around the place.

Mr PHILLIS: I am not aware that it happens too much, as Ms Motto says, so it is very mixed.

CHAIR: I have been told that even within the same agency you can have one project management team that delivers a great piece of infrastructure and another, and then it is very much the individuals and their level of experience that determines the favourable outcome. Your submission is that if you get some shared learning you get a more consistent standard across the government.

Mr PHILLIS: Correct, and even if we could implement some basic principles around which people could operate it may eliminate some of these issues.

Mr RYAN PARK: It just means that you share the expertise. Generally good project management expertise is in those hard infrastructure agencies—your rail and your roads.

Ms MOTTO: That is right.

Mr RYAN PARK: That is generally where it is because those people are attracted to that type of project. The problem is when an agency undertakes something that it does not do every day of the week, in my experience that is where it starts to go wrong very quickly. The Chair was right: They do not have that level of experience. Someone from another agency might not have bothered to put up his or her hand and said, "Listen, if you are going procure X you have never done it before. Let me take you through a few problems or pitfalls."

Ms MOTTO: Or let us have a standardised contract so you have the confidence that you are using something that has been well negotiated from the public sector and the private sector so that everyone understands the lay of the land.

Mr RYAN PARK: Good point, yes.

Mr PHILLIS: And let us worry about delivering the job, and not the contractual basis upon which it is founded.

Ms MOTTO: That is right. I always talk about the very basic principle of contracting; that is, that there are two parts to any contract. There is the bit about the promises we make to each other in the delivery outcome and there is the bit about who gets to sue whom afterwards. Unfortunately, we are spending a huge amount of time in the second part and not nearly enough time in the first part, which is what these 30 odd reports over 20 years are telling us with regard to getting the scope of works right; getting the risk management allocation right; getting the risk assessment and understanding of risk on the project right; understanding each other's parameters in regard to constraints, obligations and contemplations of what a successful outcome means; and all those things. We need to be spending a lot more time on both the relationship and the project parameters rather than negotiating over and over again forms of contract that are just wasting time.

CHAIR: I will wrap up by asking you this question. You said that there has been a plethora of inquiries and you would really like to see some tangible outcomes from this inquiry. If I were to put you on the spot and ask you to give me five bullet points in order of the tangible outcomes you would like, this is your chance.

Ms MOTTO: I will give you three. The first one is that you adopt AS4122 on an if not, why not basis. It is pretty standard in that it already exists, it has been negotiated only recently, it is a 2010 document and that was in collaboration with the Australian Procurement and Construction Council [APCC], which represented government clients, and the Australian Contractors Association.

CHAIR: One dot point.

Ms MOTTO: One dot point. So a standard form contract. If that is not possible we would like to see some rules around contracting that include the prohibition of contracting out of proportionate liability legislation and a prohibition to either making reference to this concept of unlimited liability or being silent on the concept of limitation of liability. The third thing that we would like to see is a procurement centre of excellence—a structure for the sharing and collaboration of best practice; the development of procurement understanding and expertise within the public sector; understanding how the private sector and the public sector both work in partnership to deliver projects; and also the upskilling more generally of the public sector in these areas.

CHAIR: I have a quick supplementary question. Does AS4122 have a provision that allows for contracting out a proportionate liability?

Ms MOTTO: No, it is silent.

CHAIR: So in other words there is no contracting out?

Ms MOTTO: That is right.

CHAIR: Thank you for coming today and for your detailed submission. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Ms MOTTO: Yes.

(The witnesses withdrew)

DIANA BURGESS, Adviser, Australian Constructors Association, and

LINDSAY Le COMPTE, Executive Director, Australian Constructors Association, affirmed and examined:

CHAIR: Do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr Le COMPTE: No.

CHAIR: I saw that you were both present during the evidence of the previous witnesses. I am going to give you an opportunity to make an opening statement before the commencement of questions. If you wish to comment on, contradict or agree with any of the evidence you have heard please take this opportunity to do so.

Mr Le COMPTE: I was going to make an opening statement that would have covered a number of the issues that the previous witnesses have addressed. I am not going to do that now because it will only take up more of your time, suffice to say that a lot of the items that were discussed during the previous evidence we would support. I think to just give you a little bit of landscape now in relation to the Australian Constructors Association [ACA], it is an organisation that has been in place for about 20 years. These days it is made up of organisations which to a large degree are controlled or owned by entities which are international. There are some homegrown Australian constructors still there, but by and large the majority of organisations that are of any weight in the marketplace are involved with international organisations. The ACA now also has international construction companies who are here and operating, although their operations may not be as significant yet in relation to a lot of those that are operating here. Nonetheless, they represent the major constructors that are operating in the country.

I think it is also fair to say that over more recent years all of these organisations have adjusted their business models and so they are not just organisations that might come along and build a bridge, or a hospital, or a road, or a rail project and then hand it over and move on to the next one; their businesses are much more integrated. They are involved in project management and development in many other ways. We have indicated in the submission the types of sectors that the ACA members are involved in. You actually are getting a fully integrated approach when it comes to the constructor and not like in the old days, as I suppose you would say, when an entity would come along and do the pure construction. So that has changed. They are also involved with funding and financing significantly, as well as property development. A lot of what is happening now with large projects and integrated projects in terms of precincts in cities and in regional areas are more relevant to the work that these organisations are now involved with, so it is a different regime.

The landscape has also changed, we believe, in terms of how projects are brought to market. It is different to where things were under the old Public Works structures. Individual government entities are now operating their own capital works units. They have people employed, they have many consultants attached to them and they operate on the basis of what their responsibility is under their approved project pipeline. However, governments and the community now want to see more integrated projects so we are seeing the rise of these mega projects. I am talking about projects that might be very complicated in terms of the stakeholder engagement or other related processes or very large in terms of the dollar value. It is not just about building a roadway or a rail tunnel or some other infrastructure. It is about how does the community get value out of that whole precinct? What does the Government do and what do private sector clients do to maximise the value add coming back? That is a totally different approach that has developed in more recent times from where we were a decade ago, let us say.

We see that as being a very significant issue and also the fact that there is a big issue about risk when it comes to those particular projects—who should bear it, how it should be allocated, how it should be addressed. Those are the issues that the ACA has been grappling with. As we have put into the submission, late last year we released a report on mega projects that was prepared on the basis of a number of research processes that the consultants were involved with. It identified that a better approach to the way these projects are developed, delivered and managed is going to result in a lot of funds that will be subsequently available for further infrastructure. If there is a change in the way we approach these things from both the client and the provider and the financier then we are going to end up in a situation where government will end up with a better outcome and expand the opportunity to develop other infrastructure. That is where we see things going.

We have referred to the Productivity Commission inquiry, which you have already been aware of. Of course, since we lodged our submission Infrastructure Australia has released its major project report. I am sure that you will have the opportunity to look at that document in more detail. A lot of the things in there replicate where we see things ought to go. The good thing is that report actually reduces a lot of those issues down to some reasonable plain English, which ought to make it a lot easier for parties involved to get their minds around where we go from here. Certainly, as Consult Australia made the point, there have been a lot of reports both here and internationally which we think are important but there has not been a consistent approach by governments across the country to actually deliver in the context of those issues. When I say "deliver", there are responsibilities on both sides—both in the private sector context by funding and financing organisations and the constructors and the parties that I guess hang off that sort of process, as well as on the government side of these projects.

What we are really saying at the end of the day is that there needs to be partnership brought back into public private partnerships. There needs to be greater involvement and collaboration between all sides and there needs to be a re-establishment of trust between government clients and the private sector that delivers the projects. If we can achieve that—and that is what that mega projects report is about—then we start to really unlock a lot of potential and we reduce a great deal of concern about transfer of risk, which has already been discussed. Also a lot of legal issues fall away, dispute issues fall away and the parties walk away from the project feeling a lot happier about what they got for their money and what was delivered.

I just might note in relation to that that coming out of the mega projects report the ACA is engaging with various governments across the country in the development of what we see would be processes that will actually put some meat around what we have been talking about. We see that as being a really important factor. We all know what needs to be done. The question is how do government and the private sector get on and do it to the advantage of all? That is where we are at on those particular issues.

Can I say a little bit about the question of risk and where people see themselves in the scheme of things? The reality is that if a project starts off badly it will finish badly. If the risk that the client transfers to the constructor is not an appropriate allocation of that risk, then the outcome is the risk will be transferred onto other parties in the supply chain; whether they be consultants, whether they be smaller-tier contractors, whether they be subcontractors, everybody wears the outcome of all of that in some shape or form or, alternatively, the price that the client pays is increased by the percentage of the risk assessment that the parties involved on the other side actually make.

So government may pay a lot more than what they might otherwise pay if there was a better sharing of the risk of process. In that sense we are not saying that the consultants or contractors or other parties should not have to bear a risk; they need to bear the risk which is appropriate to their involvement in a project. But the government has to also look at it from the perspective that if they are being advised that they have to develop particular commercial models which push all of the risk away from the government agency or the government of the day, then they will pay for it or there is a potential that the project will fail at some point down the track. So there is an opportunity there but it is going to require quite a lot of work on the part of the private sector and government clients to recognise that there is a shared partnership in achieving these outcomes. We believe it is quite possible and certainly the construction sector is more than prepared to engage with government to achieve that outcome.

CHAIR: You have spoken about the need for partnership and you have spoken about risk—you say there is a big issue about risk—and on page three of your written submission you talk about appropriate risk allocation. Can you give some tangible examples of the sort of inappropriate risk that you perceive is being put onto the client by government under some of these PPPs?

Mr Le COMPTE: It comes out of the particular documentation which is prepared and put into the tender documents. Sometimes what happens is that documentation which should have been part of tender material does not eventuate until after a preferred tenderer has been identified. So those are legal risks when it comes to liabilities and liquidated damages and they flow out of whether or not there is adequate information in the tender documentation as to what the risks are within the project itself, whether the client has undertaken all it reasonably could be expected to do to identify what is out there that is going to impact on the project—that can be local stakeholders and issues that might be relevant in that context; it might be issues which go to engineering factors, particularly if you are looking at a project involving tunnelling or running through sensitive areas or impacting on a whole range of other factors that a client may be aware of but that the constructor may not easily be aware of.

If there are issues that come up later that have not been prepared for or addressed then that adds issues to the whole project. It means delay, which means that there are cost issues, all of those types of factors. We put a number of those issues in our submission to the Productivity Commission, which we have provided to you, but I am happy to elaborate on those, if needed, through further questions.

CHAIR: What you are saying is interesting because on the one hand some people are saying to our Committee there is too much detail in the pre-contractual documentation and too much information required back and that is adding to the upfront cost of PPP procurement. On the other hand, you are saying that in respect of some matters there is inadequate information or the late provision of information, which is unnecessarily putting risk onto the contractor away from the government.

Mrs MELINDA PAVEY: Contract variations.

Mr Le COMPTE: It depends on the particular project and the approach which is adopted to that project. On the one hand, if the client produces so much paper in relation to a particular project that the client wants the sector to respond to, then that adds a lot of cost to the contractor.

CHAIR: And some people are saying that it is information that is not strictly necessary for government to evaluate who should be at least the shortlisted tenderer.

Mr Le COMPTE: I suppose one of the issues there is that if you are dealing with a client which does not have people with the right expertise to deal with a specific project, then it is more likely that you are going to be asked a lot more questions or be required to respond to a lot more issues that would be unnecessary if the client's side had the confidence of people who were involved in project management to be able to identify the organisations they were dealing with. By way of example, if you talk to a lot of the international constructors, they are perplexed when they are asked to provide an enormous amount of information to satisfy people about their skill and ability when they can prove that they have done 14,000 kilometres of tunnels across Europe or they have built 10,000 kilometres of roadways, a superhighway, or they have built big airports. From their perspective they are simply saying, "You know who we are. We turn over internationally anywhere from \$20 billion to \$50 billion per annum. We ought to know what we have to do", and projects in this country are no different to projects in most other western world OECD countries, and it is perplexing to have to deal with that process.

In terms of those issues, all I am saying about risk is if the client does its job properly it should be able to identify the key risks in a project and make the tenderers aware of that so they can factor it into their assessment and what they come back with, on the one hand. On the other hand, if you can reduce the amount of paperwork involved, identify appropriate entities for shortlisting and give those organisations the opportunity to then bring in the innovation which can add value to the whole project, that is when you start to get some real outcomes that can work. One example is the regional rail link project in Victoria. Some people may argue there are good and bad aspects of that, but there were about 16 different major construction industry entities involved in that project, managed by the Regional Rail Link Authority, and they brought the project in nine months and \$900 million under their budget because they were able to coordinate, they had the right people and the parties all worked together cooperatively to deliver the outcomes.

Those types of projects show you that it can be done. The issue that is important is that we do not have that situation which was referred to by Consult Australia where every different agency has a different approach to a common or garden variety project.

Mrs MELINDA PAVEY: What is the difference with that Victorian contract on that regional rail line? How did they get 16 parties collaborating?

Mr Le COMPTE: In that case they had a very big project—it was \$3.9 billion—so the Government established an authority with the power to deal with the whole project. If you had six different government agencies involved in that project, without being properly coordinated or integrated you are going to have people saying, "Well, our approach is this is the way we have done it", and somebody else will be saying this, and then if there are issues that come along between components of the project there could potentially be difficulties about who makes what decision, when do they make it, how do they make it, what will be the impact across the project—all of those types of things.

It is really about organisations working collaboratively to achieve that sort of thing. In Western Sydney, for example, the project that is coming out of health infrastructure is one of those projects where they are involving the community and the local stakeholders and other people, and that project is developing very well; it is an example of what can be achieved, but if you have different organisations running their own race then they will retain consultants who will have their own view about what contracts should be drafted, what clauses should be in them, who should be liable, who should not be liable, and, at the end of the day, the reality is every consultant wishes to reduce their own liability in relation to what they are involved with.

So if we start off with an adverse approach, then it filters through the whole process. There are ways and means. Going back in time, consider Darling Harbour. The Darling Harbour Authority had control of that whole precinct and it was developed to a point. Then the vision went further under a different government into City West and it is going further, again under a different government, to involve light rail and other things. So those projects can be done as long as people are connected and involved. But the expertise has been lost, to a degree, in a lot of organisations and the consistency of approach is not there for the private sector.

I note that you did have a discussion earlier about standard form documentation. There are many different standard form pieces of documentation, legal contracts and otherwise, used a cross the world. Some of them work; some of them are not quite so relevant to a particular jurisdiction. But the reality is, in a lot of those jurisdictions, the core principles are extremely well known by all the parties involved.

Ms JODI McKAY: So they are principles only are you saying, not standards?

Mr Le COMPTE: They can be reflected in actual contracts, but what we are saying is that the parties involved—

Ms JODI McKAY: It is not actually a standardisation?

Mr Le COMPTE: Well, there is a FIDIC [Federation Internationale des Ingénieurs–Conseils] contract—the International Federation of Consulting Engineers general form of contract—which is adopted in many jurisdictions, not all, but in many. But what I am saying is, there are common principles that can be identified in all projects and they can be reflected in the standard form commercial contract. There is no reason why that cannot be put in place.

Ms JODI McKAY: I think that is happening already though. Isn't it an issue about the interpretation of the principles?

Mr Le COMPTE: I do not think so, because a lot of contracts are drafted by different people and they cherry-pick particular clauses out of other contracts but don't necessarily apply them to the particular project in the risk profile that is meant to be adopted. All I am saying is that if we had more standardisation about the key issues and approach, and all Government agencies are obliged to operate their projects along those lines, we will have a better outcome.

Mr RYAN PARK: Sovereign risk is something that interests me and you have raised it. It has obviously been a problem in the past across all jurisdictions. Do you have a point upon which, in the procurement process, you think that a project, for want of a better word, should continue or not, regardless of who is in Government every four years here or every three-and-a-bit, or whatever it is, in Canberra? Is there a trigger point at which you think, "Well, that should be it, that project should now proceed. We have had debate, we have had the argument". Because it interests me and I think, in speaking extensively with the private sector, this has been an issue in terms that they are putting it into big costs, they are putting it into project costs, the whole lot. I understand that and it makes perfect sense. But I am interested, from your perspective, is there a trigger point upon which, in the procurement process, a sovereign risk essentially should be eliminated?

Mr Le COMPTE: Well, it depends on how you interpret sovereign risk.

Mr RYAN PARK: The certainty of project, I suppose.

Mr Le COMPTE: If you interpret it on the basis that one political party says publicly that they want to proceed with a particular project and then another party comes along, or other people who may impact on that project come along and say, "Well, if we get control of it, we are going to terminate the contract", that sends shock waves through the industry, and it should not happen.

Mr RYAN PARK: There will always be those arguments. So I am saying, at the front end, someone announces today red or blue—heaven help us if it is green—but red or blue announces, "This will happen". red or blue say there is an argument, they do not want to do that. At what point though should red or blue who say "no" say, "Well, that has now gone past the trigger point and we will not be in a position, regardless, to do that", so there is certainty. You do not get it straight away but you get it at a point in the procurement process.

Mr Le COMPTE: Certainly one of the key trigger points has to be whether or not a particular client has entered into a contract.

Mr RYAN PARK: So the issuing of tenders.

Mr Le COMPTE: Well, once you have entered into a contract, you have binding legal obligations and responsibilities and the party which is from the private sector that wins that contract, will have gone through a process where they have tendered for that project and they may well have not tendered for other projects, to their disadvantage. So it is not just a question of, "Okay, we have decided to terminate the contract". That organisation has also lost a lot of opportunity, which is very difficult to quantify. But if it is a substantial organisation, then it could have been expected that it might have won other projects in the interim. But it is never a good idea to terminate contracts because of the legal risk and the risk of financial loss to the people of that community.

The other side of it is, if you go into a tender process—so once you issue tenders—the private sector starts to spend a lot of money and we have indicated in our submission that it could be 2 per cent of the value of the project that goes into the tender. So you could be looking at, on a big project, anywhere from \$20 to \$40 million that a number of significant players will spend in big costs. So if the project then collapses, or once tender has been let, then you have a situation where all of these organisations are spending an enormous amount of money without any real guarantee that anything is going to come out of it. So organisations are going to say—and particularly the larger companies: "Well, we won't bid on these projects if what we are finding is that the Government of the day, or the likely government of the day, or the possible government of the day, is saying: We will not support this once it is in". Some will bid and they are prepared to take that risk but they will price it, so if at the end of the day the project goes forward, it will cost more.

Mr RYAN PARK: You are saying essentially, it can never be eliminated at the very beginning because the whole point of democracy is debate and that is fine, but it should be eliminated upon the issuing of tenders?

Mr Le COMPTE: I think that is right. You really should draw the line before the private sector is starting to spend big dollars in bidding for projects which may not happen. There is another factor here as well, when you look at risk and that is, if the risk profile of a project is such that too much of a risk is being passed across from client to constructor and through constructor to other parties, 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. And so, all that happens there is that you have the potential for organisations to tender for that project, take the risk on it and as soon as they are nominated preferred tenderer, start to work out how they can claw back or reduce the risk. And so that generates potential for a lot of costing variations, a lot of disputation, a lot of concern between the client side and the deliverer side and it means that it is not a project which goes along smoothly and, invariably, does not necessarily have the best outcome, certainly in terms of the innovation that the constructor might bring to bear in it.

CHAIR: Can I ask you some of the risks you are talking about. So presumably sub-surface risk is always a classic problem. Geotechnical surveys are imperfect. So that is one risk you can either pass onto the contractor or the proprietor can accept and deal with if and when things are discovered underground. What are some of the other risks that you would identify as being inappropriate for the Government to try and pass on to contractors?

Mr Le COMPTE: It depends on the individual project, but patronage risk would be a perfect one. You have all seen what has happened with various tunnel projects in New South Wales and Queensland and other public-private partnerships that have not worked because the up-front assessment of the downstream outcome is illusory.

Mrs MELINDA PAVEY: Or there was a change to the rules about where the traffic could go.

Mr Le COMPTE: Yes, that could be an issue. There were a lot of factors like that when the Cross City Tunnel project was put together.

CHAIR: Was that not a classic case, though, of contractors trying to win the job by making rosy projections? They bid based on their own assessment of what the patronage would be.

Mrs MELINDA PAVEY: And then government buckled.

Mr RYAN PARK: The private sector did have a role in that.

Mr Le COMPTE: The Government had information in relation to projections as well, which was part of that process. Those issues do need to be addressed. Often what the private sector may argue—the constructors, anyway—is that in some of the tender documentation there will be already reports that have been prepared by consultants under contracts that have not been negotiated by the constructor with the consultant but by government with the consultant, and government then wants the constructor to take those projects and the information in them and run with that as part of the tender. In effect, the Government novates the risk to the private sector even though the private sector has not had an opportunity to be involved in the up-front analysis. That can happen, and it is an issue.

It goes back to the original question about passing the risk to the lowest common denominator. What we are really saying is that if there is early contractor engagement in a lot of these processes, the private sector is able to bring forward its expertise and add value before the project is finally tendered and a successful tenderer announced. That allows the innovation to be developed by the shortlisted entities who add the value that is relevant to it.

Mr BRUCE NOTLEY-SMITH: Putting aside the risk of cancellation and patronage numbers, do you think that risk in infrastructure projects across government is overinflated? I get the sense that people talk themselves into a frenzy about risk. Very few infrastructure projects go catastrophically wrong in Australia. I might be completely wrong. I remember, back when I was a humble mayor, the council general manager banned something. I said, "Why did you ban it?" He said, "Because of the risk. Our insurer will not cover us for that." I said, "Get the insurer in to tell me he will not." The insurer said, "Put up a sign and it is fine." There is a perception that risk has to be addressed, but what risk actually exists is perhaps not scrutinised sufficiently.

Mr Le COMPTE: I take your point about whether or not projects go catastrophically wrong. They probably do not. But if you are providing the financing or the debt or if you are taking equity in a particular project and in the first 10 years of that project it is evident that it is going to lose a lot of money then the fact that it might be a great project in 20 years does not really help your organisation. Governments end up with a lot of these projects, whether it is local, State or Federal Government. The project comes back to the people. The parties that take the risk are the ones that finance, fund and deliver it through equity participation.

Your comment is accurate. Most of these projects will ultimately be very useful, but when? That is one of the factors. Darling Harbour is a perfect example of that. It is a great concept and a great project but it has taken a long time to realise the end result. If you speak with a number of the parties that were involved in running businesses in that jurisdiction in the first 10 years of its operation they will tell you that they did not make much money out of it. Some of them will tell you that they lost a lot of money from it. Long-term, it turned into a great precinct.

It really is about how the risk is shared between the parties involved in the process. An example of how you deal with that more effectively is what I understand is proposed by the Government here in relation to WestConnex. The project is meant to operate in stages. It will demonstrate patronage and then the private sector will look at it and, based on the patronage and other outcomes, make decisions about whether it is worth funding and for how long.

I note that one of the submissions the Committee has received on behalf of superannuation funds talks about the inverted bid model. That is not a bad way to look at these types of projects. The superannuation funds are saying, "If we are going to invest in a project over a 30-year horizon, we want to make sure that it is constructed appropriately so that we do not have to make a substantial change over time. It has regular

patronage, so we can model what our return on investment is going to be and it is to be operated by an entity that has the capacity to make it work." That is an example of why you would invest that way, as opposed to putting debt money in for a short period of time and then floating the entity. Then people buy shares on the stock exchange and hope that it realises the projected patronage value.

There is not a lot of cash in these projects for many parties, especially the people who build and finance them. Everything needs to be going the right way to ensure that they get a reasonable return on investment. Those people who think that construction firms have very long pockets need to think again. If you take the risk of having on your balance sheet a \$4 billion to \$5 billion project, you want to be very clear about what you will do if it falls over at some point because of major issues. That is why we are saying that a more collaborative approach will ensure a better outcome long term for all parties.

CHAIR: Your members are a who's who of the construction industry in Australia, with a lot of international experience. Does any country stand out in infrastructure delivery?

Mr Le COMPTE: A number of countries do. The United Kingdom has delivered some very good outcomes, operating under models and processes that are being taken up through Infrastructure Australia. Many countries in Europe have been building major infrastructure projects for decades quite successfully. In Germany, Italy, Spain and France vast numbers of major projects have been developed and delivered. South-east Asia is a developing market in this area as well, particularly with the entry of China and India into processes. Japan is certainly an innovator in these processes. Many countries are doing very well in different ways in the development and delivery of infrastructure. That is why I said that the members of the Australian Constructors Association [ACA], who operate across the world, look at Australia and say, "Why do we have to reinvent the wheel for every project when it could be more effectively integrated?"

Mrs MELINDA PAVEY: And we were a world leader in the 1980s.

Mr Le COMPTE: Yes, exactly. The Committee asked a question earlier about best practice outcomes et cetera. The United Kingdom, some years back, and Infrastructure Australia, back in 2012, recommended the implementation of key performance indicators [KPIs] for all projects. The intent of that was to ensure that all parties performed in accordance with their responsibilities, and that is not just the constructor but also the public sector clients. So you can actually get to a point where you can say, "This project went really well for these reasons; this project didn't do too badly but there were a few areas where we think it could improve; and this project went bad because of whatever it is." That is a great thing to implement, and I think it is doable.

But it means that everybody has to be prepared to accept that there will be some reports which are going to come back and say, "Well, we didn't get it quite right." At the end of the day, if there is maturity in the private sector and the public sector then you can get that outcome and that will add a lot of value to what you want to achieve in governmental terms in the delivery of further infrastructure projects. If it is exposed like that then a lot of the myths and all of the issues about this, that or the other will fall away because if the projects are developed the right way and delivered the right way then we eliminate a lot of the issues and people should be a lot more comfortable about it. But you do need some experience in there to make that happen.

CHAIR: Presumably at the end of a project private contractors do their own internal assessment of how the project has gone.

Mr Le COMPTE: Yes, they do.

CHAIR: Just as government does, but they do not do it together.

Mr Le COMPTE: No, they do not because in the current climate it becomes difficult for a private contractor to say, "This contract went badly because we made these mistakes." And on the government side it does not want to admit that the project went badly because it was not properly scoped in the first place. Maybe the client decided that they were going to have 100,000 variations during the course of the project. So it comes back to that area. It can though be addressed through perhaps some small number of key issues that can be reported on initially which will give everybody an opportunity to see how things are flowing and how things are working in the overall scheme of things. You do not have to have 350 KPIs in a project; you can reduce it to something that is more feasible and gives people a better outcome.

CHAIR: From a government point of view it would make sense for it, at the end of major projects, to routinely engage some sort of third-party consultant to do a review of how both the private and the public entities have performed on the project.

Mr Le COMPTE: There is no reason why Infrastructure NSW could not do that in New South Wales.

Ms JODI McKAY: Or the Auditor General?

Mr Le COMPTE: Yes, the Auditor General could do it. But my query there is: Does the Auditor General have the right expertise for this type of project? I am not saying that they cannot do it by any means, and they do a lot of—

Ms JODI McKAY: Obviously they have traditionally been limited to the public sector.

Mr Le COMPTE: Yes, they do a lot of good work; but that is the question.

CHAIR: But their audits would be done on more of a financial base rather than as a holistic assessment, wouldn't they?

Ms JODI McKAY: No, they do—

Mr BRUCE NOTLEY-SMITH: They can acquire the skillset

Mr Le COMPTE: They do performance audits.

Ms JODI McKAY: They do everything. But it is the private sector bit that I do not know how it would work.

Mrs MELINDA PAVEY: There is also a fear of exposing candid and honest collaboration in the media, which probably stops a lot of honest conversations. Maybe it needs to be done in a commercial in confidence capacity.

Ms JODI McKAY: I do not know about that. It comes back to transparency though, doesn't it?

Mrs MELINDA PAVEY: It can.

Mr Le COMPTE: It does, and then you have the different political parties involved. As long as that information flow is going through the right processes and is used appropriately then you have some chance there. I guess, though, initially if you can get the right dynamics in terms of a change to the way these projects are approached by the government and private sector then that is a start. Having the skill base increased and improved, and having greater consistency in relation to the commercial terms that are involved, is a great start to achieving that; and then people become a lot more comfortable. But you can still involve the Auditor General, Infrastructure NSW or other parties to look at that.

CHAIR: I thank you very much both for your submission and for appearing before the Committee today. The Committee may wish to ask you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr Le COMPTE: Yes, certainly.

CHAIR: Thank you again for appearing before the Committee today.

Mr Le COMPTE: I have brought copies of the mega projects report for the Committee.

(The witness withdrew)

(Short adjournment)

SIMON HUMPHREY, Chief Executive Officer, Keolis Downer, affirmed and examined:

CHAIR: Thank you for appearing before the Committee today. Do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr HUMPHREY: No.

CHAIR: Would you like to make an opening statement before the commencement of questioning?

Mr HUMPHREY: I am very happy to have submitted a submission to the questions asked. Keolis Downer, as you are probably all aware, is a major operator of public transport operations in Australia and very interested in looking at public private partnerships [PPPs] and other infrastructure developments. It also has a keen interest in the procurement models that come to market.

CHAIR: In what areas does Downer traditionally provide procurement to government?

Mr HUMPHREY: Downer or Keolis Downer?

CHAIR: Both.

Mr HUMPHREY: From the perspective of Keolis Downer it is all around public transport. So we currently operate the trams in Melbourne and on the Gold Coast. Melbourne is a pure franchise arrangement. It is the third that we are currently operating since 2009. The Gold Coast was part of a PPP which was awarded in 2010 and that was obviously build, finance, operate and maintain the Gold Coast, which thankfully has been very successfully operating since July 2014—about 1½ years ago. There was a lot of pain during the build of that, as there always is with these projects but thankfully, very successfully operating now with a step change as soon as it becomes operational for these things to go from critics to loving it, hopefully.

We also operate buses in Queensland, Western Australia and South Australia and they are all through, again, franchise arrangements particularly in Western Australia and South Australia which are very mature contracting models. There are some contracting changes going on in Queensland which we are working through with the firm TransLink at the moment. So there is a variety of models. Going forward we will continue to do both direct franchising and as part of PPPs principally for greenfield light rail projects. Obviously there has been one recently in Canberra, which unfortunately we were unsuccessful on. But there is Parramatta, the Max in Perth which may come back to market a some point and there are a variety of others that are being talked about in places such as Hobart, Sunshine Coast and a variety of others. Light rail is very much in vogue globally at the moment.

CHAIR: Is your company a joint venture between two different companies?

Mr HUMPHREY: Yes. Keolis Downer is a joint venture between Keolis, which operates global public transport operations—one of the largest in the world with about 50,000 people globally operating bus, light rail, heavy rail, car parks, bike share, car share, car parking—based out of France. It is a 51 per cent shareholder. Downer, which is the local Downer Edi engineering and construction management business, owns 49 per cent. That has been formally in existence for a couple of years but we have had a kind of relationship and bidding on and developing opportunities for the past eight or nine years.

CHAIR: Has Downer Edi manufactured trains mainly?

Mr HUMPHREY: Certainly it has a rail division which is very famous for developing both the Millennium and the Waratah—thankfully the Waratah project improved over time—

Mrs MELINDA PAVEY: Hopefully.

Mr HUMPHREY: Thankfully there are very good trains running around now. It did not come without a bit of pain for everybody. The infrastructure business, for example, is many times larger than that and that does anything from wind farms to energy plants, to biggest road maintainer on the eastern seaboard for example. It is a huge conglomerate of a variety of different businesses.

CHAIR: In your written submission one of the things you have commented on, and about which other people have commented, is the importance of project time lines in reducing the cost of tendering.

Mr HUMPHREY: Yes.

CHAIR: Presumably when a project is announced you put together a group of people as the project tender team and so the length of time that those people have to be together, and the lumpiness of the process, the more expensive it is for you to participate?

Mr HUMPHREY: Yes. It comes down to one key element, which is certainty. The thing that costs us most money is if we mobilise a big team and then there is a delay, for example. So you cannot demobilise because you then lose. A big team is made up of a variety of different elements, a lot of internal resources obviously but nobody can hold all those people on their books the whole time so a variety of consultants come in as well. If we are going to bring them on board for a period of time we cannot suddenly put them off for a while so there is a burn rate attached. If there is a delay it costs money.

Similarly—I gave this as an example—assuming it is light rail, if something comes too quickly, again there is a cost involved in that because you have to spend a lot of money bringing in a huge team very quickly which can be an international team. So it is full recognition that there are lots of external factors that impact on the timing of projects. I suppose it is just what we do not feel that sometimes the private sector gets is as much communication as could be shared.

Ms JODI McKAY: What is ideal?

Mr HUMPHREY: Just communicate where you are up to. What would be ideal is if you basically put things back as far as you can so you have got enough time basically to get things ready.

CHAIR: Ideally you would want a well-advertised expression of interest [EOI] with a clear time line of when the request for proposal [RFP] will be so that you can plan the whole stage of the project?

Mr HUMPHREY: Absolutely.

Ms JODI McKAY: Are you not saying that you want notification that the EOI or the RFP is coming?

Mr HUMPHREY: If there is certainty of a time line up-front, if you could say the Parramatta EOI will come out on 1 January next year and the RFP will be 1 June, et cetera, that would be fantastic.

Mr RYAN PARK: You mean you want it sequentially. You do not want just the next time line; you are after the multiple key time lines along the way.

Mr HUMPHREY: That would be the ideal scenario.

Mr RYAN PARK: You are not talking about a date, but mid X or first quarter Y is what you are saying.

Mr HUMPHREY: That would be very helpful. Or even as things change just regular updates to say that we know three months out that it is going to be pushed back by X weeks, or whatever else. It would be good to have that information sharing.

Mr RYAN PARK: It is not a bad approach because, as we all know, bureaucracies can get very ill disciplined at times.

Ms JODI McKAY: Or they operate to a political schedule.

Mr RYAN PARK: Or they start to make promises they cannot keep.

Ms JODI McKAY: They say, "The Minister is going to an event, can we please announce this?"

Mrs MELINDA PAVEY: This is unique testimony.

CHAIR: Would the most desirable scenario be at least when you shortlist after your RFP you sit down with, say, your two preferred tenderers at that point and then in consultation with them refine the program going forward and make it clear? It may be that the program which the bureaucracy comes up with is completely impractical from the point of view of the two preferred tenderers. Maybe at least you can have clarity up to the appointment of the preferred tenderers and then in consultation with them you can program it to the end.

Mr HUMPHREY: That is another way of doing it.

CHAIR: Is that less desirable than having a program from the get-go?

Mr HUMPHREY: We can all work with certainty. To be honest with you, we will all put a bid in at the time we are asked to because that is the competitive nature of what we have to do. What you can do is have that debate earlier on. There have been good market soundings undertaken in New South Wales and other States to get early feedback from the private sector on what could be done better as part of the process, what innovation can bring, how it should be brought to market, et cetera. As part of that certainty those sorts of things can be taken into account. If you have the announcement saying we will announce our RFP shortlisted bidders on X date and three weeks later the RFP will come out that is perfect, because we can all work to that. We know we have got three weeks. We know we need to get our team at least to a stage where we can mobilise within three weeks. If that certainty is there we can deal with it.

Mr RYAN PARK: But you can create that certainty more reliably if you have strong market soundings up-front.

Mr HUMPHREY: Absolutely.

Mr RYAN PARK: If government says it is interested in a project around X—whatever that project is, whatever colour of government—the private sector is openly and publicly engaged in a discussion saying that for that type of project we would all need a big team from X because we do not have the international experience here, or whatever it is, so we would be jointly recommending not starting that process for two months.

Ms JODI McKAY: Is a market sounding the same as an EOI?

CHAIR: No, it is pre EOI.

Mr RYAN PARK: Market sounding is the very first thing.

Ms JODI McKAY: There is market sounding, EOI then RFP?

Mr RYAN PARK: A market sounding is the sort of thing you do very early. If government has a keenness to do something, it has a public forum process and invites everyone in. Government representatives say that we are looking at this, what would be some of the things we would face? They are not committing to it but they are having a sounding of the private sector, which may have to deliver the project, about the achievability of the project.

Ms JODI McKAY: How often does that happen on a large project?

Mr HUMPHREY: Most projects. Sydney Metro has done two rounds already. Sydney Light Rail did it and Parramatta will be coming out to do it, so it does happen. That does work reasonably well because it does give the private sector the ability to comment. We are provided with some information around the project and we either say these things will or will not work and suggest a different means of going about it. We also talk a little bit about time frame. You get the best market sounding when there is a two-way communication. It should be a discussion and so it is a learning experience from both sides, effectively.

CHAIR: Is that your experience of how market soundings have operated recently in New South Wales, that it is a two-way process?

Mr HUMPHREY: Sydney Metro has been done very well. Sydney Light Rail was not done so well; that was more of a one-way process. Parramatta is about to come out, so we will see on that one. It is not all bad.

Mrs MELINDA PAVEY: What do you mean you will see how that works—if you win?

Mr HUMPHREY: Hopefully. That does help. I am not saying it is all bad it is just that everyone can do things better. It is just trying to create a greater deal of certainty so we can work to a given time line.

Ms JODI McKAY: If they are both rail projects why have they been so differently managed?

Mr HUMPHREY: It is down to individuals.

Mr RYAN PARK: I do not want to drop names but you may have someone like Rodd Staples in Sydney Metro—I am just saying someone like him—who has a very high level of experience. He has learnt lessons, no doubt, from previous mistakes and I think he would be a lot better at that. As you said earlier on, Mr Chair, it can be the difference in your own agency. It does not have to be another agency; it can be the experience within it as to how well these things run. I am definitely not accusing anyone, but the feedback I have got is the metro has been done a lot differently from other projects.

Mr HUMPHREY: I cannot comment on all of the projects, obviously, but certainly there has been very good engagement on Sydney Metro. We are on the second round of market sounding now. They are very interested in finding out views from the private sector. On something so big and complicated that is something very valid that they should be doing.

Mr RYAN PARK: I think governments of all persuasions have been too scared of market soundings before. Dare I say it, they get their advice from bureaucracy saying something can be done but the bureaucracy has relied on perhaps limited experience. We know from other witnesses and ourselves that it has largely been gutted over 20 years. Therefore all of a sudden you have a situation where you are making commitments to time lines that are simply not best practice for the people who are delivering them. All of that could largely have been stopped by a formal, although not behind closed doors, market sounding process that is open to everyone.

Mr HUMPHREY: The good thing is you are obviously getting a cross-section of operators, designers and constructors, et cetera. You have got lots of different reference points that they can take. If you have an outlier you can kind of dismiss it because you have got other companies or corporations telling you things are achievable.

CHAIR: Presumably there is another very legitimate objective of the market sounding, which is to ensure that you have as much competition in the EOI process as possible. It has a very legitimate purpose from government's point of view.

Mr HUMPHREY: Absolutely.

Mr RYAN PARK: You have mentioned bid costs in your submission. Do you know a stage where you think bid reimbursement or calculating it would be helpful? If so, what is happening that is problematic at the moment that we need to fix in terms of bid costs? Bid costs are a part of the industry. You take that risk on, it is part and parcel. Everyone understands that. But from my understanding bid costs are growing enormously. I suppose therefore the taxpayer foots that bill at some stage down the line. I am interested to see where it is going wrong at the moment but more importantly at what intersection do you think there should be a trigger for a payment at some point of bid costs?

Mr HUMPHREY: There are a couple of elements to that. One is I do not know if there is a recognition of quite how large these bid costs really are. For a complex public private partnership [PPP] for a rail project the consortium bid budget would be well north of \$30 million, for example.

Mr RYAN PARK: We heard earlier that it is normally 2 per cent of the value of the project. I will stand corrected but I think a witness said that.

Mr HUMPHREY: It can be significantly more than that.

CHAIR: Some say it is as high as 5 per cent.

Mr HUMPHREY: That is from a whole-of-consortium perspective for some of the bigger ones. Keolis Downer is a portion of that, and we are talking many millions. These are numbers that, quite frankly, can

impact your bottom line in any given year if you are unsuccessful, obviously. So they do have a material impact on the appetite to bid on projects.

Ms JODI McKAY: Not only that; they are passed on then to government?

Mr HUMPHREY: Somehow each company has to get a reimbursement for that at some point in time.

Mr RYAN PARK: The other problem also is that it reduces competitive tension for the next one too, because you may not be in a position to bid up next time. I know Treasury hates it, I get all that, but there is an actual problem with the efficiency of this the way we are all doing it at the moment because it reduces the competitive tension for the second and third project.

CHAIR: Can I just ask a clarifying question? That cost, are you talking about upwards of \$30 million to put in an expression of interest or are you talking about an RFP?

Mr HUMPHREY: EOIs are very, very small dollars by comparison.

Mr RYAN PARK: I should have clarified that.

CHAIR: The standard projects now—is it usually down to two tenderers for the RFP?

Mr HUMPHREY: It depends. Rarely is it above three.

Ms JODI McKAY: WestConnex was three.

Mr HUMPHREY: Absolutely. The two I have been involved in over the last couple of years: Sydney Light Rail was three, Canberra was two, North West Rail was two. The EOI is basically a capability statement and if you are taken through the RFP stage, the procuring body should be comfortable that each of the parts that are taken through the RFP stage are capable of delivering it. It is then about who can do it at the best value for money and come up with the best delivery options and innovation, et cetera.

Ms JODI McKAY: So if you get to the RFP stage, if the EOI is, in principle, a capability statement, if you get to the RFP are you still then asked to demonstrate capability or is it completely about how the project will work and what you will bring to it?

Mr HUMPHREY: It is more about what you will do for the specific project, but you also need to know how you will do it—

Ms JODI McKAY: There is no repetition is what I am saying.

Mr HUMPHREY: There is potentially a little bit, because you have always got to demonstrate how you are going to do something, and part of that can be, "Well, we've done it over here and this is how we will bring that capability to bear". So you have already come and told them you have got this global capability and it is then demonstrating really how you are delivering it on the ground in this particular project.

Mrs MELINDA PAVEY: Just a question about collaboration. Are there processes that encourage some of the best parts of the private sector to come together during the bid process; for example, you are good at putting out a railway line? Is that something we should be thinking about as well? Government sees the tenders and the approaches but is there a role for government or is there a role for someone to play to maybe bring the best bits together, which may not have been the original tender?

Mr HUMPHREY: Yes. I suppose that is the question. On a PPP we have got so many different parts that need to come together to form a solution, you may not have the best of everything in one consortium. You have got the best light rail vehicle supply, you have got the best builder and the best operator potentially in different consortia, just because for whatever reason they could not work out a way to work together. That is the way the PPP lends itself: you do a merry dance and you kind of work out who you are going to work with or who you can work with. So you do not always get exact best partners together.

Mr RYAN PARK: Could we?

Mr HUMPHREY: Not by the way that it is done currently. There are other models that could be utilised. For example, there was a PPP in Canada where they separately procured the tram and they decided they wanted a body in that instance, but it could have been anything, and that was then just given in to the operator to operate and made to work as part of an integrated solution to the builders. There are other options; you could pick the operator upfront and do a tender to choose your operator, and then they could help inform who is the best builder to work with and the best tram to work with, et cetera. You have got the best builder and then you could choose the others; they are always doing that and there are complexities then about forcing people to work as part of a PPP if that is the procurement model. So there are complexities around it but yes it has been done elsewhere and there are methods of doing it.

Mrs MELINDA PAVEY: Elsewhere? Australia, the world?

Mr HUMPHREY: Canada, for example, for the tram separately.

Mrs MELINDA PAVEY: Given that we have got similar populations you would think that we probably do not have as much choice as, say, the UK.

CHAIR: Just following on from Ms Pavey's question, when you break up the components of a bid, however, you take away some of the commercial tension which can drive innovation by packaging things together, do you not?

Mr HUMPHREY: You certainly can get good innovation by different elements testing each other. It depends. I would suggest that you can still run tender processes to deliver a very similar outcome, but I think what you want—I have self-interest a bit here, but I would say as an operator we could input significantly very early into how the whole—I am talking about light rail here—network could come together, which we could help with the procurement of the trams, we could help with understanding who might be able to deliver the best construction and design, et cetera, and feeding into that, because we do that as part of a PPP consortium anyway. We could be appointed early and then help with the procurement. As I say, that is self-interest there, but that is one opportunity.

CHAIR: But when you are part of a consortium are you not challenged by the other consortium parties? I am not just talking about your company but the whole group, because you are all forcing each other to sharpen your pencils and think about the most efficient way to do it, which is not necessarily going to be brought out through a strict tender process which might prescribe how you are to do it?

Mr HUMPHREY: You are right; there is value in that, and we have lived through that a number of times. There is absolutely that challenge that goes on. But, to come back to the original question, it still does not mean you get the best of everything in a consortium, but there is a trade-off.

CHAIR: This is, I guess, the trade-off, is it not?

Mr HUMPHREY: Absolutely, I completely acknowledge that.

CHAIR: Is one way potentially to get a better outcome and to allow greater scope and innovation to be more output-focused than allow the tenderers to prescribe how they will deliver the output? That is how some tenders are now proceeded with.

Mr HUMPHREY: Absolutely. They have moved in that direction a long way and that is definitely the best way of doing it in that you are then allowing the bidders to come up with the best optimal solution just to deliver and manage it by the KPIs, by the outputs, and that also, quite frankly, reduces the administrative burden on the public transport authority or whoever else is managing the contract, which also should be a key focus because that is a cost to government to doing that as well.

CHAIR: How is the early experience of that form of delivery going in Australia?

Mr HUMPHREY: I can talk from my particular experience on Yarra Trams and the Gold Coast; they are both going well. I think again, as always, it comes down to individuals around how the contract is managed. One of the issues you have got is the documentation for PPPs, you may be aware, is voluminous; there are all sorts of documents. It is positive. I think what occasionally happens is that you have a black and white contract—there may be some ambiguity in it; you can never have that much documentation that it is always

completely clear; obviously the people who had not intended to at one point always move on. What you do not always get is a willingness from the bureaucracy to work through in a partnership-type approach; they want to see it black and white, and that is the answer. So again, it is a model that is maturing but I think that what we would like to see is a bit more of a pragmatic partnership-type approach.

CHAIR: In terms of the output style of procurement, does that involve greater up-front costs at the Expression of Interest [EOI] stage, from the potential tenderer's point of view?

Mr HUMPHREY: Less so for the EOI because that is the capability statement. For the Request for Proposal [RFP] stage it is probably a yes or no answer to that. It depends, is the answer, because you still need a specification provided to you. For example, "This is the reference design", is what is generally given. But what you are then asked is, "Go for your life, do what you like to it, show us how you can improve it, show us how you can make this better". Yes, there is greater cost because the cost of having a whole team of designers reviewing everything from how the rail fits in to what the interchange looks like to how it is best put up, et cetera, there is huge cost involved in that. Yes it does, but I think it definitely drives a better outcome for ultimately the customer.

CHAIR: But your ultimate output type of procurement would not even have a reference design, would it? It would simply be something like, "Show us how you could best provide 20,000 social affordable housing in New South Wales" without specifying location, type of building, anything. It would just be in very broad terms.

Mr HUMPHREY: Yes, I think the issues that I would currently see with that is, a comparative analysis of different bids because they could just be that you get something very cheap stuck way out past Badgerys Creek versus something where people are currently living in the north west of Sydney, for example. How do you compare those? Again, from a transport perspective and light rail and looking at those Public Private Partnerships [PPP], if you have not got at least a basic specification or an alignment worked out, you could come up with something that is just never going to happen because when you do the Environmental Impact Statement [EIS] you are never going to get a certain alignment through, for example. There has always got to be a level of information given which you have got to work with.

CHAIR: But from government's point of view, let us say the output specification was: Provide a good public transport solution for the Gold Coast. Presumably some people might want to put a bus proposal forward; others might want to do light rail; others might want to do a combination of the two. Would not that give government a much better way to make informed decisions about what the best outcome is for the community, through that process?

Mr HUMPHREY: The problem I would see with that is, I do not see the logic. The problem I see is the master planning bit. What is the global vision for the Gold Coast? Do you want to build an industry or park down here? Is it all going to be about tourism? What is the ultimate reason for that public transport solution? That is in the private sector. If you just say, "Deliver us a good transport solution", well the transport solution is to deliver people from A to B, do efficiently, do it effectively. That would be a huge planning exercise to work out: Where do people want to go? Where are they going to want to go in the future? What are we actually looking to achieve here? That is something you might see first in Newcastle, where you have actually got somebody doing the multimodal operation for Newcastle. Then you can say, "Okay, someone is looking after it". You are then more integrated into the master planning exercise. So, what can we do better? What should be the next step? Unless you are inside that tent, as it were, it would be very difficult to just deliver a solution.

CHAIR: Does anyone have further questions?

Mrs MELINDA PAVEY: Is there anything you would like to leave us with?

Mr HUMPHREY: No, it is good that you are asking the questions. There is no right or wrong answer, so hopefully that has been helpful and I am happy to discuss it further at any point in time.

CHAIR: Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr HUMPHREY: Yes, that is fine.

CHAIR: Thank you for appearing today, we appreciate very much your submission and your time.

(The witness withdrew)

GREG EWING, General Manager, Sydney Division, Engineers Australia, affirmed and examined:

CHAIR: Before we proceed, do you have questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr EWING: No.

CHAIR: Mr Ewing, would you like to make an opening statement before the commencement of questions or to comment on any of the other papers that you might have read?

Mr EWING: Just briefly, I would like to thank you for the opportunity to talk to you today. Engineers Australia was founded in 1919 to promote the practice and science of engineering for the benefit of the community. What we are looking at in terms of infrastructure procurement might be a dry topic for some people but it is the world we live in and that we exercise our rights through and it is for the future of our community, so I think it is rather important.

CHAIR: Mr Ewing, I suppose to emphasise the importance of engineers generally, I think it is the Chartered Engineers have a very elaborate building in London, near Downing Street.

Mr EWING: Yes. Before I came to Australia about three years ago, I used to work for an organisation known as the Institution of Engineering and Technology. Our head office was next door to the Savoy Hotel. It is just one of many of the engineering institutions in the United Kingdom [UK].

Ms JODI McKAY: Where they celebrate it.

Mr EWING: They really celebrate it.

Ms JODI McKAY: We just get rid of it.

Mr EWING: To put it in context, the Institution of Engineering and Technology [IET] has just spent 70 million pounds—\$140 million— upgrading their office. That is just one institution in the UK out of 30.

CHAIR: Your body represents roughly 100,000?

Mr EWING: It fluctuates, it is 104,000 at the moment—about 104,000 engineers across the whole of Australia and indeed, overseas. We have chapters in the Middle East, the UK, Singapore, Malaysia, Hong Kong and China. A good spread, within Australia and across the globe.

CHAIR: One of the thrusts of your paper to the Committee is the decline in engineers employed in the public sector.

Mr EWING: That is correct.

CHAIR: And I do not know but I suspect that it may be, to some degree, caused by the move away from traditional procurement where there were in-house engineers. We may be in an uncomfortable transitional period where we are outsourcing more of that function but we have let go the engineering expertise within the public sector. Instead of each government department letting their engineers go, maybe what should have been created was some form of central body because presumably they do not get the scale of work to warrant them being in one government department. So would that be one way so that we could have, in effect, a floating in-house engineering capacity in government?

Mr EWING: The modern parlance for that would be a community of practice within government. I think part of the difficulty you could have under the old model is that individual engineers within individual parts of government can become very isolated and they work in a silo environment. It is common in industry now to have a centre of engineering excellence that sits across operations. CIMIC Group is a good example of that. It includes the old Leighton Holdings. They have an engineering group that works across design, construction and everything that happens.

Mrs MELINDA PAVEY: What is CIMIC?

Mr EWING: It is a Spanish engineering company that now owns Thiess, Leightons and other organisations. The European model is to have centres of engineering excellence. Part of the issue in Australia is that 80 per cent of the former engineering workforce within government has been lost over the last couple of years.

Ms JODI McKAY: How much?

Mr EWING: It is 80 per cent.

CHAIR: Is that throughout Australia?

Mr EWING: Throughout Australia.

Mrs MELINDA PAVEY: Is that local and State Government?

Mr EWING: It is at all levels.

Ms JODI McKAY: Does that include the Federal Government?

Mr EWING: Yes. That is all levels: Federal, State and local. That is a significant resource that has disappeared.

Mrs MELINDA PAVEY: Was that not in part because there were engineers sitting in council offices who were not responding, were traditional in their approach and had lost a sense of innovation?

Mr EWING: That is true. There is also a lack of currency. They end up with a lack of awareness of what is happening in the industry outside. It is not a case of returning it to the way it was. It is a case of looking at where the balance is correct. It is about getting the mix right between in-house and external consultancy.

CHAIR: What was the term you used for the more modern process?

Ms JODI McKAY: It was community of practice.

Mr EWING: The benefit of that is that you can be right up to date with current industrial practices and you have an awareness of what is happening outside. For instance, even the Australian Defence Force puts its officer class engineers into the private sector on secondment so that they have an awareness of how the private sector works. Part of the issue is that if you have people in a closed environment they then do not understand every aspect of what is happening in industry. The counter to that is that if you do not have any in-house expertise at the very outset when you are doing your procurement then you are making decisions with a vital part of your team missing.

CHAIR: I understand that. What is the alternative to having a community of practice? It would depend on the size of the organisation. A local council may not have the scale for a community of practice. Would engaging a consultant for a particular project to advise the public authority not be equally as desirable?

Mr EWING: That is a vital component of it, especially when you are looking at areas that the local authority may not have recent experience of. The difficulty is that they can very quickly become focused on the short term and can start looking at a capital expenditure model. That means they drive it into a very short procurement, design and construction period and they do not look at the whole-of-life costs. They do not necessarily build in anything about how to capture the asset integrity and asset maintenance costs associated with that. Integrity, maintenance and operations are what actually determine whole-of-life costs. Everything from the inception to the decommissioning should really be included in that picture. Rather than having a focus at the front end on how much it is going to cost now, they should look at how much it is going to cost over the lifetime of the asset. This is an area where, I suggest, in Australia as a whole we are way behind the curve. It is not something Australia has been good at. We do not even have the data to say how much it costs to maintain an asset over its lifetime.

CHAIR: In New South Wales we are now starting to tender design, construct and maintain contracts, which drives the design to be produced in such a way that will minimise maintenance over the life of the asset.

Traditionally, procurement of just the asset would sometimes result in construction being done in a way that would not minimise long-term maintenance but would minimise up-front costs. That is really what you are talking about, is it not?

Mr EWING: It is.

CHAIR: It is about looking at it holistically.

Mr EWING: It is, yes. If we buy any product for ourselves, whether it is whitegoods or a car, we do not necessarily focus on the up-front cost. We look at the residual value of the asset. We look at how much it will cost us to run and maintain. That is the case from a washing machine to the nice, shiny object that we get to and from our residence and place of work in. That view needs to be taken when we are buying the biggest infrastructure, right the way down to the smallest infrastructure. Something might be cheaper up front but we have to think about what it will actually cost government, as a consumer, in the long term.

CHAIR: I want to follow up my earlier question. It seems you are saying that one of the weaknesses of using consultants is that you do not get strategic engineering planning for your organisation. You are just looking at the immediate issues and not at long-term planning. Is that right?

Mr EWING: Yes. I do not know whether you have seen a UK Government publication called *Construction 2025*. It looks at a partnership between government and industry. That document is really interesting because it is driving significant targets. It looks at the in-house government engineering team, consultants and everybody else who is engaged in the process of design, construction and maintenance. It is about having checks and balances. Consultants have a critical part to play. They are the real driver of delivery. But in terms of procurement and understanding what you are doing from the strategic perspective, you need to have people inside the government team making sure that you are comparing apples with apples and looking at whether the promises that are made by consultants are realistic and deliverable.

CHAIR: Presumably they are the ones also that put on the radar of government that an asset is 25 years old, it is only a 30-year asset and we need to start planning now, in year 25, to replace that asset rather than waiting until it fails and then doing something.

Mr EWING: Absolutely.

Mrs MELINDA PAVEY: Or reassess its lifespan.

Ms JODI McKAY: I was interested to see on page 7 of your submission that you said engineers can work across other agencies and whole-of-government priorities. It says:

Through their subject matter expertise, professional networks across agencies and domains, and the application of a systems perspective, engineers can build inter-agency support for mutually beneficial projects that can generate greater benefits for less.

I am a big fan of engineers, by the way.

CHAIR: Thanks for sharing that.

Ms JODI McKAY: I employed the first Chief Scientist and Engineer for New South Wales, Mary O'Kane.

Mrs MELINDA PAVEY: We do love Mary.

CHAIR: Good choice.

Ms JODI McKAY: Yes, it was a good choice. The reason we chose her was that she had an engineering background.

Mr EWING: If you have that community of practice rather than people sitting in silos, they can see across different agencies. Infrastructure means so many different things to so many different people. It is road, rail or air transport. It is hospitals. It is liveable cities. It is energy and telecommunications. A raft of different things fall under the heading of infrastructure. They all come under different government agencies. If you have a community of practice in your engineering team, they have an oversight that spans the different agencies. There

are niche skills but there are common skills in an engineering team that are useful. They know, if they are building a school, a hospital or a road, what the bigger picture is.

The other factor is that it is not commonly known is that 62 per cent of engineers in Australia work as engineers. The other 38 per cent do not. They are at all different levels of industry, including banking, law and government. It is about having that community of engineering know-how, and a logical approach to decision-making, analysis and problem-solving. If that is taken across different government agencies it can really bear fruit.

Mr BRUCE NOTLEY-SMITH: Given that you have got this pool of talented engineers that will be able to contribute, how do you establish a hierarchy where a choice is made between competing engineering advice coming from within the same pool? How can we get the absolute best?

CHAIR: They are not like lawyers, who all have a different view on something.

Mr BRUCE NOTLEY-SMITH: They do.

Mr EWING: One of the things that I find is interesting about engineering is that infrastructure is just one slice of what I am involved in with Engineers Australia. So there are a lot of people working in the energy sector, in defence and in manufacturing. I am not an engineer and what I find fascinating about engineers is that they are problem-solvers. They are able to make recommendations, and well-explained recommendations. Within any hierarchy or within any organisation you are going to get differences of opinion.

I think one thing you will get from engineers is a willingness to put their opinion forward and to have it challenged. They will give the reasons for their decisions. I think that is important—the reasons sitting behind their decisions. They may not be the ultimate decision-maker but they are willing to put their views forward, and then other people can make an informed decision based on that. They work as part of a team with the lawyers, the accountants, the economists, and indeed the bureaucrats and politicians. They all have a part to play in that.

CHAIR: You said that you have recently come here from the United Kingdom. Has the United Kingdom experienced a similar level of reduction in public sector engineers?

Mr EWING: It definitely did, and it did suffer for a while in terms of that in its procurement. Countries that did not necessarily have that same impact—Germany is one and France is another—kept that know-how. The United Kingdom realised that there was a significant amount of waste. A lot had been spent on infrastructure procurement that did not necessarily have to be spent. The figure I have heard anecdotally in the United Kingdom, and indeed it is reflected here, is that probably about 25 to 30 per cent of the money that is spent on infrastructure need not have been spent on infrastructure because of the variations, the change controls and a whole raft of other things.

I have some headline figures from that "Construction 2025" report, which the Committee might be interested in. The United Kingdom is looking at lowering costs by 33 per cent, and a reduction in the initial cost of construction and the whole life cost of built assets. They are looking at faster delivery—by 50 per cent—and a reduction in the overall time from inception to completion for new build and refurbished assets. They are also looking at lowering emissions by 50 per cent with a reduction in greenhouse gas emissions from the built environment and a 50 per cent improvement in terms of exports—by that they mean a reduction in the trade gap between total exports and total imports for construction products and materials. So they are incredibly challenging aspirations.

Mr RYAN PARK: What report is that in?

Mr EWING: It is a report called "Construction 2025".

CHAIR: I am surprised that Mr Park does not have a copy already.

Mr RYAN PARK: I will get one.

Mr EWING: It is really very challenging. It is a serious report. Whether that is necessarily realisable in Australian terms, I think that concentration on so many different aspects of it can be what brings about a really sustainable, innovative and aspiration infrastructure policy.

CHAIR: What sorts of things are they looking to do to try to achieve those targets?

Mr EWING: One of the things that you do around the lower costs part of it is actually having, for want of a better term, a bit more thought and consideration put in at the inception of a procurement process—that is, looking at how we can take not just one project but perhaps put two or three different projects together and then deliver more of a transformational outcome. They are very outcome focused. I think earlier on the Committee mentioned something about outputs. They are outcome focused. They are asking, "What is it that we expect as an outcome from these three or four projects?" and using that as a way to drive down the whole cost, because quite often when you have design and construct contracts the design aspect is so close to the construct aspect that there is no wriggle room at all in terms of the time and mistakes are made, and there are re-works and that is a lot of waste in terms of time, money and effort. So that is one of the issues: The packaging of projects to look at how to get the best outcomes. In terms of faster delivery—

CHAIR: Sorry to interrupt, but we tend to procure with design and construct together. Were you just saying that by doing that you do not have time to reflect on the design before you start construction?

Mr EWING: There is not a particular problem with having the two of them together per se. But quite often the design and the construct element are almost on top of each other. It has been known in some areas for the final design for an aspect of a construction project to be finished on a Friday afternoon, reviewed over the weekend and then construction starts on the Monday. If that is the situation and there is a problem in the design or the design is not reviewed properly then you either have to stop construction or you construct without having a full understanding of what is in the design.

CHAIR: I only have 12 months experience in government but I have not yet seen anything work that quickly.

Mr EWING: You can have a situation where it might have been a project that is ongoing for a number of months and they are designing as they are constructing to meet the timeframes that are in place for them and the costs.

CHAIR: I see.

Mr EWING: They may have said, "We can deliver to this cost." Quite often where the margins are cut is in the design. If you cut your margins in your design, given the time period there is between the delivery of the design and the delivery of the construction, it may seem cheaper on paper but in the long run you end up with, first of all, a lot of additional costs in terms of variations and reconstruction and, secondly, assets that are not necessarily fit for purpose beyond their initial stages.

Mr BRUCE NOTLEY-SMITH: Why is it that we hear occasionally people saying that they will not know until they start digging?

Mr EWING: Well, that is interesting. Quite often they will not necessarily have done the correct geotechnical exploration work around that.

Mr BRUCE NOTLEY-SMITH: So where is the flaw there? Why, when embarking on such large projects, would they not have done the geotechnical exploration and have it absolutely down pat?

Mr EWING: It could be because you have a procurement team that does not necessarily understand what it is that it is procuring. You could build 10 separate roads in Australia and every single one of those roads has to be different because the underlying ground that you are building those upon is different. A procurement team that does not have engineering knowledge and expertise—that technical expertise—may not appreciate that.

CHAIR: All geotechnical work is though is a survey.

Mr RYAN PARK: It is an imperfect science.

CHAIR: It is a survey, and unless you put down bores so that it is like spaghetti you are taking a risk in terms of the distance between the different—

Mrs MELINDA PAVEY: I would like to share with the Committee that I have a constituent who is doing world's best practice and is engaged by the United States Army but who cannot even get in to be part of the procurement process here because it is new—it is different and it is 3D. It is hard.

Mr EWING: That is actually a good point because one of the aspects of being prescriptive about a procurement process instead of being outcome focused and lead is that often you may not consider new and innovative ways of tackling a problem because it is set to decide that that does not fit with the prescriptive process. It gives you no flexibility at all.

CHAIR: Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr EWING: Absolutely.

CHAIR: Thank you so much for appearing before the Committee today and for your very detailed and helpful written submission as well.

Mr EWING: I thank the Committee for its time.

(The witness withdrew)

IAN RONALD WATERS, Director, Cambewarra Engineering and Senior Project Engineer, K & R Fabrications, and

JOHN DOYLE, Senior Project Manager, K & R Fabrications, sworn and examined; and

JASON LEUSSINK, Leussink Engineering, affirmed and examined:

CHAIR: Thank you very much for the written submission of Mr Waters. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr WATERS: No, I think we are good, thanks.

CHAIR: Mr Waters, in your written submission you make reference in the third page to not wishing to give details publicly but requested a private meeting with the full Committee where you could provide details of what you say is an issue in New South Wales with management of some of the contractors where the financial need of the contractor to get the cheapest price and support their partner overrides the need of the New South Wales taxpayer to have safe structures erected and the needs of hundreds of fabricators and the two steelmakers in this State to survive. Do you wish the Committee to take your evidence in camera, that is, privately on that matter?

Mr WATERS: It is up to the Committee what it wants to do. We are happy to give the actual details of that information without mentioning the name of the contractors, and without mentioning the actual sites. If the Committee wants to know the actual sites and the names of the contractors, we are very free and open, but we are not willing to give that publicly because we fear some potential recrimination. But we can give you the full and exact details. It is up to the Committee whether it wants it.

CHAIR: Do Committee members have a preference? There are no members of the public present at the moment. We can go in camera now while we take some evidence.

Mrs MELINDA PAVEY: In camera you do not have to think about your testimony you can just give it.

CHAIR: This portion of the transcript is confidential. When we have finished with this topic we will go back into a public hearing and that part of the transcript will be made public.

(Short adjournment)

(At the conclusion of the evidence in camera the public hearing resumed)

Mr WATERS: Thank you very much to the Committee for including us in this interview process and for showing an interest in our submission. We really appreciate it. Our submission relates to steel in infrastructure projects, which is one of the most important structural components. Viewing the other submissions, we appreciate that the Committee is being asked to do the impossible and make a whole range of diverse recommendations, many of them contradictory to each other. We respect and value the opinions voiced in every other submission that we have read, but we would like to make a point of difference with our submission.

Firstly, all of the other submissions are either from individual companies with a direct vested interest in infrastructure, they are from individuals, they are from governments or semi-government bodies, or they are from groups where the leadership of the group speaks on behalf of the members without maybe some of the members actually knowing what is being said. We are the only group—correct me if I am wrong here—that represents the actual business communities and where each of 68 businesses that are behind this submission actually knew what was going in before it went in. I do not think that is the case with anyone else. Those people are both philosophically and geographically diverse. They include takeaway food shops, design engineers, machine shops, fabricators, hire companies, tool suppliers and they are located all the way from Wollongong to Perth and Newcastle to the Gippsland Lakes. So this submission is not just from one interested party, this is a whole range of diverse businesses.

CHAIR: I will stop you. We are now 10 minutes behind schedule, so if it is possible can you cut to the chase?

Mr WATERS: We will cut to the chase very quickly. We request that the Committee please give serious consideration to the recommendations from our business community. The main recommendation was also the subject of a petition last year, which attracted 15,300 signatures. We had this petition box built by Illawarra contractors and 15,300 people got right behind this concept of the New South Wales Government specifying Australian steel. What you are listening to today is the 68 businesses, and what you have there from 15,300 people is not something you can just cover by saying the tier one contractors are looking after it, because they are not looking after it. This is something from the whole community that is coming to the Government. We have a view that governments have to respect such a community groundswell and consider modifying their policies.

The other point of difference with our submission is that it contains just three simple recommendations, which are easy to implement, simple to enforce and very hard to rot. I think you will agree that is very important. Firstly, we want to describe the current situation with steel and the New South Wales Government infrastructure projects. The Government hands over responsibility to the tier one contractor. We have heard that agreed to today with the road projects we talked about and the sites we have talked about. There is an adage getting around with steel that if it is from out of the country it is out of control.

We would like to give a couple of precedents and the best of those precedents is last week. The Prime Minister of the country said the Government will move forward the Adelaide to Tarcoola railway line and 100 per cent Whyalla produced good quality Australian rail is going into that project. That is about 80,000 tonnes worth of steel. So here is the Prime Minister of the country specifying on an infrastructure project 100 per cent Australian steel and moving it forward a few years, the only reason being to help Whyalla forge ahead. So governments that say—I have heard it here today even—you cannot do it, or you should not do it; the Prime Minister just did it.

The second example is the Victorian Liberal Government—which is in our submission. That government had 98 per cent Australian steel on their east-west link before they got voted out. That was their commitment, it was written, it was fair dinkum, they were going to do it. Of course now the Labor Government is in office there, the Labor Government is actively, successfully putting a hundred per cent Australian steel into their level crossing projects. So no government can say you cannot do it or should not do it.

The fourth one, which applies to this Government right here today, is the ethanol situation. We have a single producer. We have a 6 per cent mandate in New South Wales, so there is that word, mandate. The New South Wales Government has mandated 6 per cent ethanol. That is forcing service station owners, forcing motorists, forcing costs on all those people. They have mandated it to help that company forge ahead. The Federal Government is paying--

CHAIR: Can you move on to your next point please? We are running short of time.

Mr WATERS: The importance of the steel industry to New South Wales I do not think is appreciated by the governments. So we are asking the governments to treat the steel industry with respect. We have done some REPLAN modelling and we have done some positive modelling if the Government was to send all of the infrastructure steel to Australian producers. The positive modelling is showing there will be an extra 389,000 tonnes a year to BlueScope, and it would put \$663 million extra into the Illawarra economy and there would be 1,307 extra jobs.

We have also done the negative modelling that if BlueScope was to shut steel making—which stockbrokers are telling us is a live issue—that would cost 5,000 jobs, which has been publicly stated anyway, and it would rip \$2½ billion every year out of the economy. This is really important that people take notice of it. We have our three suggestions. The first one is that the New South Wales Government specifies a hundred per cent Australian steel fabricated in Australia and the arguments of non-competitiveness, there are hundreds of—

CHAIR: Sorry to interrupt you but your three suggestions are in your written document? They are not different to that?

Mr WATERS: No, they are exactly the same.

CHAIR: We have read that. Is there anything else you want to say?

Mr WATERS: The non-competitiveness concerns you had before with the possibility of specifying Australian steel. BlueScope sells you the steel for about \$1,200 a tonne. The fabricator sells it to you for \$4,000-\$5,000. The person who is doing the actual value-adding is not BlueScope, they are only making peanuts out of it. It is the people doing the value-adding. They are the ones who would be dealing with the Government and making the competitive bids against each other, so you would retain a competitive situation. This argument I have heard that BlueScope will rob you is not correct, a hundred per cent not correct, Blue Scope or Arrium, because they are in a competitive market against all the other producers.

CHAIR: They will not be if you specify Australian steel. They will be in a monopoly position.

Mr WATERS: No, that is not correct. I am sorry to disagree but that it is a hundred per cent not right. The reason is at most someone like BlueScope is only ever going to give the Government, say, 20 per cent of their production of given product. The other 80 competes in the open market. In the open market there is a list price and what you pay is totally transparent. They are competing against importers. So for the Government to think they could be fixed up by BlueScope is not correct, a hundred per cent not right. Because with all the rest of their production they are competing against imports, so they have to be competitive. In one phone call you can find the list price of a product. It is not true you would be lining yourself up to be not competitive, a hundred per cent not true. It is very bad to have that story floating around the Government. We have been hearing it for months. The second one is, we are asking for a ban on secrecy agreements on infrastructure projects.

CHAIR: We have read your three suggestions, we get that. In the interests of time does anyone else have any other questions?

Ms JODI MCKAY: No, only thank you. To get 68 businesses together is very impressive, so thank you.

CHAIR: We will have to conclude your evidence there. You have gone 15 minutes over.

Mr RYAN PARK: So they should, they are from the Illawarra.

Mr WATERS: Thanks for giving us our share.

CHAIR: Thank you for appearing today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr WATERS: Yes, we will do whatever is necessary.

CHAIR: When we were in camera were there any documents that you referred to which we should tender and keep confidential in camera?

Mr RYAN PARK: Yes. Probably that.

CHAIR: Any of those documents that you would like to tender confidentially we should take now.

Mr WATERS: We are happy to tender all of these. If you think some should be confidential you are welcome to do that.

CHAIR: I think the photo of the petition does not need to be confidential. I am told it is covered by resolution already. We might separately identify that for the Committee staff as being confidential. Thank you very much for your written submission and for appearing today.

Mr WATERS: We really appreciate it, thank you.

(The witnesses withdrew)

PATRICK JAMES LAUREN, Executive Director, Plenary Group, and

PAUL ANDREW OPPENHEIM, Chief Executive Officer, Plenary Group, affirmed and examined:

CHAIR: Welcome. Do you have any questions concerning the procedural information sent to you about witnesses and the hearing process?

Mr OPPENHEIM: No.

CHAIR: Thank you very much for your attendance today and for your detailed written submission. Would either of you like to make an opening statement before the commencement of questions?

Mr OPPENHEIM: Yes, I would. Mr Chairman and members of the Committee, on behalf of the Plenary Group and my colleague Patrick Lauren, I thank you for the opportunity to appear before you today in the Committee's inquiry into infrastructure procurement. Plenary Group is a specialist infrastructure development, investment and management business with a portfolio of 35 public-private partnership [PPP] projects across Australia, Canada and the United States. We employ some 180 professional staff. Headquartered in Sydney, we have exported to North America a unique model for the delivery of public infrastructure. We are independent of both the investment banking model and the new wave of contractor-owned PPP teams.

In New South Wales we are part of a consortium delivering the Sydney Metro Northwest project. We see very strong fundamentals underpinning the capacity of the private sector to work with the State in delivering the Government's infrastructure objectives over coming years. The New South Wales Government can be proud of the fact that it is leading Australia in setting a strong infrastructure agenda, seen as the most dynamic infrastructure market in the Commonwealth today. The Government's commitment to projects, meeting procurement time lines and achieving community objectives is welcomed by the private sector.

Plenary congratulates the Committee on its terms of reference, which look to explore what can be improved in an already impressive infrastructure procurement framework. The Committee is asking the right questions in considering what processes and documentation might be standardised to make infrastructure procurement more efficient. We believe this is particularly relevant to PPPs, which have a strong record of procurement outcomes in relation to time and cost, yet it seems that a procurement approach is reserved only for very large public infrastructure projects in New South Wales. We understand that this is partly because PPPs are seen as suitable only for complex projects, as PPP procurement is said to take a long time and be costly. It does not have to be that way. In fact, it is a uniquely Australian phenomenon.

Reduced bid deliverables, through the use of standardisation and rationalisation, would lead to a virtuous circle of reduced bid costs, a greater PPP pipeline, more contestability and an increase in cost and time certainty for government. We see this in our Canadian business. Ontario, which did not achieve financial close on its first project until 2006, has now completed 118 PPP projects in the decade since. Infrastructure Australia notes that New South Wales achieved financial close on its first PPP in 1993, yet has procured only 36 projects in the following 23 years. The results of the greater pipeline speak for themselves. Ontario can draw on a robust bond market, providing competitive debt pricing, whereas New South Wales remains dependent on bank debt post the global financial crisis.

Documentation has been simplified and made consistent, reducing bid costs in the case of bid-phase legal fees by 80 per cent on average. Standardised processes have reduced barriers to entry, and Ontario has attracted international participants from Europe, the United States and Australia. The public sector has grown in confidence and capability. It is able to make decisions quickly, with less documentation and external advice, comfortably working with preferred proponents to conclude arrangements or freeing up losing bidders to move on to the next project. Big cost reimbursement has driven higher levels of contestability.

Plenary views the New South Wales infrastructure market as the most innovative and robust in Australia. It believes PPPs, due to their superior performance, can and should play a greater role in delivering infrastructure outcomes. Canada provides the most relevant examples for the Committee's terms of reference. We are pleased to take any questions on our experience in both Australia and North America. Thank you.

CHAIR: Thank you, gentlemen. I will start by clarifying one thing. In the introduction to your written submission, in the third paragraph, you say there should be "serious consideration of a review of each

infrastructure project over a threshold of \$200 million, to consider whether a PPP approach can provide better value for money". Page 1 of the New South Wales Government submission says:

Private project financing and the use of a PPP model must be assessed as a delivery option for all major projects over \$100 million.

Does that comply with your wish in your submission? On one view, the New South Wales Government submission seems to be saying that it is already doing that. Are you suggesting otherwise?

Ms JODI McKAY: I think what you are saying is that every product should have that consideration.

Mr OPPENHEIM: Yes.

Mr LAUREN: That is right. If there is a consideration level of \$100 million already, we are not saying that it should go up to \$200 million. We are saying, yes, it should be every project, as you say.

CHAIR: I read the New South Wales Government submission as saying that that is already in place, because it says "must be assessed" if it is more than \$100 million.

Mr OPPENHEIM: The observation would be that, without understanding what happens in the assessment process—because all projects of more than \$100 million may well be assessed for PPP—the pipeline would suggest that not many are getting through to PPPs. It is only the larger, more complex ones.

CHAIR: You are saying that the pipeline will be improved by the Government having more, smaller projects rather than mega projects.

Mr OPPENHEIM: You can do the mega projects as PPPs as well.

CHAIR: I am not suggesting otherwise, but more of the smaller projects could benefit PPPs. In developing a pipeline there is also the potential to bundle projects, isn't there? For want of a better example, a new school might be only a \$20 million project. If you bundle a number of schools you can reach a scale that would make the project attractive to a PPP.

Mr OPPENHEIM: There has been quite a bit of evidence of bundling. Schools are a good example.

CHAIR: I think Western Australia are doing that.

Mr OPPENHEIM: Western Australia and Victoria are currently doing it. We are building 10 for Queensland. New South Wales has done two bundles previously. There is evidence of that across Australia. There are many examples of bundling, including the one we used in our submission, which is the bridges project in Pennsylvania.

Mr RYAN PARK: You and other witnesses have raised the issue of bid costs and their impact. I have spoken to the private sector about this. Their reluctance to do things creates competitive tension on the second or third project because the bid costs are very high and are passed on to the taxpayer. Do you have a view on when in the procurement process bid costs should be paid, or paid pro rata? Given that we are a small market, we want to ensure that the market contains more than one or two players who have the ability to bid.

Mr LAUREN: Yes, sure. What we have seen today is that bid cost reinvestment is a very useful tool to get players turning up. For mine, the best place to signal a commitment to making bid costs is at the early stage—pre expression of interest [EOI]. Governments would ideally say, "We are willing to make a bid cost contribution on this project." That would ensure the maximum number of players turn up for the expression of interest stage. In terms of making the actual payments and handing it over I think bidders are happy to wait until the end of the tender process. The significant costs are incurred in the actual tender process itself. I do not think non-shortlisted bidders would expect to be paid or expect to be funded throughout a bid.

Mr RYAN PARK: So are you saying that it should be done at the request for proposal [RFP] stage or are you saying that the Government should say this at the very front end? So the Government says at the front-end that if bidders get shortlisted, and there are only two or three bidders left in the race, there will be a bid cost contribution.

Mr LAUREN: Yes.

Mr RYAN PARK: Can I get some advice from you about what you think that percentage or level should be.

Mr LAUREN: It is not an exact science. I think where bid cost contributions have been made on projects in New South Wales it has been at the lower end of about 25 per cent. I think a stipend of 25 to 50 per cent of bid costs would probably be more attractive and generate more interest.

CHAIR: What is international best practice on that? What do they do in Canada, for instance?

Mr OPPENHEIM: In Canada, and it is the same for most governments, it is always a fixed amount.

Mr RYAN PARK: As a percentage?

Mr OPPENHEIM: No.

Mr RYAN PARK: As a quantum?

Mr LAUREN: It is a fixed dollar amount.

Mr OPPENHEIM: It is a fixed dollar sum, which is an estimate of how much it may cost to bid.

CHAIR: So when you say that New South Wales has done 25 per cent has that been as a per cent or has it been as a fixed cost?

Mr LAUREN: It has been at a fixed cost but having bid said projects—

Mr RYAN PARK: It has equated on average to about 25 per cent.

Mr LAUREN: Yes, I would say that it would be 25 per cent of actual.

Mr OPPENHEIM: It is quite often the lower of the two.

CHAIR: Just so I understand the evidence you have just given, Mr Park asked you at what point would the bid costs be calculated and I think you said pre-EOI, is that right?

Mr LAUREN: I said governments should signal their willingness to pay the costs pre-EOI.

Mr RYAN PARK: But not award them then.

CHAIR: Right.

Mr LAUREN: The actual payment of bid costs would be at the end.

CHAIR: If I remember correctly you advocate three requests for proposals [RFPs] as the optimum, is that right?

Mr LAUREN: We recommend a shortlist of three. For very complex projects that need a lot of government time an argument can be made for having two. The Sydney Metro Northwest project was an example where it needed a lot of State interaction. That is really the pinnacle of complexity. For projects below that we do think that a shortlist of three with bid cost reinvestment will deliver the most competitive outcomes for the State. The State will get three motivated bidders without running the risk of a bidder falling over.

CHAIR: So only those two or three would have their bid costs covered as a fixed sum that is notified pre-EOI?

Mr LAUREN: Yes, that is correct.

CHAIR: So that is your best-practice scenario?

Mr LAUREN: Correct.

CHAIR: So the others who are not shortlisted will not get anything. It is also desirable to try to limit the information that is required at the RFP level to be only what is necessary for governments to make an informed decision on who to select. I think you and others have made submissions to suggest that at the moment more information than is necessary is being required. You run an international business. Is it your evidence that New South Wales is currently requiring more information than other jurisdictions?

Mr OPPENHEIM: Certainly in comparison to international jurisdictions. 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.

CHAIR: You are not suggesting that they are generating business for themselves?

Mr OPPENHEIM: I would not suggest that they would, but that might be a conclusion the Committee could draw. We found that in Canada government is a lot more disciplined on the documentation it requires. You cannot depart there from the legal documentation. The standard contracts are very standard and bidders learn the hard way that there are no deviations. There are exceptions for very complex projects, and because we tend to do only very complex projects everything is in the exception category. In Ontario when they are doing 118 projects, so 12 projects a year, the contracts are standard and bidders do not deviate so they can move through them a lot more quickly.

CHAIR: You say in your submission that that has required government to be disciplined as well as contract bidders.

Mr OPPENHEIM: That is correct. The discipline came in fairly early on both sides of the equation because everybody needs to move through the process. If you have a material departure from what the government has asked for then it has to have a very clear value for money objective and it has to be quantified.

Mrs MELINDA PAVEY: I want to drill down on the Ontario experience because we are talking there about a State legislature and a State that is about the same size as us with exciting cities like Toronto and Ottawa, and we have Sydney, Newcastle, Wollongong and Kempsey, which is in my electorate. I am really fascinated to learn more because historically there has been a centre left State administration there during the time these processes have come in. Can you give some background as to what actually created this innovation in Ontario? I appreciate your comments at the beginning of your evidence that we as a State Government, with the contracts you are doing with North West Rail Link, are getting there. But obviously we are a fair way behind where Ontario is with the \$100 million public private partnership [PPP] process that exists there. What led to that reform in Ontario?

Mr OPPENHEIM: I think the fundamental driver was need. In truth their infrastructure had decayed to a point beyond that of Sydney and New South Wales. So there probably was a stronger underlying fundamental need.

Mrs MELINDA PAVEY: So they had to do something fast?

Mr OPPENHEIM: Yes, so they had to do something. The other thing they did was to set aside budget for capital works and infrastructure. For example, they said, "Over this period of time we will be investing \$12 billion. We will go through a process to prioritise those and decide which are the key projects but we have set the budget." I think that was their first figure—\$12 billion over three years—and that was what they were going to invest. So the funding envelope was always known and the money was set aside in the budget. Then there was the usual government process of deciding whether a hospital was more worthy than a school or a rail maintenance facility et cetera.

Mrs MELINDA PAVEY: Or an entertainment precinct down by the river.

Mr OPPENHEIM: That was the normal government process. What it did for the market was that it signalled that there was going to be \$12 billion worth of projects. So there was a lot of competition that came into the market. Then because there was that expectation, there was a government requirement to essentially get

that level of infrastructure renewal through the system in a relatively short period of time, these processes were developed. Infrastructure Ontario, which is essentially the lead agency that oversees all of this, developed a set of processes and contracts to allow them to procure and to work with the line agencies, whether it was health, education or transport—

Mrs MELINDA PAVEY: And across portfolios collaboratively.

Mr OPPENHEIM: Yes, and across portfolios. Infrastructure Ontario has similarities with Infrastructure NSW but probably has a wider remit and a more significant role in the delivery process. There was a greater underlying need so it is important to understand that their health system had probably decayed to a level where it had reached an urgency and so that meant that they could do more projects, fund them. But the provinces in Canada—Alberta might still be triple-A but that is about the only one and that is all driven by oil revenues and I think it may have even slipped back—most of them, are under a different financial metric where they are mostly single-A provinces. So they elected to use that capacity to go through a huge infrastructure investment.

Mr LAUREN: The other point about Infrastructure Ontario, and referring to the comment on consultancies, is because it was set up with this agenda and kept going off this pipeline, it developed a very strong core of bureaucrats who were able to make the decisions themselves; they were not reliant on advice. They did not need all this copious amount of information. They were able to control their procurement processes better, control their advisers and keep time frames shorter as a result.

CHAIR: On page 4 of your written submission you say that governments need to resource and cultivate project teams. The Committee heard evidence today from Engineers Australia and contractors' representatives and so on on a similar point. How do you see the New South Wales Government going about beefing up the resourcing of its project teams?

Ms JODI McKAY: Is it agency based or is it across government?

Mrs MELINDA PAVEY: Just do what Ontario did.

Mr LAUREN: 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. That is a consequence of the pipeline not being there that you would not set it up but it is sort of a point to get things going and to get things working efficiently would be to set up a body.

CHAIR: Do you endorse the idea of there being a centre of excellence? Another witness has put that forward as a way to train project teams within government and also review the performance of particular projects during and after the event to try to learn lessons from government's point of view as to how the project has proceeded? Is that a good idea?

Mr LAUREN: Yes, I think it would be a great idea. Like I said, there are pockets of very good people working in the departments and it would be a shame not to have those lessons and that quality over all government procurement.

CHAIR: Should the Government be looking at maybe using secondments from the private sector short-term to try to bolster its experience level?

Mr OPPENHEIM: I think there are certainly benefits to that although I think that what sometimes is lacking is longer term government people who will make decisions and be empowered to make decisions and then still be there for the five years that follow, the sort of delivery phase and operation phase.

CHAIR: So maybe hiring experienced people from out of government to bolster that experience level and have longer term planning and decision-making?

Mr OPPENHEIM: Yes, I think longer tenure senior resources at probably both the commercial sort of financial level and at a technical level so there is some continuity so that those resources are seeing multiple projects and can make commercial decisions. One of the issues with contractors or secondees is that they are

there and they are people, what you might call—I do not want to use this term—just to get the deal closed. It is about getting the deal closed and they sort of move on and they are off. But really the question is the person in government who has made those decisions is then there to see them through and there is continuity. So you do see, as the Government's ranks are thinned, you have a lot of advisers who want to get the project closed but then really do not have any real ongoing interest in its outcomes.

Mr RYAN PARK: Do you think that collective governments, by reducing that expertise and skill, over a couple of decades now, have also reduced their capacity to be a finally informed purchaser?

Mr OPPENHEIM: I think the nature of procurement has changed. So when we talk about PPPs decades ago government was not really procuring in the same way. I think the skillset that is required has changed. But it is not just the case of the skill of the bureaucracy has dissipated; I think it is also the fact that in more sophisticated procurement, like PPPs, a slightly different skillset is probably required: that mix of both financial and commercial skills as well as maybe the more traditional technical skills around design and engineering.

CHAIR: One of the features of New South Wales is that different departments do their own procurements, but did Ontario have a body that managed procurement for different government departments?

Mr OPPENHEIM: Yes. Infrastructure Ontario was empowered with a bigger team and whilst nothing was absolutely mandated that Infrastructure Ontario must procure every project there was certainly a strong encouragement across the line agency.

Mr RYAN PARK: Chair, New South Wales is mainly doing a project like the Entertainment Centre or whatever but they do not do much else. Infrastructure NSW does not much else of what I call the management of the process. One of the criticisms—we have all heard this publicly—of people who have come on and off that board is that still the large delivery agencies do what they want anyway. I am not saying that is right, wrong or indifferent as I have not been that close to it but that is what has happened.

Mrs MELINDA PAVEY: Health has created a good niche for actually doing it well with Health Infrastructure.

Mr RYAN PARK: That is what I say. I think when Infrastructure NSW was originally conceived it was going to be along the lines of the Ontario model. I think then there was probably a pushback around the Cabinet table or a bureaucratic table, whatever it was, and it did not happen.

Mr OPPENHEIM: That is exactly right.

Mr RYAN PARK: I think that is how this process evolved.

Mr LAUREN: And they only did the Convention Centre on a call in right, that was also originally with the department as well, so it was not even their call.

Mr RYAN PARK: It was not even theirs originally.

Mrs MELINDA PAVEY: We now have an Infrastructure Minister.

Mr RYAN PARK: Yes, we do.

CHAIR: In terms of increasing the pipeline, I suppose you advocate trying to have what are now considered to be smaller projects, putting them into the pipeline, maybe through bundling or other methods, getting greater time efficiency in the process to reduce big costs, which will increase contestability, and I suppose consideration of some reimbursement of big costs for the short-listed tenderers. Are you suggesting anything else in terms of helping with the pipeline?

Mr OPPENHEIM: No, I think that is a pretty good summary.

Mrs MELINDA PAVEY: In relation to your testimony about the Ontario experience and the very firm guidelines so it has to be something quite exceptional, you must have a good benefit cost beside it, for them to change, do they change? Have other ideas or projects altered the way they thought they were going to do it?

Mr OPPENHEIM: Yes.

Mrs MELINDA PAVEY: That sort of unsolicited proposal is still a possibility?

Mr OPPENHEIM: Completely unsolicited as in market led and we were not even running a process sort of unsolicited—not so much. But certainly when they are procuring a particular piece of infrastructure, where they are still looking for innovation—and ultimately a significant reason to do PPPs is for the innovation—they are very open to that part of it. Where they do not allow innovation is particularly in the contractual framework. New ways of designing or operating hospitals—very interested. Renegotiating the indemnity clauses—not interested

CHAIR: The other idea that you develop in your report to decrease the cost of tendering is to have the government effectively providing standard consultant reports which can then be novated to the successful tenderer. Presumably they would have to be sufficiently reputable companies so that whoever wins would be content to use the reports?

Mr LAUREN: Correct.

CHAIR: But that seems to be a good idea. The justification for your suggestion is that ultimately if 20 different tenderers are engaging 20 different sets of consultants ultimately that cost will find its way back to government by the successful tenderer when you are a successful tenderer if not on this contract then on the next one.

Mr LAUREN: Correct.

CHAIR: So the government does get the benefit of that in lower bid prices. There are two issues that I want to raise with you on innovation. The first is what is your view on non-compliant tenders? I understand that companies might put in several different tenders, one of which is a strictly compliant tender but also several non-complying tenders with different innovations within them to see whether the government likes some of the innovation. Do you think that is a desirable thing? If you do, how should the government then deal with non-compliant tenders in terms of a transparency and fairness process?

Mr LAUREN: A useful thing is always what are government's outcomes? As long as those outcomes are clear. Also how does the non-compliance arise? The non-compliance might arise from a particular thing but as long as you are meeting the outcomes one would think that that is fair because the outcomes were clearly stated by the government, you have submitted a compliant tender but you have also shown this is another way of meeting the outcomes but it does not quite follow what you are asking.

CHAIR: Do you think it is more desirable to have a more outcomes based and less prescriptive form of tendering?

Mr LAUREN: Yes, very much so.

CHAIR: To use an old example, we say, "We want to put a private hospital on the north shore. How would you do it?" You can maybe say this is where we think it should be located.

Mr LAUREN: This is the thing about the cost of the process. At the moment if you specify everything fully the government is designing it itself and then it is bidders responding who all see that and tweak it a little bit and it actually closes the innovation down. A more outcomes approach sort of solves the government needing to design it itself. Obviously, it saves costs there, although it will need something to have an estimate of what the budget should be, 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. We are very supportive of outcomes based. To be open, New South Wales procurements in recent months have started to make steps in the right direction in terms of putting up a two- or three-page "these are the mandatory things you must do" and "this is our reference but not strictly what you must do".

CHAIR: In jurisdictions like Canada where the bid costs are less, is that because they are more outcome orientated and less prescriptive?

Mr OPPENHEIM: Ironically probably not quite as much. Outcomes are a funny thing. You can have one outcome and you can get an apple and a pear because all you asked for was a fruit, or you can ask for a thousand outcomes and it starts to look like over-specifying. Mr Lauren is right that New South Wales is starting to get that balance right. In Canada because they have probably been moving quicker and looking for more projects they are certainly outcome based but they probably lean a little bit more towards more outcomes, if I can use that term, rather than just fewer generic outcomes. What you see particularly in health, and Ontario has done a lot in health, is it is just prescriptive around you must meet certain health standards so those have just become mandatory. I do not think Ontario has been particularly flexible.

I would add to Mr Lauren's comment about the right level of outcomes combined with an interactive bidding process so that government can steer you when you are going down the wrong path. Technically it would still meet that outcome but if you say, "We want to move a thousand people from A to B", and somebody comes up with a bus system and somebody else with a light rail system you can give them some guidance as to which one you were actually after. I think New South Wales has become pretty good at high level outcomes combined with an interactive bidding process.

Mr LAUREN: I think the right balance for government—Mr Park used the phrase and I know parts of government use it as well—is to be an informed purchaser. Know enough to know what you want at the start and be very clear about that. But government does not need to be an informed deliverer. That is someone else's job.

CHAIR: Thank you for appearing before the Committee today and for your detailed paper. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr LAUREN: Yes.

Mr OPPENHEIM: Yes.

(The witnesses withdrew)

TONY DIXON, Chief Executive Officer, Australian Steel Institute, sworn and examined:

CHAIR: Before we proceed do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr DIXON: No questions.

CHAIR: Would you like to make an opening statement before the commencement of questions?

Mr DIXON: First of all I would like to thank the Committee for taking the time and allowing me to meet with you to discuss the issues around procurement today. That is much appreciated. I represent the Australian Steel Institute [ASI]. The Australian Steel Institute is a not-for-profit organisation. It is the peak industry body in Australia representing the national steel associated industries and its mission is to assist growth of the complete Australian steel value chain. The ASI members include all sections of the steel industry, covering manufacturers of steel and steel products, distributors, processors, roll formers, fabricators, designers, detailers, galvanisers, paint companies, supplier services and consumables, and some educators and constructors.

We estimate that the steel industry employs circa 100,000 people and has an annual turnover of some \$30 billion. The integrated Australian steel channel holds in excess of two million tonnes of inventory available through our distributors located in 300 locations around the country and produced in 2015 about 4.9 or just under five million tonnes of crude steel—that is about 0.3 per cent of the world's steel production. We compare that to 803 million tonnes produced by China or about half the world's total capacity.

New South Wales itself is the heartland of the Australian steel industry, with the Australia value chain and ASI members spread right across the State but with significant representation in Western Sydney, Newcastle, the Hunter and the Illawarra. However, the industry itself is now facing a number of challenges. The first is the need to compete in a world market with an oversupply of product against competitors from countries that are either State-owned or receive high levels of State subsidies, as identified in the Australian Anti-Dumping Commission's recent report on hot roll plate from China, Indonesia, Japan, Korea and Taiwan. The second is the flood of products that simply do not conform to the standards specified in procurement documents published by the Government. It is simply unacceptable that the New South Wales Government is forced to accept rectified and repaired structures which potentially fail to meet the specifications.

The final challenge is a somewhat purist interpretation of the international trade agreements that Australia has entered into. This includes taking proper account of the whole-of-life cost of infrastructure procurement as well as impeding the employment of other steps designed to place competitive pressure on overseas competitors through the maintenance of a competitive Australian steel sector. As we have discussed in our submission, the United Kingdom has in place regulations that allow procurers to consider environmental and social criteria including employment, supply chain activity and when letting contracts for construction and infrastructure. ASI believes that a similar approach should be adopted by New South Wales; that is, an industry participation policy that overtly recognises the economic value to Australia and New South Wales taxpayers when suppliers source their inputs from the domestic supply chain, thereby maximising the economic value to the State.

ASI also believes that the Australian Government should have in place systems to ensure that products used in government projects meet the design intent and the standard specified. Therefore, procurement documentation should specify that steel and steel products should only come from suppliers who are accredited by a program certifying that supply has in place procedures that will meet the quality and environment expected of the New South Wales taxpayers. These programs are readily available third party certification programs. I would also like to indicate that a whistleblower scheme should also be established where concerned professionals can report the use of substandard product without fear of recrimination. This is, in fact, practised in the UK today.

Finally, procurement documentation should require project managers to have in place a compliant management plan to show what steps have been taken to ensure that products actually conform to the Australian standards as specified. This would lead to New South Wales adopting best practice procurement procedures. In summary, the ASI has made a number of recommendations in our submission that would lead New South Wales

to adopting best practice procurement practices in this space. However, these can be summarised under two broad principles: procurement practices that acknowledge the social and economic benefits of supply through the local value chain and that make it mandatory for the New South Wales infrastructure to be produced to the Australian standard and have this verified through appropriate third party certification. I am happy to take questions from the Committee.

CHAIR: Can I just explore with you the notion of substandard steel being used in government contracts, which I think concern whistleblowing and other things you have touched upon in your opening statement? I just want to explore your knowledge of government construction contracts. There must be, must there not, some requirement for an engineer to certify the integrity of steel being used in projects?

Mr DIXON: Generally, what you have is circumstances where certainly the engineer specifies to a standard. It is unclear whose responsibility it is ultimately to sign off that 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.

Ms JODI McKAY: When the government procures a service or someone to carry out the work, in that does that it indicate that it needs to be steel compliant or is that just a given?

Mrs MELINDA PAVEY: To an Australian standard.

Mr DIXON: It can be to an Australian standard; it can be to an international standard, and there is a harmonisation and overlap.

Ms JODI McKAY: Is it in the contract?

Mr DIXON: It generally is in the contract, yes.

CHAIR: Or could it be just the steel specification—

Mr DIXON: It could be just a steel specification, correct.

CHAIR: Is it possible that some international standard or Australian standard would not be mentioned in the contract, they would just be specifying the type of steel and the dimensions, et cetera?

Mr DIXON: I think they would be generally specifying a standard that is required, and it is either an Australian standard or an international standard of some sort.

Mr BRUCE NOTLEY-SMITH: If I am signing off on some girder and my name is going on as the certifier, I would want to be damned sure that the goods used in there—

Mr DIXON: Correct, but there are many examples in New South Wales today where there is non-compliant steel getting through. The system is breaking down.

Mr BRUCE NOTLEY-SMITH: So the certifier does not know or the certifier just signs off on it?

Mr DIXON: I think there is probably a combination of issues in place. I think there is, in most extreme cases, some potentially fraudulent test certificates. In the second case, the fabrication may or may not meet the standard but is not visibly clear. If they have not collected the right certification to ensure that it is made to the right standards then they are signing off on something that is not necessarily to the standard that they thought they asked for.

Mr BRUCE NOTLEY-SMITH: What is your knowledge of how third party certification can be compromised? Say, between here and China a lot of forgery can go on?

Mr DIXON: Forgery can go on. I think the reason third party certification is the most appropriate is there are a number of third party certifying organisations, so you need to be clear that you have got one of the more reputable organisations that are third party certifying and somebody who has a track record of not only

giving a compliance tick at the start but doing regular audits of the companies that they are asking to supply. So it is not a point in time but an ongoing management and certification.

CHAIR: So for progress payments you require a quantity surveyor usually to certify that the work has been done, or maybe it is the supervisor and the architect or whatever, but they may not necessarily have the appropriate expertise to determine whether steel is compliant with the Australian standard or not. In your experience, is it usual for the contract to require an engineering certification as to the integrity of the steel?

Mr DIXON: They generally require management of the process such as they have got the test certificates that confirm that the steel is provided to the standard. There are issues with fraudulent test certificates.

CHAIR: But they could be certificates from overseas.

Mr DIXON: They will be if it is over 10cc steel.

CHAIR: For example, it may be that the steel has no imprint of who the manufacturer is on it, which is non-compliant with the Australian standard, I understand. As an engineer is required to come out and supervise a concrete pour at your house if you are putting in a new garage or something, for a major piece of infrastructure I would hope that there is some requirement for an engineer to come out and certify, visually inspect, how the steel is being placed, whether the steel is obviously compliant with the Australian standard and so.

Mr DIXON: That is the case. What happens is the engineer needs to ensure that he has set up his supply chain, that it has full traceability through the supply chain, and traceability through the test search and that those test searches match the steel that is supplied. Then you need to ensure that fabrication is to the standard that is required and that is a different standard and different certification.

CHAIR: Who does that, is that an engineer as to the fabrication?

Mr DIXON: Yes, the engineer signs off on that in terms of—sometimes I think it would be a much more comforting experience for the engineer if there is third party certification to give them confidence as well.

CHAIR: Of the steel quality and the fabrication quality?

Mr DIXON: And the fabrication quality.

CHAIR: Well, there is nothing stopping the engineer from doing that now I suppose.

Mr DIXON: And he or she goes and does it and usually they require, if they find fault, they ask for a rework and there is a lot of rework goes into projects. If they are not alerted to something to cause them, it might slip through. The recent study done by the Australian Procurement and Construction Council [APCC] said that they suspect there could be as much as 50 per cent noncompliant steel coming through the system now. That is an independent study.

Mr RYAN PARK: That is very high.

Mrs MELINDA PAVEY: Who did it?

Mr DIXON: The APCC.

Mr RYAN PARK: Chair, that is higher than even I thought. You were saying before that you would have hoped, so would I, if those figures are accurate, and they are—

Mr DIXON: Well I assume they are.

Mr RYAN PARK: That is a very high figure of noncompliant steel to be going into projects, whoever is in government.

CHAIR: But if that is right, then there is a massive breakdown in the engineering certification process.

Ms JODI McKAY: Obviously, what we are looking at specifically is around procurement so in terms of our inquiry, how do we look at that within the context of procurement?

Mr DIXON: On this particular issue around conformance and product conformance, I believe that the first step is that New South Wales Government infrastructure or taxpayer dollars should demand that all infrastructure—that is the simple part—is specified to the Australian Standard. Then, to give confidence that you are getting the Australian Standard, the steel needs to be accredited by a third party body. There is a third party body called the Australasian Standards Certification and Verification of Reinforcing, Prestressing and Structural Steels Compliance [ACRS] that certifies steel companies, not just Australian steel companies but international steel companies, such that they can supply to that standard.

The next thing is, you need to be certain that the fabrication meets the Australian Standard. There is a new Australian Standard about to come out, it is about to go out for public comment, AS5131. And Steel Compliance Australia will certify to that standard. That is open for all fabricators to be assessed to as well.

I think the last thing is really the potential about making sure that suppliers meet—it is a slight step on from what you asked—that they meet the environmental standards through the environmental sustainability standard which ensures that all steel companies that supply to Australian projects meet the environmental standards but also sign off on the World Steel Organisation's environmental charter. I think they are the four things that address the conformity or noncompliance within procurement.

CHAIR: Could I add another one which would be that there needs to be perhaps greater integrity in the certification process because we should all be concerned about substandard steel, if it is getting into major structures, because that is tomorrow's bridge failure or whatever. That should be of great concern to us all. But also, if Australian steel is not being used because cheaper substandard steel is being used, you do not necessarily need a local content requirement, you may drive that through a quality requirement and a proper checking process.

Ms JODI McKAY: Yes, it is around compliance.

Mr DIXON: That is what I am advocating. It is not a local content issue, it is an issue around making sure that you have got third party certification, that all people that are supplying to New South Wales projects are meeting those requirements.

Mrs MELINDA PAVEY: The international environmental best practice and quality assurance.

Mr DIXON: So they are capable of and are producing to the Australian Standard for steel; they are fabricating to and are capable of fabricating to the fabrication standard; and then meeting the environmental best practice.

CHAIR: If 50 per cent of the steel is being rejected, then they are quickly not very cost competitive.

Ms JODI McKAY: And that is good for Australian steel.

Mr RYAN PARK: Yes, but we have already started this process. Do we know how steel is tested now in New South Wales for projects? Like the Chair says, when you do a concrete pour, how do we test?

Mr DIXON: Each project manager would have their own processes for ensuring that they believe they are getting what they specified to various degrees.

Mr RYAN PARK: But then other witnesses have said that that could be open to various degrees of rigour. I will not say the "corrupt" word but let us say various degrees of rigour. I am just working this back to try and reduce the problem of the 50 per cent noncompliance and the cost that has on governments when we have to redo and all that. Isn't it an easier thing to just procure Australian steel that we know is up to the Australian Standard?

Mr DIXON: That would solve it.

CHAIR: But it is not a cost to us if the head contractor is procuring overseas steel instead of local steel.

Mr RYAN PARK: There is a delay cost.

Mr DIXON: There is a delay cost, there is a cost of rework, there is an opportunity cost where upfront you are not comparing the same apples with apples. So you get the local supplier has to quote based on industry requirements.

Mr RYAN PARK: I just worry, with this industry, I think it is actually more prevalent than I thought it was before I came here, and I thought it was prevalent here. After that sort of statistic I just worry whether you can actually—I know what the Chair is saying—but whether you can actually do the simple thing, move beyond compliance and say, "Are we getting badly duded here?" This has no doubt been going on for a long time, this is not in the last five years.

Mr DIXON: I think it has become a lot more pronounced as the global market has opened up in the last five to 10 years, it has become much more pronounced.

Ms JODI McKAY: What are they doing in Victoria and South Australia because they are leading, aren't they?

Mr DIXON: In South Australia, which is on compliance, which is the issue we are talking about at the moment, it is a new system they have just put in place. They have probably got the most robust system that right up front says that 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. Then, for the steel standards, they would have to be third party accredited by ACRS and then for the fabrication standard they will have to be third party accredited by Steelwork Compliance Australia [SCA].

Ms JODI McKAY: So that is what you are asking?

Mr DIXON: That is what I am asking.

Ms JODI McKAY: So they are actually doing that?

Mr DIXON: They have stepped up on that.

Mr RYAN PARK: And by having those third parties, it is a way of avoiding the process where the accreditation could be not as robust or properly assured as it actually is. Therefore, if you had an example like other witnesses have shown us, in theory if they were robust and well resourced, the third party compliance, but that steel would not have got through.

Mr DIXON: Correct and what they have done is, they have said they are going to write this into the requirements of their tender process and put it on their head contractors to ensure that the right certification is evident through the value chain. So it will be audited and checked.

Mr RYAN PARK: Is it policed by that group that they have set up under the appointment of—

Mr DIXON: They are going to do audits they are saying. I have not seen the system they have developed for that yet but they are going to audit the process.

Mr BRUCE NOTLEY-SMITH: We do not have to reinvent the wheel here. The aircraft industry is an example where it is critical that the provenance of materials should be well documented. So all you are asking for is that the Australian Standard be stipulated and it does not matter whether it is sourced from overseas or it is Australian—preferably you would want Australian steel—but as long it is of Australian standards and it goes through a rigorous certification.

Mr DIXON: I will add to that, you do not have to reinvent the wheel, I think there is a real benefit in having a commonality of approach across the States in terms of simplifying the process for the industry. Thirdly, I probably should comment that, in the conversations I have had with parts of the New South Wales Government bureaucracy, I think they are along this road in their thinking. I do not think they are going to push back on this in any way.

Mr RYAN PARK: Do you mean the compliance?

Mr DIXON: On the compliance side, yes.

CHAIR: As a note to the Committee staff, can we find out what the current state of thinking is on that within the Government? Also, can we find out under the typical contractual arrangements entered into by the New South Wales Government, what is the standard of steel that is specified and what are the processes, either under the contract or under any other legislation, with regard to the inspection of the steel that is being used and the quality of that steel in Government contracts?

Mr RYAN PARK: Ms Jodi McKay raised Victoria. I have discussed Victoria with you, and we had other witnesses talk about Victoria, can you take us through what they have done because they have seemingly worked through this with both a conservative and Labor Government? Both these things have stood the test of time through--

CHAIR: Coalition.

Mr RYAN PARK: Coalition.

Mr DIXON: What we have just talked about if you look at the strengths, we talked about a conforming and compliance issue, which I think South Australia looks to have a straw man that is pretty good. The other issue that I raised in my paper where Victoria have a lot of strength, is they recognised the economic value of procuring through the local supply chain. They recognise the economic value and they recognise strategic projects where they are important and stipulate that there needs to be Australian steel supplied.

Mrs MELINDA PAVEY: Not necessary Victorian steel.

Mr DIXON: No, not necessarily Victorian steel. This is not again a conversation about local content but about meeting your international obligations by recognising the economic value-add to the small and medium-sized enterprises [SMEs]. All of the Australian steel industry with the exception of a couple are SMEs; the fabricators, the galvanisers. If you put that work through those people—there have been a couple of studies that go through it. The International Competition Network [ICN] report said that for every million dollars that goes through the local industry you will get \$713,000 of value-add, you will get six jobs, you will avoid circa \$70,000 of social security payments, you will pick up \$250,000 worth of tax. You cannot legitimately recognise that value-add through your SMEs and I think that is something that--

Mr RYAN PARK: Without being in breach.

Mr DIXON: Without being in breach. And that is the other half of what we have to give consideration to here.

Mr RYAN PARK: That is what I was trying to get at earlier. I say, I think there are two parts to this; what I call, for want of a better word, bad steel coming in, or noncompliant steel, that should, as you said, worry us all. That is one component that concerns me that needs to be fixed.

Mrs MELINDA PAVEY: Created in an unsafe environment.

Mr RYAN PARK: Exactly, that is right. Then there is the other component that says probably treasuries of all persuasions under all governments have looked at an initial front line cost, there it is there, person X is under, or whatever, but have not done any, I think what they call in economic terms, second or third degree impacts, or second or third wave impacts.

CHAIR: It is called the multiplier effect.

Mr DIXON: I genuinely believe there is a multiplier effect of the industry. The ICN report said it; the numbers I just quoted. BIS Shrapnel put out a report that said if you move from 50 percent Australian fabrication to 90 per cent for a circa cost of \$20-\$30 million you get \$1.3 billion of economic value. There is a multiplier effect that can be used to charge the economy. It just needs to recognise the economic value to our SMEs by pulling supply through the local branch.

The Hon. MELINDA PAVEY: What is the price point differential for China-Korean steel compared to local steel?

Mr DIXON: Most steel is benchmarked to traded steel around the world. I would say in Australia today there is probably a premium of between ten and 15 per cent. There is something here that is worth mentioning that I did not put in my submission. Most people seem to have this notion that there must be this super-efficient steel industry in China that has half the global steel capacity. Ninety-three per cent of their companies are losing money. There is a chronic over capacity of steel in the world driven by the fact that you have a socialist planned economy that got its plan wrong. It kept building capacity based on a pre-2008 trajectory and now today it has capacity that is 150 million tonne above what it needs and it is exporting that problem to the world.

CHAIR: Is it the combination though of the steel value plus the fabrication cost that makes it much more inexpensive?

Mr DIXON: Yes. So, the steel is one part of it, then there is the fabrication. In the fabrication it can vary between simple transform to quite elaborate fabrication. But let us say a steel beam is worth \$1,200 and fabrication, say, is circa \$3,500 to \$4,000, somewhere in that region. So, the amount of competitive pressure on fabricators—the fabrication industry today is severely underutilised—keeps that sharp and focused, the steel is benchmarked on a global basis around the world. So there is a natural focus to bring the competitive tension there.

CHAIR: We have to take a break now. Thank you very much for your paper and coming along today to give evidence. The Committee may wish to send you some additional questions in writing, replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr DIXON: I am happy to support the program.

CHAIR: Thank you for appearing today.

(The witness withdrew)

(Short adjournment)

DANIEL WALTON, Assistant National Secretary, Australian Workers Union, and

MISHA ZELINSKY, National Vice President, Australian Workers Union, affirmed and examined:

CHAIR: Welcome. Do you have any questions concerning the procedural information sent to you about witnesses and the hearing process?

Mr WALTON: No.

CHAIR: Would you like to make an opening statement before the commencement of questions?

Mr WALTON: Yes, thank you. The Australian Workers Union is the main union representing steelworkers in New South Wales and around the country. Our members are facing some of the toughest conditions seen in the industry in many decades. They are facing these conditions not as a consequence of poor productivity or old technology or inferior products, which the Committee discussed earlier. They are struggling because Australia is not on a level playing field with other steel-producing nations around the world.

Last year I was responsible for leading negotiations on behalf of a number of unions to keep the steelworks open in Port Kembla. All sides made a fair contribution to keep the site open. In particular, a number of members on site took a pay cut of, on average, 20 per cent. A couple of hundred workers unfortunately lost their jobs. I note that the State Government stepped in and provided payroll tax concessions to BlueScope. As we see it, that is a short-term solution.

To put that in perspective, while we were negotiating to keep the steelworks open, the Gerringong bypass was being built down the road using only a limited amount of steel that had been produced in Australia. The huge and spectacular Sydney Exhibition Centre, which is currently under construction, is being built with foreign steel. While we achieved a short-term reprieve for BlueScope, the bigger question of what role the Government plays to assist steel producers around the country is a live issue that we need to discuss today.

We now find ourselves in negotiations with Arrium, or OneSteel, which is on its knees, fighting to survive. It is an issue that is broader than Whyalla; it hurts New South Wales as well. OneSteel has a number of operations. It has a mini-mill based in Rooty Hill and a lot of downstream manufacturing through both the OneSteel operations and the Australian Reinforcing Company [ARC]. They are in constant discussion with us about ways to survive. We are facing some of the most difficult times that we have seen in the steel industry. We have developed a submission to talk about ways to solve that. Misha is best placed to speak about that in more detail.

CHAIR: Mr Zelinsky, would you like to add anything?

Mr ZELINSKY: Our submission relies primarily on three papers. The first is a piece of work done internally by the Australian Workers Union in Victoria, relating to Victorian procurement. The second is a University of Wollongong report that deals with the economic cost of the closure that was about to occur at the end of 2015. It outlines the economic and social consequences of such a closure. We also commissioned some independent modelling from BIS Shrapnel that states the national case for lifting the domestic procurement of steel in public projects. The troubling finding of that report is that the total share of publicly consumed steel from domestic producers is 49 per cent. It is less than half. That is significant, given that public money is being spent and there are associated multipliers.

I heard the evidence given by the representatives from the Australian Steel Institute [ASI]. We concur with the points they made. I do not want to rake over the points they made about the multiplier effect. We have touched on that in our submission. The only other area of interest is to highlight what the State Government can do, the levers it can pull. Anti-dumping is a big area of concern, but that is a Federal issue. I heard Tony Dixon from the ASI talking about compliance. That can be done on a State and Federal basis. While procurement is sometimes a Federal matter, the big cheques are signed at a State level. In the coming years there is a huge infrastructure spend planned for New South Wales. That is good news. It is a great opportunity for the New South Wales Government to put some money into the steel industry and take advantage of the multiplier effects there. I am happy to discuss issues as the Committee requires.

CHAIR: I want to drill down and ask a few basic questions. Your membership is roughly 100,000 members.

Mr WALTON: That is correct.

CHAIR: How many are based in New South Wales?

Mr WALTON: It would probably be 15,000 to 20,000.

CHAIR: Of those 15,000 to 20,000, how many are employed in steelmaking?

Mr WALTON: My rough calculation is that it would be 2,000 to 3,000.

CHAIR: How many would be employed in steel fabrication?

Mr WALTON: It would be hard to break it down to the specifics. The bulk of our membership would be in the manufacturing side. They would be in Port Kembla, in Rooty Hill, to an extent, and there would be associated downstream manufacturing in Newcastle.

CHAIR: Hopefully you will know the answer to this. BlueScope is in the Illawarra and that is the old BHP steelworks.

Mr WALTON: That is correct.

CHAIR: Was OneSteel also BHP Steel?

Mr WALTON: Yes.

Mr ZELINSKY: They were structurally separated when it was spun out of BHP. They created two companies.

CHAIR: Where is OneSteel based?

Mr WALTON: OneSteel's steel production largely comes out of Whyalla in South Australia. They also have operations in Laverton in Victoria and Rooty Hill.

Ms JODI McKAY: And Newcastle?

Mr WALTON: Yes, at Waratah.

CHAIR: I think there is one in Newcastle, isn't there?

Mr WALTON: In New South Wales there is Waratah.

CHAIR: Is that the old Commonwealth steel?

Mr WALTON: Yes, that is right.

CHAIR: So they do fabrication?

Mr WALTON: Yes.

CHAIR: Was that BHP? I thought Commonwealth steel was different.

Ms JODI McKAY: They do all of the steel picket stuff.

CHAIR: Is that the old bar division, is it?

Ms JODI McKAY: Is it flat?

CHAIR: It is bar and wire or something like that?

Mr WALTON: It is wire and ropes, and rod and bar. They have also got the mining consumables business, which is obviously currently on the market for sale to try to assist the company. They basically make grinding media for mining operations grinding down the ore.

CHAIR: So that is in Waratah?

Mr WALTON: It is based up in Newcastle as well.

CHAIR: What is done at Rooty Hill?

Mr ZELINSKY: It is an electric arc furnace so it is melting down steel.

CHAIR: So that is recycling, is it?

Mr ZELINSKY: Yes, in effect. It is scrap metal. The only two blast furnaces working—the traditional steelmaking integrated facilities—are at Whyalla and Port Kembla. Port Kembla is bigger than Whyalla.

Ms JODI McKAY: That is what they closed down in Newcastle. So they closed down the back end and left the front end, which then split into OneSteel and BlueScope Steel.

CHAIR: The other question I wanted to ask of a general nature is: In terms of steel consumption in New South Wales how much of the steel consumed in New South Wales is on government-financed projects? Do you know?

Mr ZELINSKY: I do not have those figures. The most precise figures we can get are the ones in the report from BIS Shrapnel in terms of total public steel consumed on a national basis. Unfortunately, and it is somewhat maddeningly infuriating having gone through these processes at Federal and State level before, it can be a bit difficult to really drill down and figure out the details.

CHAIR: So it is difficult to break them down.

Mrs MELINDA PAVEY: But that figure is around 20 per cent, is that right?

Mr ZELINSKY: Nationwide it is 49 per cent of all publicly funded steel—that is, 49 per cent comes from an Australian steelmaker.

CHAIR: Sorry, I am asking a slightly different question—that is, how much of the steel is consumed by the New South Wales Government?

Mr ZELINSKY: I cannot give you the exact figure.

CHAIR: So we do not know that.

Mrs MELINDA PAVEY: I thought it was 20 per cent.

Mr ZELINSKY: That could be right but I cannot confirm it.

Mrs MELINDA PAVEY: Can you tell me a jurisdiction that is doing it really well in the world?

Mr ZELINSKY: Victoria.

Mrs MELINDA PAVEY: Aside from Australia. I have a relative who runs a small to medium sized enterprise [SME] in Victoria and they find it is very difficult to do business down there so I am thinking about international examples.

Mr ZELINSKY: To be honest, most countries are doing something better than Australia when it comes to the steel industry—whether it be in dumping or in procurement. We can quickly take the United States

as an example. People like to talk about the United States as a free trade market economy but it has just recently put a 236 per cent tariff on imported steel.

Mrs MELINDA PAVEY: Is that the Federal Government or a State legislature?

Mr ZELINSKY: It is effectively their dumping commission. Without getting into the mechanics of dumping, they also had a countervailing duty of 260 per cent. So all up it was a nearly 500 per cent tariff on a particular form of imported Chinese steel which has been dumped into the United States at a particular rate. In Australia there have been some successful anti-dumping cases against Chinese exporters but the rate of the countervailing tariffs or the price lift, if you want to call it that, is much lower.

CHAIR: Just on the trade issue, do we export any steel anymore?

Mr ZELINSKY: Yes.

Mr WALTON: Yes

CHAIR: Where do we export to?

Mr WALTON: Basically wherever we can sell it. So BlueScope at the time, and I think Arthur Simm might correct me, was producing about 1.6 million tonnes give or take per year and they were having to sell just under half of that overseas. So they were obviously trying to work out some way of having a level playing field when bidding for infrastructure projects with some of the overseas countries, in particular China, dumping their product into the market.

CHAIR: The reason I ask the question is that if we start putting tariffs on, not that this Committee can do that, could that affect the international markets of our steel manufacturers and therefore be self-defeating?

Mr ZELINSKY: The response I have to that is that, first of all, there is basically 100 to 150 million tonnes of surplus steel from China trying to find a home. So it is already happening; it is happening everywhere. So that steel is finding its way into the "most open door" market and finding a home there. If you are talking about a trade war, it is already happening. Australia is perhaps a bit absent on that front. So I would argue that you could have a substitution effect on that, and it is in the BIS Shrapnel report—that is, the 800,000 tonnes that is exported at a loss could be consumed by governments domestically and help provide a significant lift to the overall profitability of our two major steel players to the tune of a couple of hundred million dollars a year.

CHAIR: I think the greatest reduction of tariffs in Australia's history started with the Whitlam Government, and the Hawke-Keating Government did a fair bit of it too. This is a fairly big swing away from traditional Labor policies in suggesting tariffs, is it not?

Ms JODI McKAY: This is a bipartisan Committee. I do not think the witness is suggesting implementing tariffs. The chair suggested tariffs.

CHAIR: He said that America has a 240 per cent tariff.

Mr ZELINSKY: It is what they call a tariff measure so it is an anti-dumping measure.

Ms JODI McKAY: Obviously what we are looking at is procurement—

CHAIR: Is Ms McKay not allowing the witness to answer the question?

Ms JODI McKAY: The Chair is putting words in his mouth. We are looking at procurement. Mr Park and I are actually in shadow Cabinet. He wanted to talk to you on his own, and we said no. We did not trust him. We are looking at procurement. One of the ways obviously that the Australian Steel Institute was coming at this, and the fellows we heard from before from the Illawarra, was by talking about noncompliance. Noncompliance is an issue for us obviously in New South Wales given the massive infrastructure spend. Making steel compliant and fabricators compliant is a way of ensuring that we are not only locking out noncompliant steel but also locking out imported product. Is that a way forward for you? Do you see that as a possibility?

Mr ZELINSKY: It is definitely one of the measures available. There is no silver bullet necessarily when it comes to what you can fix, but noncompliant product is 100 per cent an issue.

Ms JODI McKAY: It is obviously something that this Committee could possibly look at around noncompliant product.

Mr ZELINSKY: Absolutely. Obviously there are safety issues with noncompliant steel not only in the sense that things that are shoddily constructed are dangerous but also in that 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. If you are looking just at the headline costs and the lowest bidder but you end up with a sooner replacement rate than you have not really made a saving. Also a lot of the time the work has to be redone or repurchased. So there is definitely scope there in the compliance space. It is an area which has very little oversight.

Ms JODI McKAY: That is where South Australia has gone recently and also Victoria. The argument that the Australian Steel Institute puts forward is quite compelling. They start from a base of, "We are an industry that is in trouble as well but there are major issues here around the way that steel is being procured and used."

CHAIR: Mr Zelinsky said that there was very little oversight of this. We have had a bit of evidence about that. Engineers have to give certain certifications along the construction process. Is there a process to check the engineers and the integrity of those engineering certificates? Or is it simply a case of relying on their professional qualifications and integrity to certify that compliant steel, both steel and fabrications, are being put into projects?

Mr ZELINSKY: I am not aware of the exact specifics but the general proposition when it comes to the area of compliance is that a lot of it is code of conduct type stuff. When it comes through industry departments, be it at Federal or State level, it is often done on a tick and flick basis. There is just not enough rigour in the system to double-check things. It also comes back, and we can look at the example of the mining boom, what specifications are used in the procurement stage when you are starting off a project. If you use Australian standard then you are going to get it produced to the Australian standard and it will be certified in that manner. Unfortunately during the mining boom a lot of things were done to Chinese and Korean specifications and therefore Australian bidders were locked out right from the get go. So there are those elements right from the beginning of the process of getting the standards and compliance right.

CHAIR: So the contracts actually specified a different standard to the Australian standards?

Mr ZELINSKY: We saw that in the mining boom in particular, and Tony Dixon and the Australian Steel Institute did a lot of work on that. I think they estimated that, as a result of some of those practices, only around 10 per cent of the total amount of steel consumed in the mining boom was domestically sourced.

CHAIR: Ten per cent was domestically sourced?

Mr ZELINSKY: Yes, in the whole mining boom 90 per cent was imported.

Mr BRUCE NOTLEY-SMITH: What standards would they have been using?

Mr ZELINSKY: Just Chinese specifications and international, I imagine. I do not want to give granular on every project but that was the phenomenon.

Mr BRUCE NOTLEY-SMITH: Is the use of Australian standards ever seen as a trade barrier?

Mr ZELINSKY: Not to my knowledge because it is high quality.

CHAIR: Someone said to us that the international standard was effectively quite similar to or the same as the Australian standard.

Mr BRUCE NOTLEY-SMITH: It comes down really to certification and the provenance—

CHAIR: The integrity—

Mr BRUCE NOTLEY-SMITH: —and the integrity of that system.

Mr WALTON: Tony and the Steel Institute and their members, particularly the fabricators, would have a much clearer picture. Earlier I mentioned closer to home from the get-go the design brief from what we are informed for the Exhibition Centre specifically stated that it was going to source foreign steel. It did not outline where that steel was going to come from but when some of the manufacturers do not have the opportunity to bid from the very beginning—

Ms JODI McKAY: Do you know that for sure?

Mr WALTON: We have sighted a document which was never handed over to us but it was basically from the architectural stage onwards.

CHAIR: Was that a specification by the proprietor or was that a specification from the head contractor?

Mr WALTON: The head contractor is my understanding.

CHAIR: That was not a government specification?

Mr WALTON: I would certainly hope that the State Government has not specifically said it wanted to source Korean steel—

CHAIR: I think some of the earlier witnesses were a little bit confused and may have been suggesting that.

Ms JODI McKAY: Maybe they were just talking in broad terms.

Mr ZELINSKY: A government could certainly ask that it is done in Australia. It would certainly assist.

CHAIR: That would assist Australian manufacturers to compete. If it is an international specification as opposed to an Australian specification does that require Australian manufacturers to get a different level of certification to their current level or would their Australian certification be acknowledged as compliant with the international?

Mr ZELINSKY: That is a good question. My understanding is at any rate they certainly would not be precluded necessarily from it. If it is an international standard the Australian standard will be able to be used. I do not know whether Australia produces dual credit or whether ours counts for life; I am not 100 per cent sure.

Mr BRUCE NOTLEY-SMITH: Anecdotally, where there is non-certified Chinese fabricated steel come in its actual manufactured state it is significantly sub-standard?

Mr ZELINSKY: You can only rely on industry anecdotes.

Mr BRUCE NOTLEY-SMITH: That is what I am saying. I am looking for industry anecdotes.

Mr ZELINSKY: We certainly hear through the industry that there are instances of X bridge had to be redone because the work was shoddy, the steel was not up to scratch and they had to get it back in. The importer had to re-source the steel, the work had to be redone. Obviously that builds costs into the project.

Mr BRUCE NOTLEY-SMITH: I am asking that because if our Committee were to recommend Australian certified steel; that the Government could push back and say, "We are not aware of any examples where uncertified steel is an issue" and that the Chinese produce iPhones pretty well and that the stuff coming out of there is of a higher standard.

CHAIR: I am thinking out loud, but if the Committee made a recommendation for certified Australian steel that may be considered to be a barrier of entry because it may be impractical for foreign steel to get

Australian certified. Maybe the certification has to happen at the time of manufacture. That could infringe trade agreements.

Mr BRUCE NOTLEY-SMITH: That is what I asked them a moment ago, whether they are aware that having an Australian standard would be a barrier to trade.

Ms JODI McKAY: Perhaps if we had a written question.

CHAIR: The Committee might be able to make some investigations.

Mr WALTON: If some of that anecdotal evidence would assist the Committee we could certainly do some further research into that area because a lot of the manufacturers, a lot of our members generally have a pretty good idea where their steel goes. They have generally got a pretty good idea if their steel is going to fix up some inferior steel. But it is not something that we have brought with us today.

Mr ZELINSKY: The Australian Steel Institute is also well placed to give comment on specific anecdotes, if the Committee requires it.

Mrs MELINDA PAVEY: I will move off steel a little and onto the general issue of PPPs. Were you when representatives from Plenary gave evidence?

Mr ZELINSKY: No we were not.

Mrs MELINDA PAVEY: It was interesting evidence from a company that has referred to Ontario as being best practice, which came out of a desperate need for that province of Canada that has Ottawa and Toronto when their cities had ground to a halt. They had to do something innovative to spend \$12 billion in infrastructure. More generally how do you think our approach with PPPs is going in terms of value for the taxpayer and your membership?

Mr ZELINSKY: When you say "PPPs" do you mean—

Mrs MELINDA PAVEY: Private public partnerships.

Mr ZELINSKY: Private public partnerships as opposed to AIPP, as opposed to industry participation?

Mrs MELINDA PAVEY: Or a tender process in which we as a government involve the private sector.

Mr ZELINSKY: When you are having projects that have public money or mixed private-public money I would say it has been pretty poor. If you look at the example of the mining boom there was a huge opportunity missed in terms of sourcing from Australian manufacturers through that period where you saw the dollar go right up.

Mrs MELINDA PAVEY: I am sorry if I am being more of a provincial New South Wales politician, looking at many projects that are on the way—the North West Rail Link, private hospital projects that are happening in the northern beaches.

CHAIR: The mining projects were private. I think Mrs Pavey is talking about government procured infrastructure from the private sector, financed by the private sector, public private partnership.

Mr ZELINSKY: Financed by the private sector?

CHAIR: Yes.

Mr ZELINSKY: If it is private money then there would no obligations a lot of the time, is the answer to that. If you are talking about governments putting more rigour around those processes, there is definitely a lot of scope around that and the Ontario example is a great example. It is a very forward thinking leading province when it comes to procurement practices. I would also point to the Victorian model which has come back to government spending but, nevertheless, they have on average 80 to 90 per cent, so about 86 per cent of all procurements in government projects is from domestically sourced projects. The Canadian example is a great example in terms of the efforts of that region.

But if we even want to look just over the border, just over the Murray River, there is a great example there of how procurement can be done where it is good value for money and the metrics of it stack up when you look at the multipliers, the flow-ons and the type one and type two multipliers. I would say there are great examples internationally, the Ontario example, and I would encourage the Committee to look at that, but the Victorian model, the VIPP model, is certainly worth looking at. In terms of private money but government providing approval to those projects, if it is a privately funded road or privately fund rail link, it would certainly probably be an area where very little oversight as to how much domestically sourced commodity manufacture such as steel, glass and aluminium actually goes into it.

So it is an area that increasingly if governments are minded to go down that path in terms of privately sourcing finance and know-how in public good infrastructure then it is an area that could use a greater oversight given that you are granting a monopoly right to a private arm.

CHAIR: Thank you for coming today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr WALTON: Yes.

Mr ZELINSKY: Absolutely.

(The witnesses withdrew)

MARINA GROBBELAAR, Director, Infrastructure and Structured Finance Unit, New South Wales Treasury, and

KIM CURTAIN, Director, Infrastructure and Structured Finance Unit, New South Wales Treasury, affirmed and examined:

CHAIR: Thanks for joining us this afternoon. Before we proceed do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Ms CURTAIN: I do not recall receiving that.

CHAIR: Maybe you did not. Would either of you like to make an opening statement before the commencement of questions?

Ms CURTAIN: We made a submission to the Committee so I am happy to speak generally if you like. We are happy to get into the questions. There are so many topics we could cover.

CHAIR: Have either of you had the opportunity to read some of the other submissions?

Ms CURTAIN: I have read a number of them. Not all of them, but probably over half.

CHAIR: We have heard a number of pieces of evidence in relation to potential cost savings in the bid process. One of them from Plenary Group, for example, was an idea that a number of the standard consultant reports that are replicated over a number of bidding parties be obtained by the government once and supplied to all of the tenderers with the opportunity to novate those reports to the successful tenderer. Have you been looking into the possibility of doing that?

Ms CURTAIN: This is a perfect question because we have just done it on Grafton. It is certainly an area that we are looking at. Initially there was some push back from the parties who were giving the reports, but that is certainly what we are looking at doing. So starting off with the State putting together our scope and actually testing that with the bidders so they can note if there are any changes they would want in the testing that is done and then setting up the arrangement so that they could be novated across where possible. I think there is difficulty around whether it is the factual information or the opinion report that is transferred across. Certainly we have got buy-in from the providers to novate across the factual information so that at least you are not having lots of different providers digging holes in the same place. That is certainly an area we have previously looked at, engaged with the market on and are moving forward.

Ms GROBBELAAR: You may recall that we undertook that bid cost engagement consultation project last year and this was one of the recommendations that was made by not just Plenary but also some of the other private sector participants. As a result of that project we have amended and updated our guidelines for public private partnership [PPP] procurement specifically. This will hopefully be endorsed within the next month or so and contains guidance with respect to this. It is also to be adopted on other projects, not just Grafton but also Sydney Metro, for example.

CHAIR: Presumably, the more the government can reduce bid costs ultimately is reflected in the price government has to pay. Even if it is an up-front cost for the government at least it will save money presumably in the long run.

Ms CURTAIN: Absolutely.

Ms GROBBELAAR: A bit of context and history to it is that bidders also need to feel comfortable with the due diligence that the State has done and be willing and able to accept the risk. On Sydney Metro, for example, we are intending on providing the bidders with an opportunity to ask for more holes to be drilled in the harbour to get comfortable with that risk allocation. There is a scenario where we could still go through all this trouble and fund the due diligence and the bidders may come back and say they are not willing to take the risk. It has got to properly be considered on a project-by-project basis. Where it makes sense we will certainly endeavour to do it.

CHAIR: But if you can identify that a bidder is likely to engage a certain suite of reports presumably it is a desirable approach so long as the government engages reputable consultants, which I am sure it would. Ultimately that will save bid costs.

Ms GROBBELAAR: Yes.

CHAIR: Some of the other evidence we have heard is that there is a need for greater consistency of experience and performance by project teams of government. Within the one department they may do one project better than another depending on the project management team that they have assembled.

Mrs MELINDA PAVEY: And how many engineers they might have.

CHAIR: Yes, and then between departments there can be variation. One of the suggestions from a number of witnesses has been developing a kind of centre of excellence in government in terms of project teams, training, scrutiny, debriefs at the end of projects and so on. Is that something that you have looked at?

Ms CURTAIN: Certainly the skills and experience of the procurement team was something that was raised in our bid cost discussions as well last year. There was the same issue around variability. Some teams are run very, very well and others perhaps not perfectly. I think there is different experience in different agencies and also there are a number of projects going on in New South Wales, which I think is stretching our resources. But certainly we recognise that that is an issue and there is work going on within government to try to do some skills mapping just to try to make sure that we identify all of those people with the skills across government so that we can make sure we are using the best of those resources. I think they are certainly looking at how we develop our next band of project directors particularly just because there are only so many to go around and it is quite a specialised area to understand the procurement and understand stakeholders' communication. There is quite a lot to the role.

Mr BRUCE NOTLEY-SMITH: Do they hang around for a long time or do they get poached?

Ms CURTAIN: Often they do. The project directors are the sort of people who fall in love with the project. They get really involved with the project so they do not often skip around. Certainly I guess across the States everyone is looking out for the best project directors. We have got a group of them in New South Wales but we are stretching their capacity just because we have got so many projects on.

Mr BRUCE NOTLEY-SMITH: Do they get poached by the private sector in many cases or are they really committed?

Ms GROBBELAAR: From what I have observed they are really committed to the projects. Generally we change our project directors from business case into procurement so that they do have the relevant skills for the phase of the project. Then sometimes through the delivery and into operations there may be another change to again reflect the change in skill set that is required. In terms of training, we do have the contract managers forum which offers annual training. I think there is also now an accredited training being hosted by University of New South Wales [UNSW]. I will stand corrected on that but I think it is UNSW. In terms of contract management, certainly. In terms of procurement, like Ms Curtain said, there is a limited pool.

Mr BRUCE NOTLEY-SMITH: Retaining these people in the public service, is that a huge challenge?

Ms CURTAIN: Theoretically they can be poached by the private sector, but that has not happened so much.

Mr BRUCE NOTLEY-SMITH: We could confidently put in a lot more resources into upskilling these people and combining them with a whole lot of other high-performing individuals and not fear that we are just going to lose them to Leightons and Lend Lease, et cetera.

Ms GROBBELAAR: I agree with Kim, they are generally very passionate about their projects, which is one of the key reasons why they do stay on the projects. So it is just finding those qualities. One of the other things we are also in the process of doing is providing additional guidance around some of the processes in, for example, PPP procurement—to provide additional guidance on just how to run interactive tender processes, how to facilitate regular health checks with your bidders, because we know in preparing our guidelines that we rely

very heavily on the skills and experience of those project directors and where you do have younger, less experienced project directors coming in perhaps they need a little bit more guidance.

CHAIR: We have received favourable feedback on the interactive tendering practices of New South Wales relative to other jurisdictions. Engineering Australia has given evidence that there has been an 80 per cent reduction in public sector engineers in Australia and that it is a trend that is happening in the UK and elsewhere. Other witnesses have also said that it is desirable to have longer term expertise in government—not just to engage consultant engineers but to have people who are thinking strategically and long term rather than just as one-off project engineers. Is that something that you have thought about or considered?

Ms GROBBELAAR: I do not think we have.

CHAIR: That might be something for you to take on board.

Ms CURTAIN: I am not aware of anything in particular at the moment. I guess the only comment I would want to make is that soon we are appointing the engineers for a project and we are looking for people with skills and experience for that project, so we would have to think carefully about what skills we are looking for for the in-house engineers, I guess, given that the projects that we are doing year by year change. The actual skills you are looking for at any particular time may change.

Mrs MELINDA PAVEY: I think what Consult Australia was saying is that—it was just a general commentary, probably referring to the past in New South Wales—sometimes the knowledge around the tender is not as strong as it could be because there is not enough engineering expertise or experience. We do not have the level of engineers setting up the frameworks and because you do not have that framework right then other costs blow out.

CHAIR: There were obviously more engineers when we did direct procurement. Now that there has been a change and Public Works has closed down, you do not have engineers within the department necessarily saying "That school we built 50 years ago is coming to the end of its life; we need to start planning to build another one", or "The lifecycle of this asset is 30 years, it is now 25; we have got five years to procure a new asset". That sort of capability within government has gone with the engineering expertise from direct procurement but there does not seem to have been any—

Mrs MELINDA PAVEY: One of the subversions they put up in South Australia, for example, is that there should be a high-end procurement team sitting in Treasury that can draw on that experience and understand all the agencies that are involved. Is that maybe one of the roles that you are going to be playing even though your remit is over \$100 million of construction?

Ms GROBBELAAR: I think that sounds like a role for the NSW Procurement Board.

Mrs MELINDA PAVEY: NSW Procurement sits in Finance?

Ms GROBBELAAR: They sit in DFSI yes.

Mrs MELINDA PAVEY: And do you have much to do with each other?

Ms GROBBELAAR: Yes, our paths have recently crossed. We do meet with them through the construction leadership group forum quite often now to share just some of the learnings from our bit cost study, to see how much of it can be adopted in the traditional procurement space.

CHAIR: I can say this as a lawyer: it is interesting that every department has an in-house lawyer who essentially does not do anything productive, but there is not the same level of engineering expertise and they actually do build things. I think that was the thrust of where they were coming from. ...

(Inaudible)

Ms CURTAIN: ... Projects NSW has been set up as part of Infrastructure NSW to provide procurement expertise for agencies who do not do a lot of major project procurement.

Mrs MELINDA PAVEY: So that would not include RMS or Transport, for example?

Ms CURTAIN: That is right. Generally not so much for Transport and Health, who do a lot of their procurement in-house and have skilled teams already, but, for example, with their Grafton prison project, Projects NSW are leading the procurement on that. I guess we would be looking at a similar idea, but it is not something we have looked at specifically.

CHAIR: That was Projects NSW within—

Ms CURTAIN: Infrastructure NSW.

CHAIR: We have got a Procurement Board, we have got Infrastructure NSW, which has some elements of procurement, and I think you also explain in your paper that we have got the Infrastructure Investment Assurance Committee—

Ms CURTAIN: That is part of Infrastructure NSW, as part of their assurance program.

CHAIR: Is there a need to start pulling all these bodies together or are their responsibilities well understood and they are coordinating well?

Ms CURTAIN: NSW Procurement is generally focused on design and construction procurement. Where we get involved is more around the major projects with complex private financing. The \$100 million that you mentioned earlier, above that level we need to consider a PPP-style procurement. It does not mean our team will get involved in every project that has over \$100 million but we will to the extent that it is high-risk, high-profile or has private financing involved.

Mr BRUCE NOTLEY-SMITH: What level is your involvement?

Ms CURTAIN: Often Cabinet. There is a Cabinet decision, ERC decision, which set up our team and which was the one that mandated the \$100 million to get involved in all these types of projects, the high-risk, high-profile, major sort of PPP-style projects; but also we work a lot with agencies in developing relationships to make sure that we understand which projects are coming up and to give advice on the way forward for procurement options and very often it is either within our mandate that was set up by ERC or sometimes it is requested by the Ministers

CHAIR: As the infrastructure market in New South Wales matures, the natural extension of that would be that the delineation between a major infrastructure project and a less major infrastructure project will blur, will it not?

Ms CURTAIN: I think it is more about complex versus non-complex. Things like the Pacific Highway upgrade, that is a major project and it is a very expensive project in dollar terms but it is not a project that we are specifically involved in because it does not meet the private financing involved—there is nothing sort of tricky or unusual about it. So \$100 million is sort of a guideline of where we should consider it, but it does not necessarily mean we get involved if it is still a straightforward project.

Mrs MELINDA PAVEY: But at least there is a consideration at the moment.

Ms CURTAIN: Yes—stop and checking and make sure that the right thought processes have been gone through to make sure we are procuring it in the appropriate way.

CHAIR: In terms of increasing the pipeline, has consideration gone into maybe bundling together more of the smaller projects so that they become more amenable to PPPs?

Ms CURTAIN: There is certainly consideration in areas like education and health where they can be sensibly bundled. So it is certainly a consideration when we are looking at new projects coming up as to whether it is an appropriate way to do it.

CHAIR: Some of the feedback we have got is in terms of transparency and information about the pipeline. Part of the problem is that people put together teams and then have to disband them until the next project. And if there was a steadier scheme, they would not have to disband them and that would reduce costs

and all the rest of it. We have also heard some evidence about the desirability of market testing in advance of the expression of interest and so on. Are these all things that the Government is working on?

Ms GROBBELAAR: I think New South Wales reflects strategies in the State Infrastructure Strategy, which is a long-term strategy. That is supported by, for example, the Transport Master Plan and other strategies. So there is longer term planning and a lot more visibility I think than there previously was on projects in New South Wales specifically. I think it is then up to the procuring agencies to stick to the timeframes when they communicate the projects, to assist the private sector in actually planning their resources. So as soon as you announce a project or start engaging with the private sector, they start committing resources to the project, so it is important that your communication strategy actually reflects who you are.

Ms CURTAIN: That was certainly feedback we got during the bid cost interviews that we did. We had competing views. One was that they 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.

CHAIR: You have both come from the private sector so you are au fait with what the private sector wants ideally.

Mr BRUCE NOTLEY-SMITH: Is there a strategy around Public Private Partnerships [PPP] and major projects which considers the market's capability of dealing with X number, an optimum number? There is only so much plant in New South Wales and available workforce.

Ms CURTAIN: Certainly, depending on what the project is. For example we have got the Sydney Metro, the North West Rail Link, the new Sydney Metro, and WestConnex, all using tunnel-boring machines and road headers and there is a limited capacity for this sort of plant and equipment in the world. And also there are projects going on in Queensland and Victoria and so we do look across the jurisdictions and consider, is there enough capacity in the market? And we do market soundings to say, if there was another project coming off of this size, is it deliverable? Are there going to be enough players in the market to feasibly put a project together and have a process? It is the same with financing of projects as part of the market sounding. We always go out before we get to the Expressions of Interest [EOI] stage just to test the market as to if there is enough capacity out there to finance the project and enough bidders who are interested in the way that the project has been put together, to make sure we are going to have a competitive process.

Ms GROBBELAAR: I think it is fair to say that they raise it as a constraint or an issue but they do not say they will not bid. So I do not think we have actually reached capacity yet.

CHAIR: We have had a degree of evidence today about imported steel being used in New South Wales financed or procured projects. And I think the concern seems to be that substandard steel is being used potentially in projects—substandard steel and/or fabrication steel. This may be outside your area of expertise, so say if it is, but do you know what the processes are for quality control around steel and the certification of steel by the New South Wales Government?

Ms CURTAIN: Not in detail but certainly in the bid process, in the request for tender, we specify any policies or standards that need to be complied with in the tender and they need to demonstrate how they are going to comply with those. Obviously, when it is said what those policies are, that is not our area of expertise but as part of the evaluation, we do have technical experts in looking at the bids and checking that they are capable of complying with the relevant standards. Then it is a quality process during the delivery phase, to make sure that it is continuing. We do not have specific detail on that.

Ms GROBBELAAR: What we do know is that NSW Procurement is currently working with the steel industry to develop policies and standards.

CHAIR: That is in train. That is good to know.

Mrs MELINDA PAVEY: That is all I wanted to ask about steel, so that has been covered.

Mr BRUCE NOTLEY-SMITH: What about the risk?

CHAIR: Allocation of risk.

Ms CURTAIN: That is our favourite topic.

CHAIR: Some of the tenderers have said that if government tries to put too much risk on contractors then you do not get a very contestable market. And one of the examples was substratum risk. Geotechnical information is usually spot samples, cores that are drilled and they are not perfect. If you are putting the risk on to the contractor that there is something there that is unknown that is a problem, then either the contractor has to put a huge premium on it to cover it, or people just will not bid. Does the Government have policies on unknown risks, as opposed to commercial risks, and how that is to be allocated in PPPs or is it case by case?

Ms GROBBELAAR: I think it is fair to say it is case by case and the principle generally underpinning risk allocation is the party best able to manage it should bear it.

CHAIR: What about something like substratum where there is no management? You do not know what is there. Unless you Swiss cheese the site with logs, bores, you just do not know, so someone has to take that risk. Is it reasonable for the contractor to take that risk?

Ms GROBBELAAR: The question for me is whether that is a risk that they would take in the ordinary course of their business. If the answer is yes, then I would argue it is reasonable; if it is no, then I would have a discussion on how you can de-risk it and if you cannot de-risk it, I would say no.

Ms CURTAIN: It is also a question of what is reasonably discoverable by doing geotech and other technical testing. For example, things like contamination risk. Generally on a PPP that would be, anything brought on to the site by the contractor is their risk; anything that was existing but discoverable in their normal due diligence would also be their risk; but if there is contamination found which was not discoverable by a reasonable set of engineering reports, then the State takes that risk. And anything that is on the land around the site that then leaks onto the site, the State takes that risk as well.

It comes down to, what are they able to control or reasonably able to discover with reasonable testing prior to bidding? Other than that, it is a general principle. But it is generally on a project-by-project basis. Obviously, if you take Sydney Light Rail going down George Street and compare it to a Grafton prison project which is on a greenfield site with one house on it, they are very different. So you have to look at them on a project-by-project basis.

Ms GROBBELAAR: We also test some of our thinking through the industry engagement prior to commencing procurement. So there is always an opportunity for the market to provide feedback on proposed risk allocation.

CHAIR: Going to contamination of the site, it may be capable, on reasonable due diligence, to know there is some contamination there but the extent of the contamination and the nature—well, the nature may be ascertainable and the existence of contamination may be ascertainable but the extent may not be known until you actually dig it all up and find out where it all is.

Ms CURTAIN: Generally if some was found during the due diligence process there would be a discussion in the interactives about what that meant. So that the State may end up changing the risk allocation during the interactive process if it is felt that is reasonable for an open process.

Ms GROBBELAAR: Or require measure of due diligence to try and mitigate.

Ms CURTAIN: That is part of the benefit of the interactive process that some of these issues come up before they actually bid so we can work out what the best position is for both the State and private sector.

CHAIR: One of the examples given, which I really did not understand, as a risk that maybe should not be put on the tenderer was that of—I am thinking of the words—how many cars will go through a tunnel.

Ms CURTAIN: Patronage.

CHAIR: Patronage risk. Patronage estimates are a blackout at best. It seems to me that is quintessentially a commercial risk because if you bid a high price as a tenderer then you are effectively taking a position on which end of the spectrum patronage will be at. You are saying we are going to get a lot of patronage, generate the revenue to justify that price. It seems to me to be quintessentially a question of the risk profile that the tenderer has. Am I wrong about that? How could the Government wear some of that patronage risk in a tender?

Ms CURTAIN: There are ways in which we could do it. We could guarantee minimum levels of patronage to give certainty. But, again, this is an area where the market recently has said they are not keen on taking patronage risks. That is why for WestConnex we are procuring in a slightly different way because of the risk of taking on patronage as well as taking on the risk of construction was too much for the market to bare and that is why we are procuring that differently. I think you can talk about the transport projects which do not take bare box.

Ms GROBBELAAR: No, they do not take bare box. We actually buy a service from the private sector and pay a fixed fee for the service and the bare box risk is retained by government. Government also sets the policy framework for increases in fares and if they decide not to increase. So that is a risk that is within government's control.

CHAIR: You could do that on roads too, could you not? Effectively the same, where they construct and manage.

Ms GROBBELAAR: And there are examples of that in Australia. In Victoria the Peninsula Link public private partnership [PPP] was done on that basis where the State retained demand risk. I think the East West Link--

Ms CURTAIN: The Sydney Harbour Tunnel.

Ms GROBBELAAR: The Sydney Harbour Tunnel.

Mrs MELINDA PAVEY: That was an 80s project.

Ms CURTAIN: With that one we pay for a service. They provide us a maintained, operating tunnel and we manage the risk of how many cars go through.

Mr BRUCE NOTLEY-SMITH: How has that gone, the Sydney Harbour Tunnel? Was it a successful PPP?

Ms CURTAIN: I have not gone right back to the beginning to do the analysis.

Mr BRUCE NOTLEY-SMITH: You were not born.

Ms CURTAIN: I was actually, but thank you for that. I would have to go back. I do not have the detail of that.

Mrs MELINDA PAVEY: It is regarded reasonably well, is it not, in the sector?

Ms CURTAIN: Yes.

Ms GROBBELAAR: I think so.

CHAIR: Was that design, construct, manage and maintain, was it?

Ms CURTAIN: Yes, and operate.

CHAIR: We did not use stainless steel. We used black steel, so it will rust quicker.

Ms CURTAIN: It is actually a very well maintained tunnel that one.

Ms GROBBELAAR: It is definitely sector specific but also project specific because if there is a brownfield aspect to a road, for example, where there is existing demand and it is quite reasonable to assume that that demand will continue on the road, then there is no reason why you could try and transfer that risk to the private sector, because they have a reasonable sense of what the risk is.

Ms CURTAIN: On a slightly different example; the Northern Beaches Hospital, they have taken demand risk. So if no patients turn up to the Northern Beaches Hospital they will not get paid. We still get our hospital and they have to have it there and operating. So there are a number of requirements in there that gives them incentives to make sure that patients come through the door. There is a penalty on them if patients from their own catchment choose to go past their hospital to a different one. They need to make sure it is a good hospital that people want to come to. They are taking demand risk on that.

CHAIR: Is that a trauma hospital?

Ms CURTAIN: It has accident and emergency.

Mrs MELINDA PAVEY: You missed that one. You did not get that for Coogee, did you?

Mr BRUCE NOTLEY-SMITH: Just thinking the company may be paying reckless drivers to cruise around and get the numbers.

Mrs MELINDA PAVEY: I hope *Hansard* missed that.

CHAIR: Can I ask about unsolicited proposals? They seem to be quite difficult to get up. Is an output specified way of tendering the best way do you think to involve innovation or encourage innovation in PPPs? Unsolicited proposals are slightly different but not necessarily. Depending on how you output specify it can be quite general, and the way we have done social housing I think is an example of that.

Ms CURTAIN: Yes, absolutely. The thing with unsolicited proposals is it has to be unique, and it is trying to balance innovation with fairness. If it is not a unique project we need to open it up to the market to allow the market to bid. But certainly, yes, in terms of output specifications we are encouraging agencies as much as possible to say what is the need, and specify any minimum criteria but allow that innovation to come in in the bids.

CHAIR: Is not the public sector comparator a little bit difficult sometimes in the unsolicited proposal?

Ms CURTAIN: To develop one?

CHAIR: Yes. Or can be?

Ms GROBBELAAR: Depends on the project.

Ms CURTAIN: Yes. For example NorthConnex came through as an unsolicited proposal but obviously it is still a toll road where the State could develop a shadow bid virtually coming with what would it cost the State to build it. We did have other projects that we could draw on information. That sort of project was unique in other ways because it had access to land that other providers would not have and also the way in which it was financed was quite unique, which was not available to everyone. So we would not have been able to do it in the same way by opening it up to everyone, but we could still develop a public sector comparator on that basis. It depends on the project and what is unique about it.

CHAIR: Do you think the way of the future is more of those output specified type tenders reducing the prescriptive nature to say, this is what we need as an end result, tell us how you will deliver it?

Ms CURTAIN: I think it is a mixture. On some projects we have to be quite specific. On roads projects we do want people to get from here to here, so we might have to be quite specific. The rail projects as well, the more detail you need to provide. But in other areas, like schools and hospitals, and you can set out this is the need, we need these clinical services in this location, or we need this number of pupils to be provided education in this catchment, and you might be able to be completely innovative on which land they choose to use, whether they do three schools or two larger schools, it makes it a bit more open. So, depending upon the industry.

CHAIR: Even with roads, did you not give us a New Zealand example last time you spoke to us where they—am I mistaking something? I thought one tenderer came up with a different route for the road which cut a lot of costs out. So even on a traditional road project sometimes innovation can--

Ms GROBBELAAR: I think on NorthConnex the State wanted just the road to go from one point to another and let it to the private sector to tell us how to get there.

CHAIR: How deep to go and gradients and that sort of thing.

Ms GROBBELAAR: Yes. From what I have heard the tenderers did provide different route alignments on both sides of Pennant Hills Road, and then obviously the State settled on one.

CHAIR: They put a ventilator in my electorate. Wish I had been around then.

Ms CURTAIN: Although that was an unsolicited proposal they still competed the design and construction elements of the project, so it still had that competition element.

Ms GROBBELAAR: But like Kim said, in linear projects like rail projects it is a bit harder because we have to obviously do our planning, we have to consult with the community around planning impacts, we have to acquire sites. If it is in the central business district [CBD] or in the city and south-west extension to Metro, we have to acquire those sites and look at ways to connect our existing railways. So it is not always that easy. But there are other ways of encouraging innovation.

CHAIR: Thank you for appearing before the Committee today. The Committee may wish to send you additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Ms GROBBELAAR: Yes.

CHAIR: Thank you. Thanks again for your paper and for appearing today.

Ms CURTAIN: You are welcome.

Ms GROBBELAAR: Thank you.

(The witnesses withdrew)

(The Committee adjourned at 5.30 p.m.)

=====