

CORRECTED TRANSCRIPT

REPORT OF PROCEEDINGS BEFORE
JOINT SELECT COMMITTEE ON THE CROSS CITY
TUNNEL

INQUIRY INTO THE CROSS CITY TUNNEL

At Sydney on Wednesday 1 February 2006

The Committee met at 9.00 a.m.

PRESENT

Reverend the Hon. Fred Nile (Chair)

Legislative Council

The Hon. A. R. Fazio
The Hon. G. S. Pearce
Ms L. Rhiannon
The Hon. Dr Arthur Chesterfield-Evans

Legislative Assembly

Mr M. J. Brown
Mr A. J. Constance
Mr J. H. Turner

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CHAIR: Welcome to the fourth public hearing of the Joint Select Committee on the Cross City Tunnel's inquiry. Before we commence, I would like to make some comments about aspects of the Committee's inquiry. I apologise for the length of this statement but, to assist the public and witnesses, copies will be made available at the table near the door.

It is possible that some of the questions directed to witnesses today will involve issues that may be considered commercial-in-confidence. If you are concerned that certain answers to questions are a matter of commercial-in-confidence then you can request that part of your evidence be heard in camera, which is a confidential meeting of the Committee. The Committee normally accedes to this request and will then exclude the public and media from the hearing. If a witness does give evidence in camera following a resolution of the Committee he or she needs to be aware that following the giving of evidence the Committee may decide to publish some or all of the in-camera evidence. Likewise, the House may, at a future date, decide to publish part or all of the evidence even if the Committee has not done so. It is also possible that some of the issues raised by witnesses during the hearing may be the subject of legal proceedings elsewhere, such as Independent Commission Against Corruption.

The sub judice convention requires the Chair to judge whether proceedings of the Committee are likely to prejudice a matter before the courts or the integrity of the judicial process and is therefore sub judice. If the matter is before a court, in order to make a decision whether the public interest outweighs the possible prejudice to the case, the Chair must be apprised of the specific matters before the court. Therefore, if a witness or a member objects to a question on the grounds of sub judice, I propose to hear argument as to why answering the question may lead to a substantial interference with the judicial process and make a ruling on the basis of the arguments presented.

I emphasise that a parliamentary committee, like the House, is not constrained from discussing a matter that is being considered by another inquiry or court, including the ICAC, except by its own conventions. I note that much of the subject matter of this inquiry has been debated widely in the media, and I would not support a position where a parliamentary committee was unable to hear evidence on a matter that has been freely discussed elsewhere. As with other inquiries, the Committee will consider any requests by witnesses or Committee members that evidence be heard in camera. I reiterate my earlier comments that following the giving of in-camera evidence the Committee or the House may decide to publish all or part of the evidence.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to committee witnesses under parliamentary privilege should not be abused during these hearings and I remind witnesses to ensure that the matters raised are directly relevant to the terms of reference. If a witness makes serious allegations that the Committee believes reflect adversely upon a specific person then, as a matter of procedural fairness, the Committee will be obliged to provide that person with the opportunity to respond to the criticisms, either in writing or in person. This process may divert the Committee from its deliberations. In this situation, in which the reporting date is less than four weeks away, it may impede the Committee's ability to meet that deadline.

It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of the Committee hearing. Therefore, I urge witnesses to be cautious about their comments to the media and others after they complete their evidence, even if it is said within the confines of this building. Such comments would not be protected if, for example, another person decided to take an action for defamation.

We are aware that people hold strong and divergent views regarding the cross-city tunnel [CCT]. I wish to emphasise that although this is a public hearing it is not an open forum for comment from the floor. While the Committee welcomes members of the public here today, the primary purpose of this hearing is to give individual witnesses an opportunity to give their evidence on oath before the Committee. Only questions from the Committee and the evidence of the witnesses are included in the transcript. Uninvited interruptions are not recorded and may make it more difficult for witnesses to fully express their views.

The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of guidelines governing broadcast of the proceedings are

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available from the table by the door. In accordance with the Legislative Council guidelines for the broadcast of proceedings, a member of the Committee and witnesses may be filmed or recorded, but people in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee. Witnesses, members and their staff are advised that any messages should be delivered through the attendants or committee clerks.

I advise that, under the standing orders of the Legislative Council, evidence given before the Committee and any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other person.

Witnesses and members are advised that the public address system in use today requires that speakers turn their microphones on prior to speaking and off immediately afterwards. If you have any difficulties operating the microphone, the attendant or a member of the secretariat will assist you. Finally, I ask that people turn off their mobile phones while in the hearing because they interfere with the electronic equipment used by Hansard.

I now turn to our first witness, Mr Tony Harris, former New South Wales Auditor-General. Thank you very much for agreeing to appear before the Committee.

ANTHONY CLEMENT HARRIS, affirmed and examined:

CHAIR: Are you conversant with the terms of this inquiry?

Mr HARRIS: Yes.

CHAIR: If you consider at any stage that certain evidence you wish to give or documents you wish to tender should be heard or seen only by the Committee, please indicate and the Committee will consider your request.

Mr HARRIS: Thank you.

CHAIR: Do you wish to make an opening statement?

Mr HARRIS: If I may, very briefly. I fully appreciate that governments of both political persuasions have inextricably linked themselves to the private ownership of metropolitan roads. That goes back for more than a decade and a half. It is my view, and probably the view of every economist with whom I have spoken about this, that that is a bad policy that imposes considerable costs on the community. If this Committee could persuade senior officers in the Parliament to depart from private ownership of urban toll roads it would make a great contribution to Sydney. That is all I wish to say at this stage.

CHAIR: Thank you. In your review of the Eastern Distributor in 1997 you raised a range of Middleissues, some of which appear to be similar to those now at issue with the CCT. How did that review come about? What was the purpose of the review? What recommendations did you make in that review that are relevant to this inquiry? Have any of them been adopted? If any recommendations have been adopted, can we see their impact on the CCT project? What, if anything, has changed? If any recommendations were not adopted, might their adoption have made a difference to the CCT? That is a package for you to answer.

Mr HARRIS: That is a very broad question. Under the legislation as Auditor-General I was not able to question the merits of government policy, so I had to assume a couple of things: that it was the Government's policy to eliminate government debt and to sell off parts of the urban road network to the private sector, and therefore it could not be questioned. However, I did suggest in the report that the Government should very carefully consider the implications of private ownership of public roads and, indeed, the Government said it would. However, there is no evidence, until the recent Richmond

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report, that the Government gave any thought to the very significant costs involved in the private ownership of public roads.

Had it done so, I am confident that the CCT—a great road in its technical aspects and an important part of the road network—would have been funded by the Government itself. It is clear that the Government had the capacity to fund it without raising revenue from any other sources. Indeed, had the Government merely paid off half the debt that it did since 1995 it could have funded all of the privately owned roads in Sydney. That is the major issue in the report on the Eastern Distributor, or the M1. There are minor issues concerning planning and the like. When I say "minor", the major issue is whether we should have privately owned roads. The other issues are of secondary importance. On the planning issues, I am not sufficiently conversant with the changes to provide the committee with any reliable evidence.

CHAIR: Do you see any conflict between the Road and Traffic Authority's [RTA] responsibility to look after the State's financial interests and its responsibilities to the State's motorists and other stakeholders, and how can that conflict be resolved?

Mr HARRIS: I have seen a couple of instances in which the RTA—and this is strange given the organisation's name—appears to have been indifferent to the financial position of New South Wales motorists. I remember on one occasion that the RTA expressed disinterest when given two options, one of which would have involved a toll on motorists that was twice the rate of the other option. It seemed surprising that the RTA did not have a closer interest in the financial concerns of New South Wales motorists. I have also seen the Government adopt the same position.

With regard to the CCT, the Government believes contributing nothing towards the tunnel is in the State's financial interests. In fact, the reverse is probably true. Imposing all of the financial risks on the private owners of the tunnel adds to the inefficient costs that are borne by motorists. In some senses, the higher the government subsidy on urban roads the better and the more efficient they will be for the economy as a whole and for New South Wales residents. Let me approach the question from another point of view. I think RTA should try to look for the optimum outcome, and if it is constrained by government policies from pursuing that outcome—as it is—then I think it should look for second-best solutions. But its indifference to the plight of motorists in New South Wales suggests that it is not fulfilling its responsibility properly.

Reverend the Hon. FRED NILE: In your submission you discuss a range of alternatives to the current toll on the cross-city tunnel. What are those alternatives, in your mind?

Mr HARRIS: The owner of a network does not look at an investment in part of the network alone; it looks at that investment as it affects the whole network. So, it does not matter whether it is an electricity distribution company, or a telephone company, it does not look at investments just on what will happen to revenue in that particular area; it looks at the implications for the whole of the network. By cutting up the network into little bits you are saying to the private sector, "You're only concerned with the cross-city tunnel economies. The implications of the cross-city tunnel on the rest of the network, and indeed on the rest of the city, is something that you are indifferent to." So, by cutting them up, you are actually creating what economists call externalities, and those externalities are very significant.

Most of the benefits that come from the cross-city tunnel have nothing to do with motorists. They have a lot to do with the environment, they have a lot to do with pedestrians, and they have a lot to do with the amenity of the city, but nothing to do with motorists. But the motorists have to pay for all of the costs of the tunnel, even though most of the benefits do not accrue to them. To overcome this networking problem—which David Richmond alluded to rather coyly in his report—we should try not to penalise people who use these investments by tolling them and not tolling alternative roads; we should try to raise the revenue necessary to pay for new road investments from the network users as a whole. That can be done in many ways. It can be done on a mileage charge. Each motor vehicle in New South Wales is annually registered and goes through an annual test. There could be a mileage charge associated with that registration process.

It could be done with the assistance of the Commonwealth, by having higher taxation on petroleum products in the inner city areas, with the tax reducing as it approaches regional/rural areas.

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There are many conceptual ways of doing this. A number of them are practical. Indeed, the New South Wales Government already differentiates its petroleum prices in the northern parts of New South Wales to take into account the 8 cents a litre subsidy provided by the Queensland Government. So there are many ways of doing it. I would not wish to burden the Committee by saying there is a preferred way, but there are many practical ways of raising the revenue necessary to pay for these roads so that we do not hit episodic users and force them to use alternative routes.

The Hon. GREG PEARCE: I might ask you to expand on that. I am interested in your concept—which Richmond refers to as well—of having a network and a charge based over the whole network. How would you achieve that, given that the network did not exist at the beginning, and that roads are being built in stages, so that there was no network to spread the cost over?

Mr HARRIS: I suppose there was the beginning of a network when the first road was built, in some senses. The first road to Parramatta created a network between two major cities, and it was not very long—

The Hon. GREG PEARCE: We are talking about toll roads.

Mr ANDREW CONSTANCE: Which was a toll road.

Mr HARRIS: You can have a toll on one road. If you build two roads, you can have a toll on two roads. And, if you build three, have it on three—and on four, and on five. But to have it on this one but not that one, and this one but not that one, does not make any economic sense at all. You are causing people not to use the road that you have built—which you want them to use, as a former roads commissioner said. As I have said before, I do not know of any economist that thinks that treating networks as we have done in Sydney makes sense. It might make political sense, but in terms of economics and efficiency I do not know of anyone who says it makes sense.

The best way to do it is to charge usage. The best way to charge usage is on a mileage, or kilometre, basis. If the government is going to adopt widespread electronic tolling, so that all vehicles that use urban roads carry e-tags, then it is fairly easy to build a large number of gantries around the city and charge people not just for using the M2 but for using Victoria Road, using Anzac Bridge, using Military Road, and using a whole host of other roads, to lower the burden on a kilometre basis but spread the burden across all users. In that way, you can compensate the owners of the M2, M1, M4, Lane Cove tunnel, City tunnel and M7 with the revenues that you collect across the entire network.

The Hon. GREG PEARCE: I am not sure that too many people would accept the proposition that by basically tolling all roads you are going to end up with a cheaper cost to the motorist.

Mr HARRIS: You will end up with a more efficient cost, a more efficient system. People seem to think—and the argument you are pursuing seems to suggest—that because this road is new it can have a toll on it, but because that road is not new it cannot have a toll. That does not make any economic sense. That old things do not carry a price, but new things do carry a price, does not make any economic sense.

The Hon. GREG PEARCE: A new thing carries the price of building it.

Mr HARRIS: Yes, it carries the price of building it, but that is a myopic view about toll roads, and it is a myopic view about networks. It is like saying the government will pay for the building and we will get the private sector to put the roof on it. It does not make sense.

The Hon. GREG PEARCE: You have mentioned a couple of times that none of the economists that you have spoken to agree that there is any benefit in the way that roads have been funded so far. Has anyone actually done any real figures comparing the different methods of funding roads?

Mr HARRIS: When I was presiding Commissioner of the Industry Commission, the forerunners of the Productivity Commission, I did a report on roads and rails. This goes back 17 or 18

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years, before toll roads in Sydney became so much the flavour of the month. In fact, Sydney really is about the only major city in the world—in fact, I can say with confidence that Sydney is the only major city in the world that so depends on privately owned toll roads in an urban environment. It is unique to Sydney from that point of view. I do not know whether it gives me very much comfort to say Sydney is leading the world in this. Have people looked at this? Yes, people have looked at it. But it depends on the road, and it depends on the financial sophistication of the government. What you might do in Lagos you would not necessarily do in Sydney.

Mr JOHN TURNER: If I could move away from that issue, Mr Harris. What would be your view in relation to the agreement that was entered into between the RTA and cross-city tunnel that the cross-city tunnel would do some work on RTA assets—not only on the Anzac Bridge, in the sum of \$35 million—in exchange for an increase in the toll by 15 cents? The work was priced at \$35 million. We have heard evidence that the return on that 15 cents increase over the period of the contract would be somewhere in the vicinity of \$300 million.

Mr HARRIS: As a general rule, I do not think you should undertake major projects without tenders, and I do not think you should link projects that are not linked in the one process. The Anzac Bridge process, as far as I know, is not intrinsically linked to the cross-city tunnel and ought to be the subject of a separate process. Nor do I like imposing taxes on one particular road so that other roads can be alleviated. This Government, in the past, has imposed a tax on users of the Sydney Harbour Bridge to fund rural roads. I cannot see any economic sense in that policy. It might be convenient, and it might be politically expedient, but I cannot see any particular efficiency gains in it. As a general rule, looking at my arguments about networks, it would be wrong to impose a higher burden on the cross-city tunnel users to alleviate RTA costs elsewhere.

Mr JOHN TURNER: In the capacity of your appearance here as a former Auditor General, would that sort of deal ring bells down the line?

Mr HARRIS: Yes. It goes back to the Chairman's question about RTA indifference to motorists. They seem to be rather more desperate for cash in a way that means that they cannot treat motorists properly.

Mr JOHN TURNER: It is a significant return for a \$35 million outlay.

Mr HARRIS: I do not know the net present value of that return, but no doubt it is higher than the government bond rate so no doubt it is very profitable to the private sector. I should say that I have invited this Committee to get evidence on the profitability of these toll roads. They are extraordinarily profitable for utilities. The current return on the M4, at 13.9 per cent compounded, is very high for a utility. Sydney Water's return is 2 per cent—far too low—but 13.9 per cent is far too high.

Ms LEE RHIANNON: Mr Harris, you have just spoken about how profitable these tollways are. I am aware that in the past you have described tollways as goldmines. Considering the cross-city tunnel traffic figures are way below the 19,000 or so that the contract is based on, do you think the cross-city tunnel at the moment is a goldmine?

Mr HARRIS: "At the moment" is a kind of interesting question. Do I think the cross-city tunnel will be profitable? Yes, I do. The fact that it is running at lower levels than first thought possible is not unique to the cross-city tunnel; it has happened on the M1, it happened on the M2, and it is happening on the M7. But it will be profitable if we go by the experience with all past roads. RTA has an incentive to make sure it is profitable, because if it is not profitable then the next privately owned toll road will not be advanced, or it certainly will not be advanced with any economy. So RTA has ensured that every road built in the past is profitable, and I have no reason to think that the cross-city tunnel will not be profitable; and the investors in it, including the New South Wales superannuation and Commonwealth superannuation agencies, can be fairly confident that their investment will be profitable.

Ms LEE RHIANNON: In your opening remarks you spoke about whether this Committee could achieve anything to try to wean this Government off its obsession with undertaking these tollways as public-private partnerships. That, obviously, is a big ask. It is something that people are

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grappling with right at the moment. As you are giving evidence at the moment, I would be interested in, firstly, why you think the Government is so scared to borrow to build critical infrastructure, and what we can do to swing it round on this.

Mr HARRIS: It is correct, speaking as an economist, that the Government would have to borrow—that is, increase its net borrowings—to fund these roads. But, from an accounting point of view, as I mentioned in my introductory and earlier comments, the Government could have halved the repayment of debt and funded all of these private roads. So, instead of eliminating debt—which it has; the Government currently has, according to the GFS account, something like \$1.6 billion in net deposits—instead of paying off all of its debt, it could have paid off half its debt and paid for all these roads.

It does not make sense for this generation to meet all of the investment for past generations, by paying off all of the debt, and providing all of the infrastructure for future generations. It does not make economic sense. It does not make economic sense to say that borrowings are bad, at the same time we say that savings are good, because if savings are good then borrowings are good, because savings and borrowings are different sides of the same coin. What you have to do, I suppose, is persuade motorists that what the Government is doing is not good for Sydney, and that there are better options available to provide the same important investments in roads.

Ms LEE RHIANNON: Could you elaborate on revenue bonds, how they work and why the State is just not using them?

Mr HARRIS: I can surmise that the Government has decided not to borrow in order to put pressure on its departments and ministries, so that government does not fund silly investments. In other words, if the Treasurer is incapable of arguing against silly investments, an alternative approach is to say, "Adopt a rule that we are not going to borrow any money" and that will be the argument against silly investments. It is, of course, a second-best approach to the question of funding investments. When the former Treasurer, before this Committee—I hope I do not breach, Mr Chairman, your instruction at the beginning—said that you could have either say hospitals or roads, that is just a nonsense. You could have either roads and half the debt paid off, or all the debt paid off and have private roads. That is your choice.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The RTA could argue that it had no choice.

Mr HARRIS: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That because of the parameters in which it worked it was not allowed to have any money.

Mr HARRIS: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And that it had to have a certain number of cars to make the cross-city tunnel viable. It was then in a weak position to argue with the proponent of the tunnel as to whether other roads should be closed, was it not?

Mr HARRIS: Correct. The question of funnelling traffic into the tunnel is important for the finances of the tunnel.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The RTA, with the constraints the Government imposed on it, did not have much choice?

Mr HARRIS: Correct. I do not blame the RTA. The RTA itself would prefer not to have privately owned toll roads. I am fairly confident of that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Would you accept the proposition that Paul Forward was sacked or left because he implemented government policy?

Mr HARRIS: Yes.

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Mr MATT BROWN: That does not have anything to do with the terms of reference.

CHAIR: Would you rephrase the question?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: He has answered it.

CHAIR: Would you rephrase the question?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I will leave it as is. The material adverse effects [MAE], the variations have never been tested in court. If a rail or tram link were made for the Eastern Suburbs, do you believe that the material adverse effects would be able to be demonstrated by the tunnel proponent? In other words, has the tunnel killed off the other alternatives?

Mr HARRIS: We have certainly seen over the period of negotiating these agreements a slight easing in the legal expression binding governments from undertaking policies that would reduce traffic flows. The M2 was quite draconian compared to the M1. But the cross-city tunnel provisions, in my view, revert back to a reasonably draconian limitation on the Government and it would be quite easy for the owners of the tunnel to demonstrate that significant improvements in public transport would be compensable.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are you familiar with the work of John Goldberg in terms of the economics of public-private partnership?

Mr HARRIS: I have read his material, yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In one of his papers he talked about the extraordinary price paid for the M2 by Transurban.

Mr HARRIS: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you think that the price of the M2 is reflected in its real value or do you think it is levered up by the reissuing of shares based on future valuations rather than on returns?

Mr HARRIS: I do not agree with John Goldberg's basic principle that these roads are not profitable. I think they are exceedingly profitable. The price paid for the M2, which at one stage was twice the price for the share 12 months prior to the takeover, it is going to be very profitable to that company.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: At the end of the day when it is transferred back, presumably the value goes back to nothing?

Mr HARRIS: At the passover date the value should be nothing. So the M4, which has a passover date of 2010, is still carried in the books of the owners of the M4 at an equity value which is many times higher than the original equity investment in the M4, even though many years have passed since the M4 was established and we are approaching its trade-off date.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is it a nonsense then? Why would you buy a share that is going to turn into a pumpkin in 2010?

Mr HARRIS: Because you are getting a 13.9 per cent return in the meantime.

CHAIR: We will move on to the Government.

Mr MATT BROWN: Later I would like to address your mileage charge bid. As a regional member of Parliament I can see that as having severe implications for regional New South Wales. Firstly, in relation to your claim that private funding of public roads leads to higher costs to the public, the construction costs of the cross-city tunnel, the Lane Cove tunnel and the M7 exceeded \$3 billion. The Motorways Review estimated that if financed by State debt there will be an annual interest cost of

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about \$200 million. A further \$120 million per year would be required to maintain and operate those three roads. That is a total of \$320 million per year of extra funding from taxpayers. That figure does not include repayment of the principal amount. You keep saying that no other areas of spending would lose money. Which areas of State spending would you propose cutting to fund the interest on those debt levels or would you propose that the Government increase tolls or raise new taxes?

Mr HARRIS: Mr Brown, you seem to think that people who use the cross-city tunnel are not New South Wales residents; that they who are paying for the maintenance costs, the interest costs, the repayment of capital are somehow separate from the State. Whereas in fact, of course, they are the same people that you are meant to represent as taxpayers. They are just paying taxes in a different way. Instead of paying taxes to the State, they are paying taxes to the companies that own the cross-city tunnel.

Mr MATT BROWN: Sure.

Mr HARRIS: That is the first point. As to the second point, you asked what other spending should be cut. I think for the third time, I mentioned that if you reduced by half the repayment of debt that this Government has eliminated since 1995, if instead of eliminating that debt you merely cut that debt in half—

Mr MATT BROWN: There would still be an interest component to that.

Mr HARRIS: All right, do not cut it by 50 per cent, cut it by 40 per cent.

Mr MATT BROWN: There still would be an interest component.

Mr HARRIS: You can pay the interest component out of the debt that you did not pay off. It is really mathematically fairly simple to work out how much debt you can pay off and still afford the road. However, I am not just saying that. I am saying that road users should make some contribution to the roads in New South Wales to pay for the tunnel. At its very worst, have the Government own the tunnel and the Government levy the tolls. As bad as that option is, it would be better than having the private sector own the tunnel.

Mr MATT BROWN: On the basis of?

Mr HARRIS: On the basis that the private sector can least manage the risks inherent in traffic in the city. An economist will entirely agree that that entity best able to manage the risk should carry the risk. The Government, through the RTA, is the entity best able to manage the traffic risk for the tunnel and therefore should carry that risk. By allowing the private sector to carry it, because there is no other option, you are increasing the economic cost of the project.

Mr PAUL McLEAY: What other risks are involved with the cross-city tunnel?

Mr HARRIS: All the other risks can be contracted out. The Government does not need to be the constructor, just as the current owner of the tunnel is not the constructor. The Government can pass those risks over to those best able to manage them through a contract.

Mr PAUL McLEAY: So the only risk involved is—

Mr HARRIS: The ownership.

Mr PAUL McLEAY: Volume?

Mr HARRIS: Yes, the traffic risk.

Mr PAUL McLEAY: Volume or ownership?

Mr HARRIS: The principal risk of the project is the traffic risk and that is the risk carried by the owner. The construction risk, the design risk, the maintenance risk can all be contracted out.

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Mr PAUL McLEAY: Why should the Government take on traffic risk and why should the taxpayers be liable for that risk if there is an opportunity there?

Mr HARRIS: That Government should take on traffic risk because it is the best party able to manage it. By having another party manage it who can least carry the risk you are imposing economic cost on the project.

Mr PAUL McLEAY: The Government does manage it but it is just not taking the risk. The Government, through the RTA, has managed the road network, and the private sector has taken the financial and traffic volume risks.

Mr HARRIS: Yes, and it should not carry the traffic risk because the Government is party best able to carry the traffic risk.

Mr ANDREW CONSTANCE: On that basis, Mr Harris, do you believe the Government should buy out the consortium?

Mr HARRIS: I think that is possible but too difficult. I think the best issue is to use, now that we have got all of these agreements, shadow tolls and that the Government take over responsibility for the traffic risk, pay the owners of these roads through shadow tolls, collect the revenue not only for the people who use the tunnel but for the people who use the general metropolitan network.

Ms LEE RHIANNON: Would you explain "shadow tolls", please?

Mr HARRIS: Shadow tolls are something that are mostly used in the United Kingdom. The United Kingdom Government has got privately owned roads but they do not levy tolls in their own right. The Government pays the owner of the roads according to the traffic volumes that have passed a counter.

Mr PAUL McLEAY: You are suggesting we either have suburban Sydney continue to subsidise an extraordinarily expensive piece of infrastructure—

Mr ANDREW CONSTANCE: No, he is talking about shadow tolls which would mean that every taxpayer—

CHAIR: Let him finish the question.

Mr PAUL McLEAY: Is that fair to say?

Mr HARRIS: No, it is not.

Mr PAUL McLEAY: People in Engadine should subsidise the cross-city tunnel by a suburban toll?

Mr HARRIS: People in Engadine who use major roads pay a mileage basis on those major roads, including the M7 and the M5, and those tolls would be lower then they are at the moment but because they are much more widely spread would eliminate all point of collection tolls throughout the city. Yes, I am suggesting that.

Mr PAUL McLEAY: If you have more tolls on longer roads and you have a short tunnel, the city is only a certain length. If your argument is that the rest of New South Wales should continue to subsidise all road networks—

Mr HARRIS: No, I did not say that. I was very careful to talk about urban motorists.

Mr PAUL McLEAY: Suburban Sydney.

Mr HARRIS: Yes.

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Mr PAUL McLEAY: Or alternatively \$5 billion worth of debt should be maintained by the Government. If that is the case, should the RTA's budget continue to grow at all times—\$5 billion is a lot of money? If your argument is shadow tolling, it is specified to particular users.

Mr HARRIS: I understand the question but I do not understand the point of the question. The concept that people in a network pay for the network is not unusual. They do it for electricity and telephones. People in Engadine pay for the very significant enhancements done to the telephone system in the city of Sydney.

Mr PAUL McLEAY: They also pay petrol tax, road levies and RTA registration fees. They are already contributing to the significant RTA budget.

Mr HARRIS: It is true that motorists face a price for the use of roads, most of the revenue going to the Commonwealth, which exceeds the amount spent on roads annually. That is true. It sounds a difficult task for politicians to say, "Look, instead of charging people on some roads some tolls and on other roads no tolls"—what is the economic justification for having no toll on the Anzac Bridge and a toll on the cross-city tunnel? I do not understand. In fact, the Government that you represent has something like nine policies about the funding of roads, including cash backs, relieving tolls and imposing tolls.

Mr PAUL McLEAY: There is no doubt we are a very innovative government.

Ms LEE RHIANNON: And contradictory.

Mr HARRIS: It has so many policies that you could say it has none.

Mr PAUL McLEAY: That may be your opinion.

Mr HARRIS: Which part?

Mr PAUL McLEAY: The fact is there is a view that this Government believes that the community desires if there is a strong individual benefit for a significant upfront cost that can be brought forward and a toll is a way of delivering that package, then it is an option for government.

Mr HARRIS: There are a couple of assumptions there. The bringing forward one is an assumption, i.e. we will not have the road until we get the money for it.

Mr PAUL McLEAY: Your view is to just have debt. You talked about generations—

Mr HARRIS: We will keep on paying the debt off before we provide the next road.

Mr MATT BROWN: You also assume that we build nothing else, that we just build roads, not rail or anything else.

Ms LEE RHIANNON: Do not verbal him.

Mr MATT BROWN: Your comment was that if the Government only paid off half the amount of debt that it has done it would be able to fund all these other roads. You did not say there were other things that could have been used with that money.

Mr HARRIS: I am assuming that the Government has chosen the highest priority investments in these roads.

Mr MATT BROWN: I think the Government has chosen to put that money to front-line services.

Mr HARRIS: Called paying off debt.

Mr PAUL McLEAY: Debt savings allows the freeing up of cash.

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Mr MATT BROWN: Recurrent expenditure to front-line services. Would you discuss the taxation implications you suggested of shadow tolling?

Mr HARRIS: The charge implications?

Mr MATT BROWN: The taxation implications.

Mr HARRIS: It could be a charge. It does not have to be called a tax. I do not know how the statistician would treat a charge levied on road users widely throughout New South Wales. They might levy it and they might call it a charge, not a tax. When you say, "discuss it", in what context do you want me to discuss it?

Mr MATT BROWN: Are there not particular other taxation implications regarding shadow tolling?

The Hon. GREG PEARCE: What? Do you think that the State Government would have to pay tax on it?

Mr HARRIS: The question I think suggests that if shadow tolls are imposed then the taxation deductions allowable to the owners of the roads would not be provided. I do not know that that is true. I mean, it could be, but I do not think it is true. I think the taxation office would treat the shadow tolls as merely another person who is paying for the use of private enterprise roads that continued to be privately owned.

CHAIR: Our time has expired—unless there is one urgent question or questions to be taken on notice?

The Hon. AMANDA FAZIO: I have a couple of quick questions, seeing that the Hon. Dr Arthur Chesterfield-Evans took some of our time.

Ms LEE RHIANNON: He took my time.

The Hon. AMANDA FAZIO: I am not wasting time arguing with you about that. Mr Harris, the "Review of Future Provision of Motorways in NSW" concluded:

The use of private financing and the associated toll road regime has enabled the provision by the NSW Roads and Traffic Authority (RTA) and its predecessors of an extensive network of motorways across Sydney. These roads have been provided to the community much earlier than would have been the case if they had been funded by the public sector.

Would you agree that one of the major advantages of private-sector financing is speeding up the delivery of these major infrastructure projects?

Mr HARRIS: No.

The Hon. AMANDA FAZIO: Can you explain why government debt should be cheaper than private debt? Should not government debt have a risk premium added, depending on the project that is to deal with the construction, traffic and other risks that a government would be taking on, if governments build the project themselves?

Mr HARRIS: I have always argued that you should not use the government bond rate as the finance indicator for these projects.

The Hon. AMANDA FAZIO: You have stated a few times that you think that the Government is best placed to manage traffic risk and that the private sector should not be asked to manage traffic risk. From that are you suggesting that the Government, by managing traffic risk, should be able to funnel traffic through the cross-city tunnel and to make sure that they achieve the projected traffic volumes? I cannot see any other implication from your statements.

Mr HARRIS: It is true that this Government already funnels traffic into toll gates. If you want to see an example of that, go to where the M5 crosses underneath the Hume Highway just

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outside of Liverpool where you will see an exit space designed to take traffic of the M5 onto the Hume Highway just near Liverpool, but it has never built that exit because it will take traffic away from the toll gates further down the M5. So the Government already does that. The Government, when it built the M5, even forgot to put toll signs, "There is the tollway there". It forgot to put signs saying, "This is your last exit before you approach the toll gates"—something which was remedied in my time as Auditor-General. When I say that the Government can best manage traffic risks, I mean that from many kilometres away it can, through the use of signals, signs, traffic controls, seek to ensure that the best roads are used most intensively. However, if the cross-city tunnel carried a price that was no higher than the price for users of William Street, people would use the tunnel. That is my major point.

CHAIR: I am afraid our have to conclude this section of the hearing. We are running to a tight schedule today so we will have to keep to our timetable. Thank you very much, Mr Harris.

Mr HARRIS: It is my pleasure, Mr Chairman.

CHAIR: If any members have further questions, they may like to place them on notice.

(The witness withdrew)

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BETTY CON WALKER, Principal, Centennial Consultancy, sworn and examined:

ROBERT GRAHAM WALKER, Professor of Accounting, University of Sydney, affirmed and examined:

CHAIR: In what capacity are you appearing before the Committee?

Ms CON WALKER: As an economist and a principal of Centennial Consultancy.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Ms CON WALKER: Yes.

CHAIR: If you should consider at any stage that certain evidence you wish to give, or documents you may wish to tender, should be heard or seen only by the Committee, please indicate that fact, and the Committee will consider your request. Professor Walker, in what capacity are you appearing before this Committee?

Professor WALKER: In my role as a student of public sector finances.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Professor WALKER: I am indeed.

CHAIR: I will begin with some general questions. What challenges to accountability do public-private partnerships represent? How are they evidenced in the case of the cross-city tunnel?

Professor WALKER: We did have an opening statement.

CHAIR: Do you have an opening statement?

Ms CON WALKER: Yes, we do. Professor Walker and I welcome the opportunity to appear before the Committee. Our attention to this project has its genesis in our long-term interest in public policy and public finance. At the outset it should be noted that we do not have an ideological position regarding public-private partnerships [PPPs]. A government cannot provide every service it wishes to see delivered to the community on its own. Many elements of government infrastructure and service delivery have been undertaken for many years by contracting arrangements with private sector firms. PPPs are a variation to this private sector participation in government.

Our position is that decisions to enter into public-private partnerships should be based on, firstly, the analysis of the pros and cons of the project being undertaken by the private versus the public sector and that, secondly, those providing advice, conducting negotiations and making decisions have the relevant skills to ensure that the public interest is maximised.

Suffice it to say that this is not the first public-private partnership to attract our attention. Professor Walker published his views on the Sydney airport link and the M2 back in 1994 and these were expanded in our book, *Privatisation: Sell Off or Sell out?*, which was published by the Australian Broadcasting Corporation in 2000. Our most recent comments were placed before the New South Wales Public Accounts Committee late last year. A number of witnesses who have appeared before this Committee have lavished high praise on the government agencies together with their private sector advisers that are responsible for the negotiation of public-private partnerships. However, it cannot be forgotten that the same agencies were responsible for the debacle of the Sydney airport link which saw the State lose some \$700 million to \$800 million.

The advocates of PPPs justify their position on the basis of minimising the risk to government and avoiding debt.

The Committee heard from former politicians, public servants and the operator and they have all lauded the cross-city tunnel deal because it removed all risk from the Government. You can pick

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out all sorts of quotes from the transcripts so far. However, toll roads world wide have involved little risk and have generally proved to be profitable enterprises for the private sector. In fact, the Roads and Traffic Authority [RTA] provided its own evidence about how the other tollroads thus far have expanded their patronage by multiples of thousands of motorists. So what the RTA was telling the Committee was that the private operator was taking all the risk, but then told the Committee that the CCT is likely to succeed within a couple of years. In other words, there was little financial risk. The head of the Cross City Motorway, Mr Sansom, supported that claim. He in fact said that while they originally thought it would take them 18 months to two years to reach the 90,000 target, they now expected that will be reached at about three years.

If that claim comes to fruition, then the operator is likely to earn \$140 million in its third year of operation—that is, assuming that it happens—and that is without the 4 per cent annual increase in the toll. That is on the assumption of the current \$3.56 toll. Even if that is not achieved, and even if we say that there are some 40,000 motorists going through currently, the collections are \$52 million a year at the moment. On that basis, at the lower rate, the operator will have collected nearly \$800 million within 15 years, so it would have recouped all its estimated costs for the building of the tunnel. That is without, again, an increase—the 4 per cent increase. In summary, the evidence of the RTA is contradictory. On the one hand it claims that the cross-city tunnel was best built as a PPP because it transferred substantial risks to the private sector and in the same breath it claims that in a short period of time it will prove to be quite profitable, in line with other toll roads. It just cannot have it both ways.

Turning to the issue of debt, it is our belief that the emphasis placed by some politicians on reducing debt is overblown and exaggerated. There is nothing wrong with government borrowing to finance infrastructure that will be of benefit to current and future generations. This argument is strengthened if the project is also a profit maker and if the State has little debt. Commercial enterprises certainly see no problem with debt to grow their businesses. In fact it is understood that a significant proportion of the costs of the CCT have been funded by borrowings.

I make just one final point: we were told that the toll was originally set at \$2 in 1999 and that only after the significant changes was it lifted to \$2.50. The Committee was told by Mr Skinner, the director of finance of the RTA, that “the \$3.56 that is currently being offered is in line with the base arrangement of 1999 dollars. In fact, if you allow for the Consumer Price Index [CPI] base on the arrangement, I think a \$3.56 maximum toll is probably still better value than what it could have been if you adjusted it to for CPI.” He said that on 6 December before the Committee. That surprised us because, had he done his sums, he would have found that the CPI index for Sydney increased from 124.7 in the 1999 December quarter to 151 in the 2005 December quarter. That is, the CPI index increased by 21.1 per cent in that period. However, the toll was increased by 42.4 per cent, or more than double the CPI in the same period. Had the toll been increased in line with the growth in the CPI, then the toll today would be \$3.02, and not \$3.56.

CHAIR: Just following on from that statement, the former Treasurer argued when he was giving evidence before the Committee that the Government's lower rate of borrowing is offset by the patronage risk. You have argued in the opening statement that really you can anticipate the patronage and there was no risk.

Ms CON WALKER: In fact the RTA has anticipated that it takes about 24 months to get to the right level—“right level” meaning the level which is required to achieve a profitable outcome—and the operator himself, the chief executive officer Mr Sansom, said that they have adjusted their expectations because of the slow uptake in their patronage from 24 months to three years. They themselves have stated that there is no way that they will lose.

CHAIR: This is another general question. Do the public-private partnerships detract from the capacity of government to strategically plan for transport needs?

Professor WALKER: I might comment on that. In my view, there has been a tendency to enter into public-private partnerships, particularly in transport, because they are easily packaged and sold off to the private sector. In a sense, that may, as we have argued in our book, affect priorities. It is very easy to put on a new toll road because you can package it and pass it on to the private sector. Secondly, there have been other problems associated with particularly the cross-city tunnel. When it

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was first announced, it was not to be connected with the other toll roads. The fact that different operators are constructing different toll roads affects planning because you do not get integration of the plan. I recall on the ABC program, *Stateline*, that the RTA was asked why they would not connect the Cross-City Tunnel to the Eastern Distributor, and they said that there were geological problems. Later on apparently they were overcome to some extent, which is probably one of the major reasons why the original project blew out in terms of costs. It is said that using the private sector enables toll roads and infrastructure to be put in place more quickly.

Sometimes I think it might be better to go more slowly and plan more carefully as to what extent planners are seeking to integrate infrastructure because, in a sense, once a contract has been signed and then you seek to modify the contract you are dealing with a monopolist provider.

CHAIR: Thank you for supplying the Committee with your prepared submission to the inquiry into the cross-city tunnel. I incorporate that into our documents.

Motion by Mr Matt Brown agreed to:

That the submission be made public.

The Hon. GREG PEARCE: I will take you back to your comments that the proponents, or at least the government negotiators, need to have the skills to maximise the public interest in doing these deals. Can you expand on that and explain what you really mean by that?

Professor WALKER: Evaluating these kinds of proposals involves careful analysis of projected cash flows and the use of fairly standard techniques in project evaluation. Without naming names, I can relate an anecdote that is published in our book. The proponent of one major infrastructure project advised others in a public forum that when they assessed the projected future cash flows of the project, discounting the cash flows using the internal rate of return, it showed positive net present value. That is an accounting joke, because if you use the internal rate of return the net present value of the cash flows should be zero. So my response at the time was that either the person who was speaking did not understand the concepts or could not do the calculations, or possibly both.

As an example of that—and this is noted in the tabled dot points—it is of concern that bodies like the RTA apparently do not prepare contract summaries themselves; they have to outsource that to a consultant. That gives me cause for concern, particularly since in the process it is quite plain that the RTA has not complied with 2001 Government Guidelines, "Working with Government", which proposed that contract summaries be tabled in Parliament within a certain period of time and that these should reflect the results both of cost benefit analysis and the public sector comparator. Both of these involve some further analysis. I should point out that the public sector comparator focuses solely on the financial aspects of the project. Cost benefit analysis should look at the wider impact of a particular project on the community as a whole. The cost benefit analysis was not reflected, as I recall, in the contract summary and the material published in relation to the public sector comparator was largely confined to a few lines in a footnote on page 11 of the contract summary. I think that is unsatisfactory in the interests of public sector accountability.

I applaud many aspects of the Government Guidelines issued in 2001 because they purported to provide assurances to the community that government would be accountable to the community in relation to entering into major infrastructure projects of this kind involving private finance. I have got some concerns about the Guidelines because I think they are also fundamentally biased in favour of private sector delivery in several technical respects. But the Guidelines have not been followed. It seems that people within agencies have not understood what was required and certainly have not delivered what was required.

The Hon. GREG PEARCE: One of the arguments that Dr Richmond adopted in his report just before Christmas, in which he effectively distanced the current Government from everything that was done in the past in relation to the toll roads, and one of the issues that he raised was the need to protect the motorist or the public interest in terms of the quantum of tolls. He basically recommended that you no longer have a situation where the RTA can go out like a vicious dog and negotiate a no-

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cost-to-government deal that simply involves adding tolls up to a level that gave you that result. Do you have any comment on that process that occurred certainly with the cross-city tunnel?

Professor WALKER: On page 5 of the submission we summarise what we believe is the methodology adopted by the RTA in setting levels of tolls. Essentially that involves, initially at least, estimating the cost of constructing the tunnel, estimating the timing of cash flows, estimating traffic volumes for the life of the contract, estimating the operators' outgoings, estimating the cash flows associated with the requirement that the operators reimburse the RTA for the costs of design, consultancies and legal costs. Then you assume that the operator requires a cumulative annual return throughout the life of the contract of 16 per cent real—that is, before inflation. You then estimate the cost of debt finance utilised by the operators to give that return and then from that calculate the level of tolls that would produce a nominated rate of return. The level of tolls was the dependent variable, if you like, in this calculation. That is the approach that supposedly gives no cost to government. It does give cost to the community. I do not think there has been any great change from that.

Ms CON WALKER: We must say that we were a little bit puzzled by a letter that was attached to the submission to this Committee by the RTA, which was from our esteemed former Treasurer to Carl Scully. This is a letter dated 14 March 2002. In the last paragraph the Treasurer states, "Accordingly, it is not certain at this time that the project can achieve a no net cost to government outcome. If the project cannot proceed without a government contribution any such contribution would need to be funded out of RTA's existing forward capital allocation". There are two puzzlements about this paragraph to me at least. One is that there was doubt that there would be no net cost to government and, secondly, it appears that the RTA is not regarded as part of government. If the RTA was going to be required to put in some extra funding then surely that is part of government.

The Hon. GREG PEARCE: To be clear what you are saying there, in setting the toll for this road there was no exercise in terms of fairness or what was appropriate and no sort of government decision about the level of tax to be imposed on the road users of the tollway. Instead it was completely the other way around: the RTA did its best to figure out what sort of toll would be required to make it acceptable to a private sector consortium to build it.

Ms CON WALKER: To ensure the 16 per cent return.

Mr ANDREW CONSTANCE: In light of your opening remark in relation to the \$800 million profit that will be reaped from the pockets of motorists—that is \$800 million within the next 15 years—do believe, therefore, that the Government should buy out the consortium?

Ms CON WALKER: Firstly, I should say that the \$800 million is without any increases in the toll and on the basis of just a volume of 40,000, which according to both the RTA and the operator is likely to increase significantly before then. So that is a very conservative amount.

CHAIR: Have you done an estimate of what you think the total profit would be? If it is not \$800 million have you estimated another figure?

Ms CON WALKER: Only on the basis of assuming that if it is 40,000 motorists and \$800 million within 15 years then if it is 90,000 motorists it would be \$114 million per annum.

Professor WALKER: We have to be very cautious about profit projections because you have to allow for whether you are talking in real terms in the nominal dollars of the day with inflation. Certainly we have not sought to estimate what it would cost to buy it out. That would involve some extensive calculations and it is not something we have chosen to address. We are more concerned with the perspective of being students of public sector finance and how we can go ahead in the future to have better public sector accountability.

Mr ANDREW CONSTANCE: In light of your statement, what do you see as a potential solution to the problem?

Professor WALKER: It is our view that many items of long-term infrastructure should be funded by government, particularly if they are going to be profitable. I noted earlier comments that there is an alternative way of constructing schools and hospitals by government funding the project

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itself. The fact is if government funded the project itself it could be earning that rate of return; it could be charging those tolls. It could be buying more schools and hospitals with the revenues from such a project.

Ms CON WALKER: There is no rule that the Government cannot impose a toll. Who made that rule?

Professor WALKER: In fact, the freeway to Gosford and Newcastle was initially funded by a toll imposed by the Government for a period. It has now been withdrawn. The history of infrastructure development in the country indicates that that has been a common means of financing it—by Government. It seems to be driven by the notion that you go into a public-private partnership to keep debt off balance sheet. It is interesting to note the comments of Treasury officials, who say, "Accounting treatment is not a driver of these projects at all". Yet at the same time the Government Guidelines require proponents of the projects to indicate what accounting policies they are going to use, to document that by giving copies of the accounting standards that will be used, and to get an advance sign-off from the Auditor-General that this accounting policy treatment is acceptable. Yet we are told that accounting policies are not the driver of this form of very expensive finance.

CHAIR: So when you get the contract to build a tollway it is a licence to print money—you cannot lose.

Professor WALKER: It depends where the tollway is of course. But there are certain transport routes in an urban area that are plainly going to be highly profitable. I think the M2 is the most attractive one. I think the new M7 already is proving to have a higher traffic volume and users are already using it for a greater distance than was originally forecast. Indeed, I have stockbrokers sending out buy recommendations on the basis of the revised forecast of traffic volumes. Some will be winners and some will be losers.

Mr PAUL McLEAY: Did you buy any?

Professor WALKER: No, I have not. Ethically I just do not like the idea.

Ms CON WALKER: When we look at what has happened in the past, it seems that the only one of these big projects that had any danger of risk was the Sydney airport link. And what did our negotiators do? They passed it on to the Government. They retained the risk. That is why we are facing the \$700 million or \$800 million output from the Government.

Ms LEE RHIANNON: In your submission for Unions NSW you have an interesting section from the New South Wales 2005-06 Budget Papers. The bit you quote says, "In certain circumstances PPPs can offer significant savings over conventional procurement options before they combine finance construction and operational costs and risks in a single package. PPPs are not appropriate where they do not offer significant savings." That quote is from the Budget Papers. You go on to talk about how the savings are defined and measured. Can you elaborate on that because at first reading the New South Wales Budget Papers seem to give some comfort but if it is not defined clearly we still have the problem?

Ms CON WALKER: Yes. It seems that in more recent times a lot of good words have been used by public officials—words almost intended to give comfort to the way that they are making decisions. We believe that is part of that process: "We will only do it if we have got significant savings". But they are never defined—they have not been to date. We put to the Public Accounts Committee that the Treasury should be asked by the Committee—we put it to this Committee as well—to provide evidence that PPPs have indeed produced significant savings and explain how those estimates of savings were calculated. They claim that we only enter into these PPPs if there are significant savings. They have never come back and told us what the savings are. We also asked that Treasury explain the extent of losses incurred on unsuccessful PPPs, such as the Sydney airport link and what has been learned from the experience. It is all very well with budget papers—and I think it has been done over several years—that they commit to doing the right thing, but we think we deserve to have some evidence that they have indeed done the right thing by the State.

CHAIR: We will check with the Treasurer when he appears before the Committee.

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Ms LEE RHIANNON: Just keeping to that line, the former Treasurer, when he gave evidence to the Committee, boasted about the international renown of the Roads and Traffic Authority [RTA] and Treasury in negotiating contracts such as the cross-city tunnel contract, so we are obviously aware of your criticism of many of these projects. Have you made an assessment of how this contract stacks up against the other contracts, because there has been a growing feeling that it has in fact been a bad deal and that the Ministers were not paying close attention to the details of the contract they signed off on?

Professor WALKER: In that submission—for Unions NSW—we also provided a table summarising the content of all the contract summaries that have been tabled to date. I might note, incidentally, that they are available on the Treasury web site but not available with the Auditor General's report on them. On my request to Treasury for a copy of the Auditor General's report I was advised that I would have to direct that request to the Auditor General to determine whether he wants to release it. I expect that it is a fairly benign report, simply saying that the contract summary fairly summarises the details of the contract.

In the tabulation of the contents of prior contract summaries we acknowledge that there have been instances—for example the education department's schools project, where they actually do publish the results of the private sector comparator and suggest this is the projected cost of doing it ourselves versus what it would have been if it were done by the private sector. I suppose that is pointing you towards an indication of savings. Having said that, the savings were pretty marginal and, secondly, the comparison then is with a calculation of the cost to government of what is called the public sector comparator, which is a risk-adjusted cost where they build in projected cost overruns—a factor representing the probability of a projected cost overrun times the amount of the total cost overrun. That represents the 'cost to government'.

I think that is technically a flawed way, if you analyse these projects, for reasons we outlined previously. Secondly, I think it needs to be recognised that the major source of cost overruns is design changes by the client. It is not relevant when you are comparing the cost to the public sector versus the private sector, loaded in on one side but not loaded in on the other, because most of the cost overruns, if they arise from design changes, will in due course also impact on higher charges coming back to government for the PPP alternative. Indeed, that is the case with the cross-city tunnel. The cost of the design changes and doing the legal and consultancy work had to be paid back to the RTA. The design changes that occurred were reflected also in an enormous change in the toll costs to the community.

Ms LEE RHIANNON: On subject of the public sector comparators, it may be that I misunderstood you, but were you saying that you thought that they were not working effectively?

Professor WALKER: Absolutely! The only contract summary we saw that had even a simple tabulation of the results of the public sector comparator related to the schools project. Indeed, as I mentioned earlier in evidence to this Committee, the only reference to the public sector comparator in the contract summary appears in a few lines on page 11 of the report. It does not even deserve a separate subheading and the evidence presented in that footnote is not consistent with what was required to meet Government Guidelines.

CHAIR: Are you saying that that is partly because they were outsourced and produced by consultants, and that they would be more accurate if they were prepared within the department?

Professor WALKER: If the department outsourced it, the contract to the consultants should have said, "Please ensure that the contract summary complies with Government Guidelines for contract summaries." Apparently that was not the case, because they do not. On pages four and five of the documents tabled today there is a whole series of dot points detailing how that contract summary did not comply with Government Guidelines.

Mr PAUL McLEAY: Will you outline your views on the risks associated with the cross-city tunnel project?

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Professor WALKER: The major risks obviously were initially in construction and they are risks that government could have avoided by simply calling for tenders for construction. The risks to government arose from design changes initiated by the Government—including, for example, changes in health standards in relation to ventilation, which required, as I recall, an additional \$36 million of expenditure that had to be further recovered through increased tolls if the operator was to get a 16 per cent internal rate of return over the life of the contract. So there are design risks, of course. The construction risks can largely be avoided through contracting. If the Government changes its mind about ventilation standards during the course of the project, that is a self-imposed risk, that is its own choice.

Then there are volume risks. The major source of revenue will be tolling and the volume of traffic that uses the tunnel, but these are capital-intensive projects. The major cash outlays occur in the early years of construction. After that the operating costs, I suggest, are fairly minimal—they have to change the light bulbs and resurface the pavement occasionally and so forth, and manage the tolling system—but the major risks are obviously in construction. Design changes are not risks that you can say would occur with or without private sector involvement; they are self-imposed. Volume risks are things, as Mr Harris said, that the Government is in the best position to control—deciding whether to funnel or not funnel. Conversely, one of the risks associated with a PPP is a total lack of flexibility in managing public infrastructure, because you tie yourself up for an extended period of time to a particular pattern of traffic funnelling and traffic flows.

Mr PAUL McLEAY: Mr Harris said that those kinds of things have become more mature as they have gone on. In fact, Ms Con Walker referred to lessons learned and whether we can really test those. One test of whether we have learned the lessons from, for example, the airport rail link, is the fact that in the past 10 years there has not been a new project that has cost taxpayers an additional \$700 million. Is that not evidence that we have learned the lessons?

Professor WALKER: No, because that was a risk that arose on default. There are other risks—to the community. For example, the Eastern Distributor contract extends for 48 years! Now, that really imposes a great lack of flexibility on traffic flows throughout the city.

Mr PAUL McLEAY: Most roads will be around for at least 48 years, I would imagine. Lang Road has been around for about 150 years I think.

Professor WALKER: Yes, but it has a traffic problem, too, because people are rat running.

Mr PAUL McLEAY: The points on page 5 of your submission are really where the risks are involved?

Professor WALKER: I am sorry, would you repeat that question?

Mr PAUL McLEAY: On page 5 of your submission, item (c) deals with methodology. Is that where each of those risks is contained?

Professor WALKER: Page five indicates the approach that was used to set the toll pricing. If you were to have regard to risks, it is our submission that you do not do it by using a high discount rate in these calculations; you do it by applying sensitivity analysis—in other words, changing the projected future cash flows, medium and high estimates, and then working out what the impact of that would be on the viability of the project. "Viability" means giving the operator his desired rate of return.

Mr PAUL McLEAY: In simple terms then, if those things are all fixed then the cumulative annual return for the life of the contract of 16 per cent is where there is, say, a buffer. If we were to get the Government to do it there would be no profit, therefore the tolls could be potentially 16 per cent cheaper.

Ms CON WALKER: It is more than that, really. It is 16 per cent and then you have 4 per cent each year in addition to that.

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Professor WALKER: If I might just comment, the 16 per cent is an internal rate of return. That reflects the discount rate, which equates the cash inflows and cash outflows for the life of the project. It is pretty generous.

Mr PAUL McLEAY: Bur, all things being equal, that would be the difference. Given that the numbers of traffic volume have been significantly lower than estimated, could the argument therefore not be that the risk has been shifted to the private operator and that taxpayers are significantly better off?

Professor WALKER: Well, no, because the basic model, for example, the M2—

Mr PAUL McLEAY: Let us keep to this one.

Professor WALKER: I have to refer to that because that is a case where I have actually been able to see the contract in a form of that I could analyse. The contract for the Cross-City Tunnel has been dumped in an unindexed form in a manner in which it is not possible to actually look at the detail. In that particular case, which was introduced by the previous Government, the term of the contract provided for an internal rate of return of X per cent, but if that was not secured by the end of the nominal term of the contract, the contract would be extended until they did attain that. I have no reason to believe that is not the case with this contract. In other words, the basic contractual model for these so-called "BOOT schemes" is that the operator builds them, owns and operates them and then transfers them back to the Government at the end of a specified period, provided they have attained the cumulative annual rate of return specified in the contract. If they have not, then they keep going.

Mr PAUL McLEAY: You do not know that that is the case in this instance.

Professor WALKER: Well, it is the case in the Melbourne trans-urban tunnel, it is the case with the M2. The documents that were provided in this instance were in such a garbled and confused form that I have not been able to identify that in the time available.

Mr PAUL McLEAY: So you do not know if it is the case?

Professor WALKER: I have printed about 900 pages and I have not hit it yet. If you could point me to those pages I will happily come back with a written response addressing that question, but I have no reason to believe that the term is fixed and not linked to the attainment of a minimum cumulative rate of return over the nominal term of the contract.

Mr PAUL McLEAY: In your submission to this inquiry you suggest the Government identify new sources of funds that could be used for new road works and to replace existing tolls. Are you saying there that it has increased taxes or charges?

Professor WALKER: I cannot locate that in our submission.

Mr PAUL McLEAY: I am sorry. Just a moment.

Mr MATT BROWN: While my colleague looks for that reference, the Committee directed a question earlier to the former Auditor General regarding the quote from the document entitled "Review of Future Provision of Motorways for New South Wales", which in summary concluded that, by going through the private financing route, roads have been delivered to the community much earlier than if they had been funded by the public sector. Would you agree that one of the advantages of private-sector financing is speeding up delivery of these major infrastructure projects?

Professor WALKER: No. In fact I am saying that maybe it would be better to hasten slowly because we have seen with the Cross-City Tunnel that the original design was for a little tunnel going from around College Street down to Sussex Street, a dip under the main roads. Later on it was expanded totally.

Mr MATT BROWN: Through community consultation.

Ms LEE RHIANNON: Oh! You said that with a straight face!

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Professor WALKER: And apparently overcoming geological problems, too.

Ms CON WALKER: Even without those issues there is nothing to stop the Government from contracting out in the traditional way of procuring investment in infrastructure developments and writing the contract in such a way that highlights timing and getting the project in place as soon as possible. I do not understand why there is the claim that they would be done quicker by the private sector than by the public sector. The public sector does not build big roads, for as long as I can remember it has never built that level of infrastructure; it has always been contracted out. The private sector contracts out. Builders contract out, so I cannot see how that arises.

Mr PAUL McLEAY: Once they get the contract to build it they could do make a profit as well, could they not?

Ms CON WALKER: Well, yes, of course. But the point is that it would be a competitive tender and the Government has the choice of selecting the one best suited to constructing that infrastructure.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You have suggested on page five of your submission that the inner-city roads are more or less fossilised for 30 years and that this is very bad policy. Would you care to comment on that?

Professor WALKER: What is suggested is once you enter the PPP and you have to pay compensation, if you vary the road access and so forth, you are locking yourself in for an extended period of time. As I mentioned before, the Eastern Distributor has a term of 48 years, which is very long.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So, William Street will be a bottleneck for the next 30 years or so?

Professor WALKER: If that is the term of the contract, that appears to be the case.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You do you think that the MAEs are enforceable, the major adverse events, for example, a train or a tram is built out to the eastern suburbs?

Professor WALKER: I am not in a position to give legal advice on those issues.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you think Federal infrastructure bonds make PPPs more attractive than government financed projects or have they not made any difference?

Professor WALKER: I am not aware of the current status of those bonds.

Ms CON WALKER: Just going back to the issue of the risk factor, one thing that cannot be transferred to the private sector is political risk. When I talk about political risk I do not mean just risk to politicians but rather to the community as a whole. That is one of the things we are facing at the moment, the impact on the people who use and who live in surrounding areas, and so on. If the Government had control of that project and had built the project itself by funding it, the Government would have more flexibility to explore alternative options in resolving those issues of the impact on the community, options it currently does not have unless it was to expose itself to significant financial risks.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You are saying political risk is that the whole city will be gridlocked for the next 30 years?

Ms CON WALKER: You may say that but it may be that the commuters will use the tunnel to the extent of 90,000. If that is the case, perhaps there will not be as much of a problem on William Street. We do not know that until time has passed and we have only had several months of the tunnel

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at this stage. I do not think we can make those judgments at this point. What is certain is the flexibility of the Government has been limited by the way if it has chosen to build this tunnel.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is it not worrying that the Government has not managed to do its own contract summary?

Ms CON WALKER: It concerns us, because it is only when you really look at a contract in order to summarise its major clauses that you really become familiar with it. If you are contracting that out, who is the person in Government who is familiar to the nth degree with the contract and who can advise the politicians? I feel ill at ease with that concept because in my time as a Treasury official I wanted to know every single detail of whatever I was dealing with and what I was advising a Minister on. If you lose that, it seems very uncertain—and I still do not know from going through the transcript of the Committee's hearings so far—as to who is familiar with the fine detail of those contracts, other than perhaps partially consultants, one on finance, one on accounting and so on. It is just too fragmented.

CHAIR: Our time has expired. One last question from Mr McLeay.

Ms LEE RHIANNON: Sorry, the witness wanted to add a point. Can we hear the rest of that?

CHAIR: We had already covered that issue.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The witness just wants to answer the question.

Ms LEE RHIANNON: The witness wants to answer.

CHAIR: We have already covered that particular point.

Professor WALKER: I just draw your attention to the comment on page five, the probity auditor apparently failed to address the question that the contract summary did not reflect the results of the public sector comparator, and that raises questions about the terms of reference for the timing and methodology followed in the so-called probity audit. They simply focus largely on the deal between government and the operator and there does not seem to be a comment as to whether the contract summary tabled in Parliament, the basic instrument of parliamentary accountability, is fully and adequately addressing the issues. I recall again my note that I had been unable to obtain copies of the Auditor-General's report on the contract summary for the Cross-City Tunnel.

Mr PAUL McLEAY: We were talking before that all things being equal, 16 per cent was a guarantee. Clause 2.2 of the deed says that the revenue risk lies solely with the operator, and therefore there is the capacity for them to lose millions of dollars. The risk is theirs.

Professor WALKER: Mr Moss of the Macquarie Bank has told the *Economist* in London that the Macquarie Bank chooses to invest in projects that have the features of a monopoly.

Mr PAUL McLEAY: So, clause 2.2 does I the revenue risk is fully with the operator. So, all things being equal there is capacity for the private operator to lose substantial money?

Ms CON WALKER: But, according to the experts who have already been the before Committee, there is very little risk. In fact, they are sure that within two years there will be much profit going to the operator.

(Short adjournment)

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SUZANNE LORRAINE O'CONNOR, former member the Kings Cross CLG, sworn and examined:

JOHN OULTRAM, Architect, former member of the Kings Cross CLG, and

MALCOLM BRUCE DUNCAN, Barrister and chairman of the Taxation Reform Party (NSW) Inc., affirmed and examined:

CHAIR: Are you conversant with the terms of reference of this inquiry?

ALL WITNESSES: Yes.

CHAIR: Do you have an opening statement?

Mr DUNCAN: I have a brief one. The history of public-private partnerships in New South Wales is a long one; it goes back to the second fleet. They have always been a disaster. The second fleet killed far more people than the first fleet and nothing seems to have changed. I would like to clear up a couple of points. There is a report in the *Sydney Morning Herald* this morning suggesting that Ms Rhiannon said that Mr Iemma and his ministers should attend this inquiry because they signed the deal. I hope she was misquoted because that is not true. One of the things I would like to direct the committee's attention to is the question of taking responsibility for this deal. It is something that, on my investigation of the documents, was not put in detail to either the then Premier or the then Treasurer. I have covered that in my submission.

Something that Mr Chesterfield-Evans keeps harping on is the MAEs in the contract. It is not true on any reading of the contract that the Government would be unable to construct a rail link in competition with the tunnel. What is true generally is that it could not construct a competing road link. That is the case for the next 30 years, which in my view is lunacy. Rather than talking only about community consultation experiences I would like to direct the committee's attention — and I have done this in my submission — to more important policy considerations. First, some serious constitutional questions arise out of this issue. How is responsibility for this sort of project to be supervised by the Parliament; not the Government, not the Executive, but the Parliament? These funding measures, which allow what are effectively corporatised public bodies to raise their own money, mean that there is little or no parliamentary scrutiny. From a public policy point of view that is a bad thing.

The question then arises: Should the public have access to what is proposed in the contractual arrangements? I have dealt with that in my submission as well and proposed a model that I think would work to allow the contractual negotiations to remain confidential until such time as heads of agreement were reached, at which point they would then be made public and the details of the contract would be subject to public scrutiny. In my view that would be a good thing: it is the way the commercial world often operates, and there is nothing to prevent it.

The traffic modelling that was the basis of this entire project is obviously completely and unutterably flawed, and the Committee has to do something about making sure that no projections like that are allowed again. The RTA is alleged to have stated that the members of the community liaison groups approved of various things that were done in connection with the project. That is not true. My colleagues can talk about that. Ultimately, the Committee must make recommendations about the way in which projects of this type are conducted and the way in which control and scrutiny can be exercised over them. That leads me to community consultation. With your leave, Mr Chairman, I wish to table a local newspaper.

Document tabled.

CHAIR: Is that a newspapers article?

Mr DUNCAN: Yes. It is a letter from the Greens candidate for Sydney, Counsellor Chris Harris, and a reply from the editor of the newspaper. He is complaining about the surface traffic changes in a small area of East Sydney. This is one of the great difficulties of community consultation: If one takes into account the opinion of a very limited number of people — it is clear the

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RTA has done that in this case — one gets a distorted view of the community's opinion. This is a good example of a limited viewpoint in relation to a general project. That is why I have tabled it.

CHAIR: We will have to move on to the questions. There appears to be some overlap in the membership of different community groups. Can you indicate how much of an overlap there is and how many people at the table are members of a number of different community groups with an interest in the cross-city tunnel?

Ms O'CONNOR: At the beginning of the process I was secretary of 2011, and then because of work commitments I stepped down. However, I remain a member of that organisation. That is the only community organisation to which I belong.

Mr OULTRAM: Prior to the instigation of the CLG I was a member of the CTAG, which is a local action group. However, I did not play any formal part in the proceedings; I simply attended meetings and had discussions and email traffic with it.

Mr DUNCAN: There is a certain amount of overlap. I was originally the president of the Chamber of Commerce, a member of 2011 and a resident. People in the area tend to get fairly involved.

CHAIR: When you say you are "former members" is that because the liaison group itself was closed down because the tunnel was completed?

Ms O'CONNOR: It was closed down on us; we did not choose to close it down. We were told our usefulness had come to an end.

Mr DUNCAN: It was more of an execution than a Gowings sale.

CHAIR: Did you see an ongoing role for the liaison group in view of some of the problems with traffic blockages and so on?

Mr DUNCAN: Not only that. The project requirements involve a review after six months. It was of considerable concern—which I expressed and which is recorded in the minutes of the last meeting—that the Committee should continue to meet to be able to assess the effects six months down the track. We were deliberately closed down so that we could not do that because we were effectively a pain in the arse.

CHAIR: No other group took your place?

Ms O'CONNOR: No.

CHAIR: There was a vacuum.

Ms O'CONNOR: Yes.

Mr DUNCAN: There may be an argument that the central group is still running. I am not sure about that because no minutes have been posted on the web site since July.

CHAIR: What efforts did you make to provide feedback on the CCT project before the CLGs were established when the project was in its conceptual stages? Were you involved in that earlier period?

Mr OULTRAM: I took a note, or had a look at the CCT documents in the local library that were published for general comment. I also attended several public meetings at which the RTA presented the various schemes that it was putting forward.

Mr DUNCAN: My answer to that is "No." But the reason is that I do not think it was sufficiently widely publicised. The project had been mooted for a very long time, and one gets rather tired of government by press release, which simply means re-announcing the same project over and again. It is one of Mr Carr's hallmarks.

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Ms O'CONNOR: I tried a number of times to look at the proposed modal at the alleged information section the RTA had set up, but it was always closed so I could not go in.

CHAIR: In your opinion you were not supplied with information on which you could base a considered opinion?

Ms O'CONNOR: No.

CHAIR: Was it difficult to get information?

Ms O'CONNOR: Yes, definitely.

Mr DUNCAN: Not only that but also because the project changed so many times with the original portal suggested at College Street and then ending up at Rushcutters Bay. It is still my contention that the project as built has never been publicly discussed.

CHAIR: What was the involvement of each of you in the liaison group? What did you do at those say monthly meetings?

Ms O'CONNOR: There were monthly meetings for at least two hours, on our own time, from 6.30 to 8.30 every Monday. We naively assumed that there would be discussion about the impact. We are all people who live and work in the area. As I said in my submission, a number of times when we brought up examples of potential difficulties our suggestions and comments were treated with contempt, and were rarely tabled in the minutes. So, in fact, we very quickly began to feel that we were the token community, and that consultation really meant instruction—hopefully to bore us so that we would not keep turning up at these monthly meetings, which went on for a number of years.

The rest of the members were being paid overtime; we were giving our own time. As well as that, we became very much involved with additional meetings of smaller groups. As I said in my submission, our particular liaison group, even in its own time, and with expert advice, designed a preferable portal for the Rushcutters Bay exit. Reluctantly, and after six months, the RTA agreed to this better design. It has actually executed that design using very unpleasant materials, so that it looks shabby, but that is the depth at which we were willing to become involved.

CHAIR: Who actually conducted those meetings? Who was the chairperson?

Mr DUNCAN: There was yet another consultant brought in. Eventually, the final chairman of our committee was Bob Gaussen from Mediate Today. He is in the mediation racket. They produced that as an attempt to show that there was somehow a chairman who was somehow independent from any of the proponents. However, when Suzanne talks about redesigning portals and also some traffic redesign that was done on the Rushcutters Bay end, those meetings were chaired by RTA officers, and various so-called presentations were made of PowerPoint things and diagrams and so on and so forth. Some of those meetings went for hours and took a very long time. Designing the traffic flow across the lanes of the exit from the eastern portal was very difficult, and it is still not satisfactory. In some cases, traffic has to cross five lanes of traffic in a very short space, and it is really not safe. But there is probably no other solution.

CHAIR: How could community consultation have been improved—say for future projects?

Mr OULTRAM: I think it was important that the committee was set in place, having worked on the other side of these things and knowing how difficult they are to run and operate. But this particular committee had a considerable amount of expertise, and if the RTA and the other proponents of the scheme had been more willing to take into account local knowledge and feedback from the community, the scheme would have been improved far more quickly and there would have been far less resistance to some of the things that they were doing.

Ms O'CONNOR: I said in my submission that the basic problem is that, although the phrase "community consultation" is warm and fuzzy, no-one has actually defined it, and it would have been

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far more helpful if we had had a set of criteria: this is what community consultation is, this is what we can do. I do not mean a jargon-ridden mission statement; I mean a set of very clear guidelines. And if, out of all this unpleasantness—which ultimately is what happened with this ELG—comes a clear set of guidelines, then at least it has all been worth it, so that nobody else has to go through what we went through.

Mr DUNCAN: And that is what I would ask the Committee to do: to make a recommendation about a model for community consultation. I had a copy of a document delivered to the front desk, and I hoped it would have been distributed by now. Apparently, it has not been.

Mr MATT BROWN: It has.

Mr DUNCAN: The BHP model?

Mr MATT BROWN: Yes.

Mr DUNCAN: Thank you. In my view, from the limited time I have had to research it, this is a particularly good model of how to consult a community. One of the most important things about community consultation is to listen. If people make constructive, sensible suggestions—as many people did on these committees—they should not simply be dismissed out of hand. That is precisely what happened. People then not only feel that the process is a waste of time, but they actually feel valueless themselves. And that is not good public policy.

Document tabled.

Mr ANDREW CONSTANCE: What is your understanding of the changes in the design of the portals? Do you understand why those changes happened, and what the reason was behind them?

Mr OULTRAM: I was quite involved in that. I was on a sort of subcommittee, if you wish to call it that, which played quite a big role in looking at designs with the tunnel's designers. The committee had expressed concern that the tunnel portal was going to be a rather bland and uninteresting structure—similar to what has already been done on the eastern strip shaft—and we considered, because of the scale of the project, that it merited more attention. The tunnel's designers came forward with some proposals that we thought were very lacklustre, and the community came forward with an alternative scheme, which we thought was a quite viable option but it was rejected by the RTA. However, it did seem to trigger a more serious look at the design of the tunnel, and a considerable amount of time was spent between us and the tunnel designers in coming up with the solution that you see there now.

Mr ANDREW CONSTANCE: Are you aware that there are required standards in place for tunnel design relating to everything from the incline of portals and those types of things?

Mr OULTRAM: Yes. That was discussed at length—smoke safety, and so on and so forth.

Mr ANDREW CONSTANCE: Do the standards set for this project meet those requirements?

Mr OULTRAM: I am sorry, but I am sufficiently technically aware to make comment on that.

Mr DUNCAN: The pure engineering probably does. But, when you get to considerations outside engineering, I mean, engineers are lovely people, but if you give them a project they will just build the project. They do not then go and think about what happens at either end of it. That is one of the great difficulties. They obviously had some difficulties with occupational health and safety matters in the course of construction of the project. But, going back to your earlier question, were you asking about the design of the portal, or the fact that it shifted from College Street to Rushcutters Bay?

Mr ANDREW CONSTANCE: I was asking about the design of the portal specifically. If there were changes to design, I can only presume that was due to attempts at cost savings.

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Mr DUNCAN: They did agree to spend a bit more money than they had originally intended as a result of community input, but it was not much more. And they were very cost conscious at that stage.

Mr OULTRAM: Design changes were resisted because they would cost more money.

Mr ANDREW CONSTANCE: Were there any changes in terms of the nature of the inclines of the tunnel?

Mr DUNCAN: That is why the portal was shifted from the entrance to the existing Kings Cross tunnel to where it comes out now. In order to bring the tunnel out at the entrance to the Kings Cross tunnel, the incline was such that the road could only be rated at 60 kilometres an hour, and that meant that the project was economically unviable. They needed an 80 kilometres an hour rating in order to make it pay, so the portal was extended so that the incline could be flattened out. If you go through the 40 or 50 boxes of papers that are sitting in there, you will discover that—as I did, to my pain.

Mr JOHN TURNER: By way of quick observation: you are not alone in the method by which you have been dealt with by the RTA. My electorate at present having an upgrade of the Pacific Highway through it, and many constituents are in tears about the way they have been dealt with. But, leaving that aside, I notice that at least two of the submissions, and perhaps all three, contain references that younger RTA representatives were polite and informative, and you draw comparisons with the more experienced representatives. Firstly, would you enlarge on that? Do you see that as a good-guy-bad-guy approach by the RTA? What do you think was the philosophy driving the young, inexperienced nice person in tandem with the older, more arrogant?

Mr OULTRAM: The younger staff were basically trying to do their job, but seemed to be at all times very conscious about releasing information to us. Also, everything had to be taken back to somebody else. However, the more senior staff were extremely dismissive of any ideas that we put forward for improvements, or for carrying out further research or investigation into issues that we regarded as quite serious problems—problems that were addressed eventually, thank goodness. That attitude was very disappointing. It meant that, when dealing with the junior members at the committee meetings, although they were perfectly polite and very nice people to deal with, and we got on very well with them, one felt that it was a complete waste of time in terms of actually getting an outcome if there was a serious issue to be addressed.

Mr DUNCAN: And that is something that comes back to the question of who is going to be responsible and who is going to be accountable, because those at the lower levels always have to account to someone higher, who is the decision-maker. So, attending the meetings was part of their job, and they attended the meetings, part of their job was taking suggestions back, and the other part of the job was telling us that the suggestions had been rejected.

The Hon. GREG PEARCE: Was anyone on your group told that the RTA was going to receive an upfront payment of \$97 million at any stage? Were you aware of the upfront payment?

Mr DUNCAN: I do not recall that. I think the first I noticed about that was either when it became public or when I was reading the documents in the Council office. It appears to me as though the entire project was driven by the RTA's desperate need for money. That is ridiculous, because all the money it got upfront it spent on tunnel works anyway. It is really a very strange accounting system.

CHAIR: Did they explain to you at any point about these road closures or diversions so that you could comment on what was being planned?

Mr DUNCAN: No. In fact, that is one of my major criticisms of the secrecy of the contract. One does not find anything that would suggest that clause 18 and clause 19 were in the contract in the form that they were. There were plans out that showed William Street being narrowed and various bits and pieces, but mostly they were buried in maps at the back of EISs and things like that. As I say, even from the supplementary EIS, the project itself changed anyway. But to have suggested to the community at the beginning that for 30 years we were going to have William Street effectively one

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lane each way, with all of the associated clogging and bottleneck changes that have gone on around the area, would have caused an open revolt. We would have staged our own Vinegar Hill.

Ms O'CONNOR: As it was, any information about traffic was in jargon about "traffic calming". They were very keen on traffic calming, which apparently is jargon for funnelling. So there was a lot of jargon, a lot of English being abused, again I think, as John said, in an attempt to keep the implications hidden.

CHAIR: Was it made clear that the city council was mainly responsible for the William Street changes? Did the RTA see itself as responsible for that, and did not tell you about it then?

Mr OULTRAM: It became obvious later on that that was going to be the responsibility of the city council. But, in the initial stages, I think we all assumed that was part of the consortium's work.

CHAIR: Were you given the opportunity to give feedback on the William Street changes, the narrowing of the lanes?

Mr OULTRAM: Not in the later stages.

Mr DUNCAN: That is part of the perennial problem. Because of the third tier of government in Australia there is a constant toing and froing about what is a regional road, what is the council's responsibility, what is the RTA's responsibility. Then, of course, a lot of legal questions arise. Once the RTA becomes a proponent of a project like this, who does the land vest in, who has the responsibility for this particular road or that part of the project? They are complexities that seemed to have been skipped over largely. I think part of that is the unfortunate trend that modern governments have, and this is of all complexions—and I do not really want to speak against the private legal profession terribly much—of farming these sorts of things out.

The danger that arises out of that is (a) a loss of corporate knowledge within the organisation itself and (b) the consultants only consult to the extent of the brief. Now, if their brief is to draw a contract, and Clayton Utz's brief was, they draw a contract and they draw it within the parameters of their instructions. They do not sit down, as I think the RTA should, and say, "Well, we are going to build a project. What are the consequences of that project on the surrounding areas and, ultimately, what are the consequences of that in an economic sense for the State budget as a whole?"

Ms LEE RHIANNON: When Mr Forward, the former Chief Executive Officer of the RTA, gave evidence he said that a lot of people were calling for road changes before the tunnel was built. We also heard similar evidence from the former Premier Mr Carr is said that there was great support for the road changes. I appreciate the evidence you could give as locals. Is there strong support or any support for the road changes that they have alluded to?

Mr OULTRAM: Because I live in Rushcutters Bay, certainly I do not think there was any great feeling in that area about changes in the Woolloomooloo area. Most people were concerned about the local impact of the tunnel and, further on, the changes that would occur in traffic volumes in local streets, New South Head Road, Mona Vale Road and Ocean Road. The problems that may be caused through Paddington, there was quite an effective lobby, I think, in the early stages of the project. So it was the concerns beyond the portal mouth and, from my perspective, the concerns of local people.

Ms LEE RHIANNON: You are saying there was support from some sections?

Mr OULTRAM: The people in Paddington, I think, were supportive of the idea of trying to funnel traffic into the tunnel to try to avoid people running through Paddington in order to get to the tunnel, not to bypass the tunnel.

Mr DUNCAN: The Paddington Society effectively did a deal whereby Clover Moore championed their push to keep Paddington as traffic free as possible. They are interested in their own area and that is where the support is. Beyond that I do not think there is very much support at all, although there is a small but vocal group down in East Sydney, which is pushing a particular line,

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which seems to be largely popularly unpopular. There have been petitions taken up opposing the scheme that they and the Lord Mayor proposed. It seems from the best information we can gather that the feeling is against such street closures. If Mr Forward wishes to make such assertions, and I have read his evidence, I would like to see the facts that back them up.

Ms O'CONNOR: My anecdotal evidence is increasing anger and frustration because the work is still going on. Suddenly overnight, like mushrooms, concrete barriers are built. So at the corner of Darlington Road onto the run down to William Street suddenly a whole lane has just been cut off. It is the RTA striking again, like the forces of darkness. I too would like to meet these people who support this. I think it must be very comfortable from the extreme comfort of retirement to believe that people approved of the closures and the changes.

Mr DUNCAN: You would have to understand as well that Darlington Road, for example, is not a contractual requirement. It is not a MAE. Reversing it would not trigger compensation, it would just make the public happy. But who cares, it is not a Lbor electorate.

Ms O'CONNOR: Besides, we live in Kings Cross so we deserve what we get. We were told that a number of times. Most of the RTA seems to live in Baulkham Hills. Their attitude was, "You live in Kings Cross. You are not really worth worrying about."

Ms LEE RHIANNON: I am interested to know more about the road closures and when you heard about them. You have covered some of this in your evidence so far. I am interested about the meetings you went to and was this information presented to you at any stage or was it that you just came across it in the EIS yourself. I am interested as to whether you were ever told about any aspects of those closures or narrowing?

Mr DUNCAN: At some stages we were, but very late. It would be true to say we were expected to burrow through things for probably the first 18 months.

Ms LEE RHIANNON: When you say very late, Mr Duncan, was that after the tunnel was opened?

Mr DUNCAN: No, towards the beginning of last year when we were still having meetings, between January and July. The first thing that came up was the closure of Bourke Street, which just gob smacked everybody. They claimed that that had popular support. It has the support from a group called ESNA, and you will be hearing from some of them later. It has no support, as far as I can see, from anyone else and it does not make any sense. They just closed that. We found out about that and then we were told we had approved of it. We had not. We did not know anything about it and they claimed that there had been community consultation. If there had been community consultation it certainly was not with our CLG. The next thing—and this gob smacked me, I find out that this was flagged early on, I think in the original EIS but I had missed it—I am just flabbergasted about the bus lane in Druiitt Street. Who is the moron who came up with the idea of stopping traffic going on to the western distributor, I do not know but I would love to find out and have a chat with him.

Ms LEE RHIANNON: To conclude, the local residents outside your committee did not receive flyers or letters from the tunnel consortium or the RTA informing them about these changes?

Ms O'CONNOR: We brought that up a number of times. The RTA admitted they had contracted the distribution of the flyers. We do not know where the flyers have gone because nobody in my community—and that includes a school and residents, and we know a lot of people in the area—nobody we know in private houses or apartment buildings or businesses has ever seen one of these flyers. They have the status of the Holy Grail.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do they exist?

Ms O'CONNOR: Apparently.

CHAIR: We will move on to the Government members.

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Mr DUNCAN: They did exist. If I could just add something to that, the great difficulty in our area, and I have letterboxed it twice, is that most of the buildings are security buildings. So you cannot get leaflets into them. Yet they were saying, "Because we have contracted this distribution it must have been done." We did not see it happening.

Mr MATT BROWN: Thank you for appearing. You are aware that a number of changes were actually made to the project as a consequence of the participation of the Community Liaison Group?

Ms O'CONNOR: Our group or all the groups? There were four different groups.

Mr MATT BROWN: Predominantly the Community Liaison Group.

Ms O'CONNOR: There were four Community Liaison Groups.

Mr DUNCAN: Five.

Ms O'CONNOR: And we never met. So we do not know. We were kept apart.

Mr MATT BROWN: I understand that there were a number of changes suggested by the community liaison groups.

Mr DUNCAN: We have just told you about some of them.

Ms O'CONNOR: Could you give another example perhaps?

Mr MATT BROWN: You spoke about the green portal feature constructed there, the median constructed on Bayswater Road to restrict access to through traffic on that residential street and to improve the safety of traffic on Bayswater Road, two southbound traffic lanes that were maintained in Ward Avenue down to Craighend Street, and additional parking was provided in Bayswater Road and other local streets.

Mr OULTRAM: Those are positives that came out of our CLG.

Mr DUNCAN: There were discussions about parking spots. I have said that in my submissions. The difficulty arises out of things like this. Can I quote from a letter from Clayton Utz dated—

Mr MATT BROWN: Your evidence was indicating that there were no positives through the liaison group.

Mr DUNCAN: No, we did not say that. In fact, we have said that the eastern portal was redesigned with input from the committee, and so were some of the lane changes down in Rushcutters Bay. They are still not satisfactory, but at least they listened to us on that. But on other things that were more important, to take a perfect example, the roundabout that was temporarily installed at the intersection of Sir John Young Crescent, Yurong Parkway and St Marys Road. It worked perfectly. It took out the lights. During the whole of the construction of the project the entire community was happy with it; it worked brilliantly. But what did they do? They said, "We are putting the lights back." We said, "Do not put the lights back. Everybody loves the roundabout." "We are putting the lights back."

Mr PAUL McLEAY: You have to acknowledge that there are competing interests with, as you said, five different CLGs and that it is a balancing act.

Mr DUNCAN: No, there is not, because you have to understand the nature of the divide and conquer plan. If I can answer your question, the five CLGs were: the eastern group, our group, which only dealt with the east; the Sir John Young Crescent group which I was originally on, which only dealt with Sir John Young Crescent; the southern which only dealt with the southern approaches; the western which only dealt with the western approach; and the air quality control CLG which only dealt with air quality control. There was one meeting at which all of those people were invited for a meal

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and to be talked at. Apart from that, we did not meet unless we contacted one another. When we contacted one another we found that we were being given different information.

Mr MATT BROWN: You indicated that the EIS was not widely publicised. I understand that the road closures were in the original EIS as well as subsequent supplementary EISs.

Mr DUNCAN: Some of them were.

Mr MATT BROWN: I understand that the EISs were on the website and advertised through brochures everywhere. In fact, tens of thousands of brochures were sent out. There were shopfront locations and posters around the place. How could you not be aware of the road closures?

Mr DUNCAN: Quite easily. Do you read every newspaper in New South Wales?

Mr MATT BROWN: I do not.

The Hon. AMANDA FAZIO: We tend to read the local ones.

Mr DUNCAN: You tend to read the local ones. If it is in the local one you might manage to see. If it is in the Herald you might manage to see it, although there is a fair bit to compete with in the Herald. You might go to Town Hall once a week to check every DA. Not everybody does. What your task as a committee is—

Mr MATT BROWN: If I was an interested resident I would look up the EIS on the website.

Mr DUNCAN: Not everybody has a computer, my dear fellow.

Mr MATT BROWN: They have access to one.

Mr DUNCAN: No, they do not. Some people are blind and deaf.

Ms O'CONNOR: The other thing is at the beginning of each meeting the first 18 months we were given all the information at the beginning of the meeting. We had to ask for 18 months would they at least give us the information a week beforehand. When you are given that much paper to read at 6.30 on a Monday night, that is not satisfactory.

Mr DUNCAN: We were not the given copies of the EIS.

Ms O'CONNOR: As I said to you, the shopfront was frequently the shop closed.

The Hon. AMANDA FAZIO: Ms O'Connor, I want to ask you a few questions about the actual process of being a member of the CLG. You stated in your submission and in an earlier response that you felt that there was no clear definition of what community consultation was. As a member of the Kings Cross CLG were you actually given a copy of the charter and procedures for the CLG and the way in which was to operate?

Ms O'CONNOR: We were given that at the first meeting along with the incorrect map, as I mentioned, yes—but again the general jargonistic bureaucratic language. We asked at a number of the meetings, "Can you give us clear guidelines about what we can do, what we cannot do. Please guide us." We were never given any such clear document.

The Hon. AMANDA FAZIO: Did you understand that the role of the CLG was not to reopen the approval for the project or to make decisions but to make comments and recommendations about the implementation of the development and environmental management plans?

Ms O'CONNOR: Obviously.

The Hon. AMANDA FAZIO: Was it also made clear to you that the role of the CLG was limited to just the construction phase of the project?

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Ms O'CONNOR: Yes, but again the point we keep making is that that sounded as if it was consultation. There was for months and months of meetings no genuine consultation.

Mr OULTRAM: There was also some level of expectation that there would be some desire to bind it. Obviously any project which is at that stage of approval is the subject of considerable documentation following the approvals process. It was hoped that the community could provide some feedback on that, based on their local knowledge. That is an area in which was made very clear to us very quickly that we would not play a role in.

The Hon. AMANDA FAZIO: Ms O'Connor and Mr Oultram, could you explain or tell us—because there are always different viewpoints within a local community about what should proceed or what should be changed—given that there is always a range of issues in any local community, how you ensured that the views that were put forward at the community liaison group [CLG] meetings were representative of their local community?

Mr OULTRAM: Just by talking to local people, putting the notices up on our building and noticeboard. It is very difficult. We neither have the reserves nor the time to actually canvass opinion on every issue that came before the CLG. Obviously the CLGs were open to any local person to join when they were being set up, but because we have some knowledge of it, we put ourselves forward and were chosen. But I think it would be foolish to assume that we were representing every single person's interest in the surrounding area.

The Hon. AMANDA FAZIO: Could I also ask Ms O'Connor and Mr Oultram, given your experience on the CLG, have you ever been involved in any other community liaison groups or community consultation processes, or is this the only one?

Mr OULTRAM: Only on the other side of the fence.

The Hon. AMANDA FAZIO: If you were looking at establishing community liaison groups, given the experience that you have had in this instance, how would you ensure that the many competing demands from different parts of the community were resolved? What other improvements, apart from Ms O'Connor's suggestion that there should be clearer guidelines available, would you recommend to try to improve the CLG process?

Ms O'CONNOR: Perhaps sincerity and a genuine desire to hear from the community would be a nice start. I would suggest that you have some people—there are lots and lots of bureaucrats and consultants who actually consult the established community groups. In all my time as secretary of 2011 and the subsequent secretary's time at 2011, we received no correspondence about this project. That would seem to me to be very basic. The reason I joined the CLG is I read about it in the *Herald* and found the advertisements.

I also teach at St Vincent's College where a third of those students are boarders. They are there seven days a week. They live in the area. No-one at the school was asked to consider to become part of the CLG. Again there seems to have been very much a tokenistic walking through consulting-ness. I think there needs to be a sincere and genuine involvement in the community, a deep knowledge of the community groups. You are quite right: of course some community groups are going to disagree. That is the nature of the community, but it is a very densely populated community and far more groups, both at community level and as individuals, should have been contacted initially. Not everybody reads the small print in the *Herald*.

CHAIR: Our time has expired for this segment. Did the Hon. Dr Arthur Chesterfield-Evans have an urgent question?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes, about public transport.

Mr JOHN TURNER: That is not an urgent question.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Does your reading of the material adverse effects [MAEs] and also the response from the Cross City Tunnel Consortium suggest that

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public transport can be developed as long as it does not impact on the lanes of the road? Is that your understanding of the situation?

Mr DUNCAN: It is not quite that simple. The MAE is triggered by the reversal of any contractual road requirement. For example, changing the configuration of William Street would be an MAE trigger and there is another one which worries me. This is a letter from Clayton Utz dated 11 October 2005 to Wielinga which says that the RTA is considering removing the concrete medians that are now in place in Woolloomooloo. Clayton Utz's opinion in respect of that is that that would be an MAE. The removal of those concrete barriers would be a trigger for compensation for the tunnel operator. I am quite concerned about that because that traffic configuration just has to be changed.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: MAEs have never been challenged in court, though, have they?

Mr DUNCAN: I do not think they existed before this series of contracts. I am not aware of any case that has brought them up. The contract is a little strangely constructed in that an MAE trigger would require negotiations between the RTA and the tunnel operator to see whether they could resolve their differences. One possibility is that it might extend the length of the operator's time controlling projects, so it might go from 30 years to 50 years or something like that, but if they are unable to resolve their differences, then the operator is entitled to argue that it should be compensated. Horrifyingly, it is clear from Mr Forward's memorandum of 13 October last year to the Minister that that trigger could result in the Government having to subsidise the tunnel operator to the full extent of its profits, which, over the time of the project is \$5.808 billion.

CHAIR: We have to conclude now because we have run over our time. We thank you very much for appearing before the Committee. We thank you for the time you have spent on the consultative group, even if you feel frustrated, and for your good citizen's desire to assist the State. We appreciate your interest and your willingness to volunteer.

Ms O'CONNOR: Thank you.

Mr DUNCAN: Thank you.

(The witnesses withdrew)

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CHAIR: The next witnesses have distributed five items: "Inquiry into the Cross City Tunnel—Statement", Darlinghurst Business Partnership, *Herald* barrier evidence, cross-city tunnel maps, a statement by the Residents of Woolloomooloo [ROW] Action Group, and another indicating traffic flows and frequent wheel spin points.

Motion by the Hon. Amanda Fazio agreed to:

That the documents be received, and be made public.

JO HOLDER, Co-convenor, Action City East, and

STACEY LEE MIERS, Member, Residents of Woolloomooloo [ROW], and

STEPHAN RUBENOW GYORY, Communications Director, Darlinghurst Business Partnership, affirmed and examined:

JULIA PERRY, Co-convenor, Darlinghurst Residents Action Group, and

CAROLE RAE FERRIER, Member, 2011 Residents Association, sworn and examined:

CHAIR: Are you conversant with the terms of reference for this inquiry?

ALL WITNESSES: Yes, I am.

CHAIR: Do you wish to proceed straightaway with the PowerPoint presentation?

Ms HOLDER: Mr Chairman, with your permission, we would like to read our submissions en bloc and then take questions at the end of all five presentations, again en bloc.

CHAIR: The document I have just received, that is an additional one, is it—"Inquiry into the Cross City Tunnel—Statement"?

Motion by the Hon. Amanda Fazio agreed to:

That the document be received, and be made public.

CHAIR: I just want to clarify what has been said. You do not want to read all the statements now?

Ms HOLDER: Each of us will read a statement from each of the organisations that we represent, which is a summary of the key points in our submissions to the inquiry. Action City East, or ACE, is an umbrella group representing four resident and business groups in the area broadly covered by the 2011 and 2010 postcodes. The groups are: 2011 Residents Association, Darlinghurst Resident Action Group, Residents of Woolloomooloo and Darlinghurst Business Partnership. In total, our groups have between 400 and 500 members. The primary objective of ACE, and the thrust of my submission before you, is to achieve the re-opening of roads and the removal of traffic obstructions that would not lead to the triggering of the "adverse financial liability provisions"—the MAEs—of the CCT contract. Each person on this panel will speak to different aspects of these punitive closures and their impacts.

Let me make it absolutely clear: The road closures and road "changes"—a euphemism introduced by the member for Bligh—that have been forced onto our local area have made life for people much less amenable. These forced road "changes" number around 71 completed or scheduled. You cannot underestimate the trouble and difficulties that these closures have caused. There has been no advantage to the people of city east from the opening of the tunnel. Trapped as we are between two entrances, the road closures have created Berlin walls. The tunnel is of no practical use; people do not use it. My written submission states that in fact the CCT has failed to meet its primary objectives at all. I ask you to please read the amended version that was submitted.

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In particular, for public transport—public buses—traffic is much worse. The totality of traffic problems, related pollution and the social and economic disadvantage caused to the City of Sydney and its adjacent neighbourhoods, like Kings Cross, Woolloomooloo and Darlinghurst, have not decreased. Clearly they have become much worse. The tunnel was designed to ease traffic problems for the city. It has had the opposite effect. We realise, however, that the tunnel and its infamous contract is a political *fait accompli*. This inquiry is merely putting a soft-focus lens onto a catastrophe. But, given the small room to manoeuvre, what we want you to consider is to undo at least some of the mess that has been created.

In our submission we have stressed that the consultation process leading to these disastrous outcomes for New South Wales—keeping in mind that the inner city is the engine room of the State economy—was fundamentally flawed. We gave clear factual examples. The community liaison groups were tokenistic and undemocratic. The common story of those who participated was of constant manipulation and refusal by those with the information either to share it with the public or to consider any substantive criticisms of the plan. Members were denied knowledge of the full extent of the closures. In any case, these meetings are only relevant to the narrowing of William Street but are irrelevant to other closures and restrictions in Woolloomooloo, Kings Cross and Darlinghurst as most of these closures were not finalised until late 2004.

It is therefore ridiculous to claim that these closures were "widely advertised". In fact, the substantive periods for advertising only related to the 1999 EIS and the second EIS in 2002. There was some limited advertising of the Bourke Street closures. As we know, it was not until 1 November 2005 that Sir Laurence Street released the important documents and the public finally had a clear picture of the full extent of the sell-off of public roads to a private monopoly. These documents flushed out grave concerns about the way toll road businesses operate and sparked a debate about the benefits of privatisation. This is not the concern of our groups.

We have outlined in writing how our groups and our area were not consulted—and indeed how we tried to raise the alarm beginning in February 2005 about even what little knowledge we had about the scope of the road closures proposed by the CCT-RTA consortium on the one hand and by the Lord Mayor of Sydney, and member for Bligh on the other hand. In fact, as we submitted to you, our only consultation was an informal invitation to meet with CCT-RTA representatives on 15 December 2005 about closing Bourke Street. At that meeting we were told that the report was already completed and on its way to the Minister for Planning. Our letter subsequently, written on 8 February, was completely ignored by the RTA, the Minister for Roads, and the member for Bligh, and Lord Mayor of Sydney.

The mood in city east is almost universally livid about the wilful obstructionist road closures. We have held three public meetings in Darlinghurst and Kings Cross: in June 2005 attended by over 150 people, in early August attended by 60 people and in October when 90 people attended. All of these meetings overwhelmingly carried resolutions calling for a proper traffic study over the entire affected area, an economic study into the effect of pedestrian and vehicular movement on local business and for a limited number of reasonable measures that could alleviate the worst traffic-jamming problems. We have presented a petition of 1,200 local names to city council and this Parliament calling for a traffic study to ensure relief from this mess. We are now circulating a second petition which already contains 1,600 local signatures. This calls unanimously for an end to the tunnel funnelling. It closes at the end of this month and will be submitted to you then.

We respectfully ask you to consider the following modest measures and stress that, the way we read the public documents, these would not create any liability to compensation to the operators of the tunnel. These are, first, to re-open Bourke St at William Street; second, to remove the ridiculous traffic-jamming measures at Kings Cross around the Coke sign; third, to re-instate access to the city from Woolloomooloo by removing concrete barricades at Cowper Wharf Road and to re-instate the roundabout at Sir John Young Crescent and full two-way access on Yurong Parkway; fourth, to initiate a full traffic and safety study of the city and city east; and, finally, to initiate a movement economy study. I particularly point out that Bourke Street, the Kings Cross and Coca-Cola sign works and Woolloomooloo are all works driven and implemented by the member for Bligh, and Lord Mayor of Sydney.

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The political consequences of this fiasco remain to be seen. At the moment people in city east are angry with many different people. Primarily, though, it is the responsibility of this Parliament and also of City of Sydney council to put right the chaos. We have modest and achievable goals. We have not come anywhere near achieving our objectives. We have been raising alarms about this now for a year. We have not succeeded in one single road reopening. They ought to be your objectives because they are real measures that can be achieved on a sound financial basis. I urge you to do what you can through this inquiry to encourage decision makers to assist us in these ways. Thank you.

CHAIR: Thank you very much, Ms Holder.

Ms HOLDER: These are the main measures.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Could you tell us what roads these are?

CHAIR: You just went through a moment ago the roads that you want changed.

Ms HOLDER: They are not actually in sequence. Perhaps, Stacey, you might like to read them as they come up on the screen.

Ms MIERS: That is Bourke Street just as you go onto the Eastern Distributor.

Ms HOLDER: We have already had half an hour. You have copies of these images. Perhaps we could come to them at the end if there is time. We can get through the rest of our en bloc presentations now.

CHAIR: Yes. Ms Miers.

Ms MIERS: I am speaking on behalf of Residents of Woolloomooloo [ROW], who seem to have been the most disenfranchised in the consultation process associated with the CCT. Predominantly the issues for us are about access in and out of our suburb, particularly the Bourke Street closures, and the ongoing problem of increased traffic on very small local roads due to those closures and the proposed closures of Liverpool Street and some other local streets in Darlinghurst. ROW has been around since 1973. It was very active and came about through the impacts associated with the green bans, then the eastern suburbs railway and Eastern Distributor and now the cross-city tunnel. It is a small group of residents—it has about 30 people in its membership—and it is really focused on Woolloomooloo.

I think the primary issue for us is that there has been this ongoing process of Woolloomooloo experiencing the major impacts associated with these infrastructure projects that are about benefiting the broader community. But the one community that continually disbenefits from it is Woolloomooloo. Nobody feels that these major infrastructure projects should not go ahead; they are important and about social benefit in a broader context. But when they continually disadvantage one community to benefit others there is a problem, particularly for us.

As you can see from my one-page submission and the covering sheet attached to the submission, Woolloomooloo is actually quite a socially disadvantaged community, particularly if you look at the demographics in comparison with an area like Darlinghurst. Three per cent of Woolloomooloo's community are indigenous Australians. It is equivalent to Redfern. That is significantly higher than in its adjoining suburb of Darlinghurst. The socioeconomic make-up of Woolloomooloo is significantly disadvantaged compared with the adjoining suburb of Darlinghurst and its home ownership constituents are significantly lower than in Darlinghurst. It has a much higher rental population than most of Sydney city LGA but also, specifically, the adjoining suburbs. So it seems to me that there are reasons why the greatest impacts associated with these major infrastructure projects end up being on Woolloomooloo.

The issue for us is that we would like to see some access in and out of Woolloomooloo improved, particularly the reopening of Bourke Street. There are huge traffic problems currently in McElhone, Cathedral and the lower end of Bourke Street, Cowper Wharf Road. If anybody drives down any of those streets during peak hour they will know what I am talking about. I think the process

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of stopping residents from getting either into adjoining suburbs or into the harbour tunnel is a huge problem. Predominantly we are requesting that the parliamentary inquiry into the CCT establish mitigation measures to alleviate the accumulated and ongoing negative impacts by opening local roads and putting in place reforms that allow residents of Woolloomooloo to have ease of access into and out of Woolloomooloo and adjoining neighbourhoods.

CHAIR: Thank you. Ms Perry.

Ms PERRY: I will try to be quick. As I mentioned, I am representing the Darlinghurst Residents Action Group, which was established in 1974 and has about 140 members. I am co-convenor of that group. I live in Bourke Street, Darlinghurst and I want to use that street as an example of how the whole process has been managed. I refer you to the single-page map. The issue is point 1 on that map, which is where Bourke Street is currently closed. Before work started on the cross-city tunnel Bourke Street ran across William Street. You could go into the Eastern Distributor and go straight out of the city on the south side. You could go down to Woolloomooloo or across the harbour through either the tunnel or across the bridge or you could turn left or right on William Street. So you could go north, south, east or west very conveniently and people from the whole east Sydney-Darlinghurst area could use that to leave the area very efficiently.

It was temporarily blocked on the Woolloomooloo side of William Street for the construction of the CCT. What has now happened is that it is completely blocked off on the south side so we cannot go to any of those major routes without going down Crown Street, which is so congested it is hard to get onto, or over the King's Cross land bridge—both of which are much more time-consuming. We get stuck in traffic, causing a lot more pollution than if we could get out of the area quickly.

I just wanted to use the consultation over that as an example of how the whole consultation has been managed. I received notice of the meeting in Woolloomooloo in October 2004, which is when I first heard of the proposal to permanently block off Bourke Street. We were asked to vote on three options all of which involved some closure of Bourke Street. There was a group there, the East Sydney Neighbourhood Association [ESNA], who are appearing before the Committee tomorrow, who seemed to be pretty well briefed on the issue and there was a large majority of people like me, who were bewildered and alarmed at this new development but knew nothing more about it.

With these three motions about "which way would you like Bourke Street blocked" there seemed to be a lot of discontent. Somebody from the floor moved that we vote against any closure of Bourke Street, and that was carried overwhelmingly by the meeting but in all subsequent official reports of that meeting there was no acknowledgement of that vote. I thought that maybe I could not trust my own recollection but I have talked to other ordinary residents, including the person who moved that motion, and they confirmed my version of events. I went home quite happy because I thought: Well, there is an overwhelming vote against closing backstreet. But that was never acknowledged.

I have also found that only people in the very small area near that blockage were notified of this, and with a road closure you need to understand two passes along the road not just the people who live adjacent to the blocking area. Roads are different from a single building. In our subsequent efforts to draw attention to the problems we found it very difficult to find out whether it was a CCT-RTA or council decision. Everyone seemed to say it was the other one's decision and there was nothing they could do about it, but we have now found that the RTA and the CCT have no problems with us being able to turn at least into William Street. It was the council that actually wanted a complete block on William Street. We now believe that it was a council that instigated that with the CCT and the RTA.

Clover Moore finally said, on 12 December in a council meeting, that it was closed because of ESNA's concerns about street prostitution at the junction. If that is the real reason then we have two comments: one, that is not a sufficient reason to justify the enormous damage that it has done to traffic flows in the area; two, at that barrier there is now far more street prostitution, because it is a cul-de-sac and people can stop and park, negotiate, and buy and sell drugs. It has actually made the problem worse. We do not believe that cul-de-sacs are actually a way of reducing street prostitution; we think there are other policies.

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Our main concerns relevant to the CCT handling are the lack of transparency and who was responsible for various changes; the buck-passing between local and State governments so that you do not know who to try to see; the way that consultation has been managed so that a particular favoured group is taken as representing the community; and that what really happened at a public meeting was misrepresented to negate the community's real views and come out with the result that the people who ran that meeting wanted to see. We believe that the blocking of Bourke Street is one of the really major problems for the area, spilling over into congestion in those streets that remain open. We would very much like a recommendation that it be reopened across Bourke Street at least to allow turning into William Street.

Ms FERRIER: I am speaking to the submission also 2011 Resident Association Incorporated. We have 350 members. I live in Kings Cross Road and there are approximately 350 residents in my building. The Kings Cross land bridge, under the Coca-Cola sign is the major intersection in the area and the main entry-exit to hear the East—Kings Cross, Darlinghurst, Potts Point and Elizabeth Bay. Recently it has had to take a big increase in traffic as a result of the road changes in neighbouring areas—as the others have spoken about. Every road leading into this major intersection has been narrowed with a natural outcome of traffic chaos and build-up. It is on this little map.

Despite the public outcry about traffic funnelling, more roadworks commenced in November 2005 during the toll free period of the cross-city tunnel [CCT], narrowing all streets leading to the land bridge. As a resident I have never received any notice about these roadworks at the end of my Street. The 2011 Resident Association was never consulted by the city of Sydney council or by the Roads and Traffic Authority [RTA] about the roadworks. No-one in my building, and that is a lot of people, ever heard anything. As a member of 2011, I attended three public meetings, plus three meetings with the RTA, to find out who controls these roadworks, and never could we find out who was responsible. The answer was hidden from all community representatives.

On 15 December 2005, at a meeting with the Roads in Traffic Authority, city of Sydney council and a member of the CCT, the answer was forced from these people. It was confirmed that the Council of the City of Sydney is responsible for the works, contacted by the RTA with the roadworks performed by Cross City Tunnel Management. Phone calls, letters and appeals to the lord mayor are ignored. As a result these roadworks have proceeded without any community consultation, as has been the case throughout the whole CCT project. No-one is ever told anything. Action City East [ACE] would like to submit to the Committee this letter to the General Manager, City of Sydney Council dated the 31 January 2006, as an example of the bureaucratic obfuscation we have faced over the past three months.

The community wants the roadworks halted and the situation restored to what it was before. It worked! There was no need to change it. Now we have traffic banked up in all directions. During the week another set of concrete barriers was installed, taking out yet another lane. Darlinghurst Road is now banked up in peak hour right back to Oxford Street, which then impacts further back into Surry Hills. Macleay Street comes right back up to Kings Cross and Craigend Street goes back into Paddington, because no one can get down these narrow streets. The link to William Street heading into the city, which is way beyond the portals of the town, is now restricted to one narrow lane that has to be shared by buses, taxis, bikes, cars and fire trucks. When I was coming over here this morning the ambulance could not get through. It had to wait its turn.

That is what we have been stuck with. Today they are taking out one lane, a laneway with, yet again, no consultation. We have been trying to find out who authorised the works. All we got was buck passing from the city of Sydney council: It was them. No, it was us. It was them. These roadworks could be halted immediately. That is why I am here at this Committee to please ask: Can it be halted and restored back to its natural layout? They have not actually ripped up all the roads; we have just got concrete barriers. Local residents and taxpayers who come into this major area with three major hospitals have a right to be able to drive down the road. Thank you.

Mr GYORY: the Darlinghurst Business Partnership represents over 100 businesses in the areas surrounding Oxford Street, Darlinghurst. We formed more than two years ago with the intention of managing the Oxford Street upgrade and improving area safety and business amenity. Having said that, our members comprise businesses owners who have been in the area anywhere from 10 to 30

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years. In extensive discussions with both member and non-member businesses, I can confidently assert that consultation over the cross-city tunnel was, for all intents and purposes, nonexistent. My own personal experience as a business owner and a resident bears this out. The consultation only adds insult to the injury being perpetrated against local businesses, most of which are independent and struggling. Some have even closed.

It is disturbing to relate that some people literally break down crying when you speak to them about their livelihoods. They are angry, desperate and hopeless. I have to confess that we also lack hope, in that we appreciate the opportunity to address this inquiry but we feel that its scope fails to address the most pressing issue, which is returning public roads to public ownership. The negative impact of these changes cannot be overstated. They have increased travel times, congestion and, antisocial behaviour and taxi fares, reduced safety, access and passing trade, and made navigating the area a professional exercise. Indeed, a customer last week informed me that he no longer comes in from the northern beaches because, in his words, "it's a shit fight".

The closure of Bourke Street in particular has killed business in that immediate area and created congestion on Crown and William streets. To translate this into the politically correct vernacular, amenity has been reduced. The two key objectives of the environmental impact statement were: (1) to improve the environmental quality of public spaces within central Sydney, and (2) to improve the ease of access and reliability of travel within central Sydney. Not only has the cross-city tunnel failed to realise these aims but any reasonable person would conclude that, in many places, the opposite has in fact been achieved.

It is particularly disappointing that the economic impact of the tunnel and associated changes were never taken into consideration, both in terms of the businesses to be affected and additional cost of navigating the city. This cost may be measured in both financial and social terms. If I may be permitted an analogy, a living city has people as its lifeblood and for a living city to thrive this lifeblood needs to permeate. If we restrict the flow to major arteries and the extremities begin to wither. If we divert it past major organs altogether, they simply die. As one of the most densely populated regions in Australia eastern Sydney is a major organ. By council's own figures, almost 900,000 people live there and these people need to get into and out of the city, not under it. I would also add that 500,000 people a day visit Sydney.

We accept the CCT as a positive reality but completely object to the sacrifice of public roads. As such, we strongly urge the removal of all obstacles to easy access into and out of our suburbs. While funnelling may be part of the contract that the State Government signed with the cross-city tunnel group, it is not and never will be part of the social contract that the Government has with us. Thank you.

CHAIR: Thank you for that comprehensive presentation. Members of the Committee appreciate it. We realise that you are not public servants but citizens working in your own time. We appreciate the effort to have put into the preparation of your submissions. The Committee has some general questions. How were your organisations involved in the consultation process, both during the project planning stage and during the construction stage?

Ms HOLDER: I will answer on behalf of all our organisations. Darlinghurst Resident Action Group [DRAG] and 2011 Resident Association were first consulted about this on 15 December 2004. I received a phone call from representatives of the RTA consultants and we met. We were invited to meet informally with representatives of the RTA and the CCT consortium consultants about street closures. At that meeting we were told that the report had already been submitted and that in fact there was no point to us having the meeting.

It did prove to be useful in that at that meeting we actually ask them a bit more about the wider intent of road closures in the area. That is when we first realised the catastrophic impact—excuse the vehicular metaphor—of the head-on collision between the traffic funnelling closures being implemented by CCT and road closures being implemented by the city of Sydney council; that we in fact had two sets of road closures overlapping with each other, the city of Sydney set using the CCT largely as a camouflage to slip through so that in the general chaos people would not notice that these were being implemented.

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CHAIR: The Committee heard evidence earlier from the Community Liaison Group for Kings Cross. That group seems to have had some official relationship with the RTA and so on. Did you have that relationship, each group or one of your groups? Did they recognise you as a consultative group?

Ms PERRY: There was another group in the area of East Sydney that did not consult with our groups, as I think Jo has mentioned. They tended not to go outside the group and consult either with a wider group of citizens or with the other organisations. There was one community group in our area that had quite a lot of people as members of the central consultative group, but that group tends to be very much in favour of road closures. We think that only that side of the division of opinion was really represented by that group. It would have been better to have it balanced with representatives from some of the different groups who could have perhaps negotiated a fairer outcome.

Ms MIERS: In terms of Woolloomooloo, it seems that there was minimal consultation with anyone in Woolloomooloo. The predominant consultation was with Trish Mullar, who actually owns the East Sydney Hotel and who was a resident down there. She was involved in the RTA's formal consultation. That seems to be the only consultation that happened, other than the two public meetings. It is my understanding that Trish Mullar put forward the recommendation at that meeting that Bourke Street should remain open on both sides, which ended up being ignored.

Mr GYORY: In terms of local businesses, we did not know anything about it. I found out about the proposed closure of Liverpool Street, which was a council proposal, through the business partnership. The business partnership only found out about that because we had been stirred into action because of the upgrade put on it. At the Liverpool meeting I then met other people who informed me that other closures were going on and by basically clawing information I made our group aware. In the previous session someone mentioned that things get published in the papers as announcements.

As a business owner and as a member of the public, not everyone reads the papers all the time, not everyone reads them from cover to cover. If something is on page 57 of the *Wentworth Courier* you are not going to find it. If that is consultation, yes, I guess people were consulted. One would expect with a venture as large as the cross-city tunnel that you would pamphlet a very wide area to get as many people as possible at least informed. Most of those people probably go, "Hey, whatever," but as far as we know no-one on the strip, no-one on Oxford Street, no-one in East Sydney ever heard anything about it in terms of businesses.

CHAIR: Do you agree it seems to have been a piecemeal consultative process? In other words, you find some people who may agree with the proposal so the RTA would say we have agreement? They did not bring you all together to hear the big picture and see where you all agreed and where you objected?

Ms MIERS: It seems the Woolloomooloo people were brought together at two public meetings, where the proposal was rejected. Yet, that was ignored. So, it seems it is not just about bringing everyone together, it is who gets heard in the process. That seems to have been one of the failings of it.

CHAIR: So even though when you have made a decision, that decision is not respected?

Ms FERRIER: Not at all. I have to say from our group, if you look at this disaster that is up there at the land bridge, the Kings Cross Coke sign, no-one has ever been told and they know, we have been pleading for 12 months, tell us what you are doing. As I said earlier, it is this and that, it is not us. We are never told anything. But even when we come together there is still no answer.

Ms PERRY: As a former public servant—of the Commonwealth, not the State—there are different ways you can do a consultation. One is that you can manage it so you know exactly the outcomes of the consultation you want and you can arrange it so you get those, and the other is a genuine exploratory one where you ask the community and then you listen to answers with an open mind. Unfortunately this seems to have been an example of the former.

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CHAIR: Do you believe that sufficient information was given to you on which you could make decisions?

ALL WITNESSES: No.

Ms PERRY: As I mentioned before, if you are going to close a road, you need to understand the wider group of people who use that road. It is not like a development application for a building where you just ask the people adjacent to that building. A road should belong to the people who travel along that road, not necessarily the person who lives in the house past which they travel. You need to do both to understand road changes.

CHAIR: We understand the RTA is supposed to be monitoring community opinion in relation to the Bourke Street changes. Has it communicated this to you or sought any feedback on those changes?

Ms MIERS: We have been at meetings with the RTA and discussed Bourke Street but it has not come forward with any position on Bourke Street. We have continually asked for it to be reopened.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Sorry, is that since the tunnel opened?

Ms HOLDER: Since the tunnel opened.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is that ongoing now?

Ms HOLDER: Ongoing. We have had three meetings, again described as informal meetings, with the RTA since the opening of the tunnel. It has been like getting blood from a stone. We have really received some basic background briefing documents at our meeting of 17 December 2005. At this meeting also we were presented with a draft proposal for community consultation on the trial reopening of Bourke Street, which is required by the Minister's CRA No. 288, and we are not satisfied. We believe that even that draft reproduces the failures of the first limited community consultation in that it is only dealing with a very restricted group.

I would just like to widen this. We have grave concerns about the monitoring process over the whole tunnel in the contract and that is something this inquiry needs to look seriously at. How can we trust the CCT and the RTA to monitor over these one-year and three-year intervals the adverse impacts of the traffic when many of these impacts are in enclosed streets? A review is only triggered by increased amount of traffic and we are talking about 71 road closures, traffic restrictions, where traffic has been reduced because of the concrete barricades there. So the streets of our key complainants as residents and businesses will not be monitored under the Minister's CRA. The only counts that will be done will be on the main streets like William Street. What kind of the monitoring is this?

CHAIR: You said you thought the council had originated the decision to close Bourke Street. Have you had any discussions directly with the city council for it to originate a request back to the RTA?

Ms HOLDER: Yes. At our meeting of 17 December 2005 we had requested the presence of the city of Sydney traffic officer at each of these three meetings. He could not attend the first two. We finally got to meet with him at the third meeting. At that meeting we finally pinned them down in the presence of each other to declare who was responsible for Bourke Street and who was responsible for these roadworks here at Kings Cross. It was unilaterally declared by both parties that these were authorised by the city of Sydney.

Ms PERRY: We asked about the methods of studying the effects of the road closures. The RTA said it really did not know how to do with social and economic impact studies. As a social researcher, counting the number of cars that go across a concrete bollard you end up with a score of nought. Well, what do you do with that information? There are different methods of understanding the impact on society and on the business community. I think they are not really aware of the sort of

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policy areas and the policy techniques that you use to understand the economic and social impacts as opposed to a traffic count.

Mr GYORY: In fact, they admitted that was not even their purview.

Mr ANDREW CONSTANCE: As local residents—obviously I am not one of you, I come from Bega—I imagine there would be a lot of apprehension and concern about the need in an emergency to access—

Ms FERRIER: They cannot. I can answer that.

Mr ANDREW CONSTANCE: Are you aware of stories from residents who have been put at risk—maybe in a worst-case scenario even death occurring—where emergency service vehicles have not been able to access?

Ms FERRIER: No. I can say from speaking with various people and from out there petitioning, no, but it is the fear that it can happen. As you can see from that fire truck trying to pull out. The fire truck has to get out and it comes up and it goes down. But when you have that mess up there, I have actually watched them drive right over the middle of the street, and that is not an unusual thing when you have William Street jammed.

Mr ANDREW CONSTANCE: This is occurring, what, daily?

Ms FERRIER: Daily. Come down and have a look. One of the cops said to me one day I was out there collecting, "We were not even told they were closing off Bourke Street." He said to get into Bourke Street they now have to go all the way around whereas it was straight through and also they cannot come up from Woolloomooloo because again they cannot get over.

ANDREW CONSTANCE: I would imagine this would be one of the greatest justifications—

Ms FERRIER: It is huge.

Mr ANDREW CONSTANCE: There is a massive public safety issue.

Ms FERRIER: It is massive, and thank you for bringing it up. We have a major hospital up there, St Vincent's. How do they get up there in an emergency?

Mr RUSSELL TURNER: Just by way of background again, I am a country member. One of my staff stays at Woolloomooloo. After Christmas, trying to get here after she got to North Sydney, the Haymarket and a U-turn and got here, an hour and a half later, it was pleasant to see her. We heard some evidence from the RTA or the cross-city tunnel—I am not sure and I do not want to verbal whichever one was—that the residents liked the closures of the streets. They think it has given them some amenity. I am playing the devil's advocate here. Is there any evidence from your committees that this has some value?

Ms HOLDER: I can report from our three public meetings, at which we invited the RTA to attend, and their principal liaison person attended all three, that we had the interesting experience in at least two of those meetings where there were unanimous votes at the third meeting in October. One person abstained because he represented a professional motorists organisation and said he could not do it. The RTA representative stood up and said, after a majority vote with one abstention, "Clearly the community is divided on this."

Ms PERRY: I think removing the traffic from a particular precinct can work very well. There is an area just on the corner of Paddington and Darlinghurst, adjacent to our area, where there was no reason for through traffic. That has been closed off and it is very successful, but that is a very small area. When you close off a street like Bourke Street, which is just as big as Crown Street, on the basis that Crown Street is an arterial road and Bourke Street is a local road, we do not see children playing with billy carts up and down the street. You can do it in a small conglomeration provided there is access around that and that people can park their cars outside it, but if you try to deliver the

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whole suburb the logic of that does not work. We like to live in a village, but not in a mediaeval village.

Ms MIERS: Would you like to go through these pictures?

Ms LEE RHIANNON: We would probably like to ask our questions, but hopefully we can do both. I think all of you spoke about the need to open up the roads closed, and there has been talk about the RTA's involvement and also Sydney city council's involvement. Are you able now, or otherwise to take it on notice, to give us a list of which of the street closures come under the responsibility of the RTA and which are under the Sydney city council, or do we have that already?

Ms HOLDER: It was attachment 2 to the A submission. It is a summary of the identified traffic concerns in relation to road and traffic flow-throughs, changes to the CCT. After our meeting with the RTA on the 17 December, we did receive—

CHAIR: It is in the original submission.

Ms HOLDER: Yes.

Ms LEE RHIANNON: Ms Miers, with Woolloomooloo, you recommended Bourke Street opening and a number of other local roads. Have you also supplied a list of the names of those local roads?

Ms MIERS: I have listed them in the ROW submission which came in the morning after the inquiry so I do not think it is on the net, but it has been submitted. I hand delivered it. It talks about which streets are the problem streets.

Ms LEE RHIANNON: It came out in one of your submissions and also in the evidence today, this issue of the sex workers and the closure of the streets. I understand the lord mayor has said on a number of occasions that closing Bourke Street south of William Street is important to control street sex work and problems associated with that. You gave evidence that it appears there is an increase around the Bourke Street area. Had there been any discussions with Sydney city council about this, recognising that there are problems associated with those street closures?

Ms PERRY: No, we have not been able to get a meeting with the lord mayor over the past 18 months that we have been concerned about this issue, but it appears there has been an increase in prostitution there. We addressed the council meetings on this and a number of people who live in other cul-de-sacs around that area such as Palmer Street said that closing a street does not seem to reduce that, that in those other cul-de-sacs there is a lot of anti-social activity.

Ms LEE RHIANNON: Does anybody else want to comment on that?

Mr GYORY: Yes. At one of our last meetings our two main concerns that came out of road closures were obviously lack of access, but also safety. There is this idea of passive security, which is if you have active streets, if you have people coming and going through them, that reduces the ability for anti-social behaviour. We have warned, as much as you can warn, again and again that we believe road closures are the wrong way, that prostitution is a police issue. It has been stated that anyone who opposes road closures supports street prostitution. In no way do we even see a link between that. What has happened since the Bourke Street closure? It is fortuitous or perhaps not, the director of the Darlinghurst Business Partnership has moved into that area and he personally recounts to me that there are now far more street workers in that area.

As an aside, it is ironic that the two groups that wanted that closure—ESNA and SCEGGS—the SCEGGS mothers are now up in arms that they have to find their way to the school and back again. We cannot state strongly enough that if prostitution is an issue—and I am sure it is for local residents—it is a policing matter. Are they going to close the ATMs at all the hotels as well?

Ms LEE RHIANNON: I also wanted to take up an issue that to some extent you have answered. As both former Premier Mr Carr and former CEO of the RTA Mr Forward spoke very strongly about this issue, I wanted to put to you questions about the issue of the community's attitude

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overall. You are representative of a number of a number of people. Firstly, I will relate what they said. They had both said that a large number of people supported the road changes. Mr Carr was very emphatic about this: that the community support was very real, and that consultation also had been carried out. At times, do you come across opposition? I have appreciated your contributions, but you have probably heard this comment before, and I would like your feedback on it.

Ms HOLDER: I have read through the transcript of Mr Carr's evidence, in which he refers particularly, almost exclusively, to the two EISs for William Street, the 1999 and 2002 EISs. In 2002 the then Lord Mayor of Sydney, Frank Sartor, was the main proponent of the lengthened tunnel and the further narrowing of William Street. That was at that time supported by the Institute of Architects, or a handful of architects who were very influential within that organisation. I note that in its submission the Institute of Architects has reversed its decision, having, like everybody else, not been fully appraised of the full extent of the community impact of all the 71 road closures and restrictions.

Ms PERRY: I would support independent consultants actually surveying the area. It is my impression, from going round the area and talking to people, that the majority of people do not like what has happened because of the road closures. I think the only fair way to do it is to have an independent survey. If the majority of people are happier with it, then so be it. But I do not think you can take one group or another, each having a fixed position, as being able to fairly represent the community's opinion.

Ms FERRIER: You cannot agree with something you did not know about! When the truck comes in the middle of the night, as happened there, and dumps bollards everywhere, no-one had any opinion. It was just there!

Ms HOLDER: It seems that most people do not support it. If people support the concept, it is a broader concept about cleaner environment; it is not a concept about road closures, but about traffic management in the city in a general context. That has been my experience.

The Hon. AMANDA FAZIO: I want to ask you about your request that the Committee recommend that Bourke Street be reopened. As you are aware, the Taylor Square end of Bourke Street is closed as well now. What would you see happening? Are you simply requesting that the blockage of Bourke Street at William Street be removed, or are you expressing a desire that Bourke Street be opened up again at Taylor Square as well?

Ms PERRY: I moved into the street after the closure of Taylor Square. Taylor Square has had many thousands of dollars spent on the redesign of it, and I think it is highly impractical to suggest that that be reversed. But the William Street end at the moment is a temporary closure, with concrete bollards. Before the Cross City Tunnel, it worked perfectly well in being able to cross it. Unless William Street congestion is worse now than it was before the Cross City Tunnel, I think it would be better to open it and then monitor what happens, rather than having it closed. The trial opening would be preferable to us than a closure. I think it would be ridiculous for us to push for the reopening of it at Taylor Square because of the cost involved. So we are really focussing on the current reversal.

Mr PAUL McLEAY: It would run to a dead-end though, would it not?

Ms MIERS: It would run to a dead-end. That is one of the reasons that we have argued it should be opened. Its potential impact of being a rat runner is very minimal because you cannot get through at Taylor Square. It is really about how we get to and from our neighbourhoods.

Mr PAUL McLEAY: It would need a sign saying "No entry" or "No through road" or something.

Mr GYORY: It depends how you define rat running. If rat running is trying to get to your street by going through someone else's street then, yes, people are rat running to their homes. But the dead-end at Taylor Square ensures that you do not have high volumes of through traffic. It is not a main road.

The Hon. AMANDA FAZIO: You do not have through traffic.

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Mr GYORY: It is not a main road, but it is a high-density community. A council report on a marketing plan that they have done came out two weeks ago. It found that 20,000 people live within a 500-metre radius of Oxford Street. These people are trying to get in and out of where they live, and their friends are trying to visit, and taxis are trying to pick up and set down. That is all we are asking. I do not think Taylor Square was on the cards.

Ms MIERS: Because Taylor Square is blocked, there seems to be no logical reason for Bourke Street being blocked.

The Hon. AMANDA FAZIO: I think you are aware, because Ms Holder referred to it earlier, that one of the conditions of the report that led to the closure of Bourke Street at the southern side of William Street was that there be a review of the closure after six months and 12 months. My understanding is that that consultation phase has started, and that a consultation study has been drafted and copies have been given to both the Darlinghurst Residents Action Group and ESNA for comment. Will all of your groups be making submissions on that process?

Mr GYORY: Yes.

Ms FERRIER: Yes. We do not want the letterboxing disaster that was mentioned earlier. It does not work. It has got to be a far wider exercise, with posters and so on because of the secure buildings.

Mr GYORY: I know people said that there was letterboxing, and supposedly 8,000 pamphlets, but I do not know anyone who has seen one. If they are going to letterbox, they should ensure everyone gets those letters.

Mr PAUL McLEAY: There were not 8,000, but hundreds of thousands.

Mr GYORY: Well, where did they go? There are 350 businesses in Oxford Street, and it is pretty easy to slip them under businesses doors, and we never saw anything.

Mr PAUL McLEAY: This is a high profile activity happening in your area, and you are saying you did not have information.

Ms MIERS: Until the secondary changes, including the proposed Liverpool Street change, the notifications were from local resident groups. None of us had any idea of the impact of this until that point, and then we all went, "Oh, my God!" One of the really important things about the consultation process is that in the meeting with the RTA again they listed really similar groups that they had already consulted with. I think there is a fear that we are going to repeat the same process. I think it is really important, in terms of particularly the issues for Woolloomooloo and social demographic matters, that there be a phone survey to bring some unbiased opinion into the process. If you can work out the percentage of people by suburb, that will provide a much clearer survey in terms of its legitimacy and legality, compared to the current process, which has been about repeating the existing consultation with existing groups.

Mr GYORY: That high profile, with respect, is a point of view. A lot of people out there were not aware of it. Maybe, from the position that you are in, the Cross City Tunnel is a big thing and you get to hear about it all the time, but a lot of people going about their daily lives do not hear about these things. Just as a suggestion for the inquiry, the consultation process needs to take that into account. It is one thing to build a big model and put notices up and ask people to come to you, but I would suspect the onus is on the government or the body in charge of the project to go out and disseminate the information, not to wait for people to come and get the information off them.

Ms HOLDER: I would like to draw the attention of the inquiry to the submission from the Horizon residents in Forbes Street. They have concerns about the Bourke Street closure and the so-called consultation. They point out that there are works being carried out today. I checked on my way to the inquiry, and they are in fact implementing those works, which permanently restrict Bourke Street. So, again, we have this repetition of the rigged inquiry, or an inquiry with a predetermined outcome, and that really is why recommendation 9 of ACE is the need for this inquiry to establish

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standards for consultation; to establish a definition for community consultation; the need for a standard civic consultation document that is an authoritative guide for these processes; and that that document should define the positive values of consultation in the areas of significance to be considered, social, economic, environmental considerations, et cetera, and one that provides a check list for the processes.

The document should avoid technical jargon. We have all been bamboozled by the chimera of the traffic count and the conflicting traffic reports. You can of course manufacture whatever you want. And the document should also provide guidelines to good public management, including options for redress should there be concerns about this process. And that this should be consistent with the language and aims of international civic rights and anti-corruption charters. There is nothing in place that gives us any guaranteed whatsoever, and the Cross City Tunnel process proves that.

The Hon. AMANDA FAZIO: I am involved in another inquiry into the upgrade of the Pacific Highway, and one of the recommendations made in the interim report, in response to very similar comments, was that there be an improved explanation of consultation processes with the RTA, including having some guide book so that people can inform themselves. If I could now go back to an issue that was raised by some comments made here at the inquiry and in some of your submissions: your concern about the original closure of the southern side of Bourke Street. You stated that you were concerned that only very limited consultation took place, and just with people who lived very near to that affected area. You have suggested that, for the review of the closure, something like a phone survey of local residents be undertaken. Would you see that as overcoming the problem you identified before of having too narrow a focus in terms of the area where the consultation took place?

Ms PERRY: You need to ensure it is well publicised so that people who use that road are able to make a submission. There are businesses, customers, people who work for businesses, people who run plumbing services and there are services that go into residential areas, like ambulances and fire engines. A street is not just the residents of that street; it is the people who use that street.

Mr PAUL McLEAY: But there was doorknocking of businesses and doorknocking of residents, and there was not just one advertisement in the *Sydney Morning Herald*.

Ms PERRY: When I first heard about the Woolloomooloo meeting that I described I received a pamphlet under my door. But when I asked a lot of other people around whether they were going to the meeting, it seemed that I was the only one who had picked up and read this pamphlet. Others said they did not receive any. I do not know whether more were distributed on the Woolloomooloo side, but in our area the distribution seemed to have been confined. I live in Bourke Street, so it seemed to be confined. The one thing about leafleting is that it seemed to be a very narrow distribution, and I suppose people missed that leaflet. It was a very technical leaflet. I just happened to sit down and read through it.

The Hon. AMANDA FAZIO: The RTA does leafleting of letterboxes and on occasions a survey by knocking on doors. It holds public meetings and puts information on its website. You suggest having a telephone poll in the local area. Are there any other measures you could suggest that would help ensure that the flow of information gets to the targeted recipients?

Ms FERRIER: Put signs in cafes. Ask the council maybe, they have got a list of residents.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: They are marginal seats.

Ms MIERS: It does seem that there is a process. At the last meeting with the RTA when I talked to them about who they were going to consult on Woolloomooloo, again they said that they were going to consult the groups that they had originally consulted. One was Sutton Motors. There is no chamber of commerce down there. The other group was residents who were active around maintenance issues to do with Department of Housing properties. I actually said, "Why is that the main group?" That was the only resident group they were consulting. I was a bit flabbergasted by that myself. But there are some really significant businesses down there. There is Nick's supermarket and there is the Woolloomooloo wharf development. There is a whole bunch of businesses that were never consulted about the process. That to me seems like the process is flawed. There is something really

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wrong about the fact that the majority of the negative impacts have actually affected Woolloomooloo, yet the consultation there has actually been quite flawed.

The Hon. AMANDA FAZIO: Would you like more businesses to be consulted?

Ms MIERS: I think businesses and residents, but it does seem that neither was consulted very effectively.

Mr GYORY: One of our members walked around yesterday and spoke to three business owners on William Street: Hertz, Thrifty Car Rentals and QCC catering. This is direct from her; I got this on e-mail this morning. None of the businesses was consulted. A couple of them got a brochure saying what was going to happen but not asking them anything about it. They all report that their businesses have been severely affected. To answer what you suggested before, I think obviously businesses were not targeted in the area and something that perhaps the consultation needs to do is to expand its purview beyond, as Julia suggested, one street corner where it is happening and actually walk a couple of hundred metres each way and speak to businesses there. The other thing you can do is use businesses. When I find out something I speak to my neighbours and then those businesses speak to their neighbours and they speak to all their customers. It might be one thing to actually engage businesses in the area because on the whole they are there every day and they are talking to people every day.

Ms LEE RHIANNON: Is it also a case that even if you have perfect consultation the RTA is not going to listen to you? Do you get the feeling it ticks the box that it has consulted everybody?

Ms MIERS: Exactly. Trish Muller says that very strongly. She is the only Woolloomooloo resident who was involved in the formal consultation process. She says that she felt that the process was tokenistic, that it was about ticking the box rather than actually understanding the relevant impacts and that the primary issue was Bourke Street.

Ms LEE RHIANNON: That means we need to see if the RTA has a willingness to come to this with an open mind.

Mr PAUL McLEAY: Considering you have an existing road network and a significant new piece of infrastructure that should, in theory, reduce the amount of traffic through your local areas, should there be any road closures at all or any modifications to your local road?

Ms PERRY: It should be, but there should be a proper plan rather than a sudden arbitrary beautification of the Kings Cross land bridge making massive pedestrian areas where you can stand in the middle of traffic around you and admire it. It just seems there has been no understanding that a huge amount of traffic is being displaced onto that Kings Cross land bridge and suddenly they are strangling it there. And understanding and some comprises that if we close this off then we cannot really close all these other ones. It just seems that there are closures all over the place and they do not seem to understand—

Mr PAUL McLEAY: There could be closures but you think they may have got the wrong ones?

Mr GYORY: There are pragmatic closures that need to be done and then there are closures designed to force people into a tunnel that is overpriced. No-one is disputing the need, the tunnel is there, we will accept that. It is a positive piece of infrastructure and it can do good things. But people do not want to use it because (a) it does not take them where they want to go—

Mr PAUL McLEAY: If there are going to be 90,000 traffic vehicles a day off William Street potentially—

Ms LEE RHIANNON: Potentially, at least emphasise it.

Mr ANDREW CONSTANCE: That is what you thought it was going to be.

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Mr PAUL McLEAY: That is what the proponents thought it was going to be. Would it be reasonable for a government to say, "Let us take advantage of that and beautify some areas"?

Ms HOLDER: Could I remind you, sir, that we are talking about out of the 71 road closures and modifications 22 material adverse effects [MAE]. All our submissions have been very carefully and thoughtfully crafted after very substantial community consultation to focus on achievable road reopenings. Your question in a sense is hypothetical. Our entire focus is just on alerting you to the fact that there are roads they can be reopened. You can bring us relief from this.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You say that two-thirds of the road closures can be released without MAE at all?

Ms HOLDER: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And presumably some of the others would be disputed?

Mr PAUL McLEAY: That was not my concern. I am not trying to put words in your mouth but you are saying that there can be some road closures and that some of them they got wrong you want reversed?

Ms HOLDER: Yes, sir.

CHAIR: The time has expired. We appreciate very much your valuable submissions.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Would you answer my question about two-thirds of the roads being closed?

Ms HOLDER: Without being a commercial lawyer, that is our understanding from basically secondary sources, press summaries and information we have received from the RTA itself at the meeting of 17 December. Perhaps you could ask the RTA to submit that list that they gave to us which does summarise the category of road closures. They list them as A, B, C to D. I understand A to be the MEA triggers.

The Hon. GREG PEARCE: The Committee has that information.

CHAIR: Thank you for appearing before the Committee. We appreciate your concern about your community and the time you spend in representing your community.

(The witnesses withdrew)

(Luncheon adjournment)

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JOHN ERIC PIERCE, Secretary, New South Wales Treasury, sworn and examined.

KERRY ELIZABETH SCHOTT, Executive Director, Private Project and Asset Management, New South Wales Treasury, on former affirmation.

DANIEL JOSEPH GRAHAM, Director, Private Project, New South Wales Treasury, on former oath.

CHAIR: Mr Pierce, are you conversant with the terms of reference for this inquiry?

Mr PIERCE: I am.

CHAIR: Do you wish to make a brief opening statement?

Mr PIERCE: Chairman and honourable members, thank you for the opportunity to appear before you today. As you would be aware, Dr Schott and Mr Graham appeared before the Committee in November. Unfortunately I was unable to be there at that time. I would not intend to cover all the evidence that they covered when they did appear. However, in opening, I might just address one issue that arose at that time in relation to stamp duty in respect of the cross-city tunnel. The amendments that I think you are aware of, just from the transcript, are the amendments of section 226 of the Duty Act made in the 2003-04 budget. Legislation was subsequently introduced applying mortgage duty to all funds drawn down from budget day on 24 June. These amendments concerned removing a tax concession in relation to mortgage duty that had been there for quite some time. It was first introduced in 1975 in relation to mortgage duty where the mortgage is used to secure debenture issues.

Most people when they enter into a mortgage draw the funds down pretty well straightaway or very soon after they have entered into the mortgage and they pay their duty up front. For large projects, however, the mortgage on New South Wales property may be entered into at one point in time when they draw the funds down, or in the case of this particular form of financing, issuing the debentures over an extended period of time after the mortgage is entered into. The purpose of the concession as it related to these debenture issues was really to allow people, not to not pay the duty, but, rather, to give them a choice whether the duty would be paid up front, or paid over time as the debentures were issued.

Of course, as capital markets have matured since the seventies, the use of debentures as a form of capital raising has diminished significantly. The Office of State Revenue [OSR] informed us prior to that budget announcement that the concession was essentially not being used in its intended form—that is, to give people the option of being able to pay the duty over time in line with the debenture issues—but rather it was being used by issuing debentures outside New South Wales to avoid paying the duty altogether. So the amendments were intended to effectively close that loophole of being able to avoid paying duty altogether, and that goes back to the position where it can be paid over up front, that is, when the funds are drawn down, or over time as the draw downs occur.

Against that background the RTA executed contracts for the cross-city tunnel in December 2002. The consortia had executed a mortgage of their finances to secure the debt facility to construct the motorways. The consortia advised the RTA after the budget announcement that they had been affected by these amendments and obviously the RTA had no knowledge of the amendments because they were prospective when the contracts for the cross-city tunnel were executed. Subsequently the Treasurer received submissions from the consortia proposing that they be reimbursed for the liability to pay the additional loan security duty as a result of these changes in the stamp Duty Act because they had structured their affairs so that they were issuing debentures outside New South Wales and were not paying the duty. There was a transitional issue, if you like, where the real issue that really had to be addressed was the fact that the consortia had already locked in its financing arrangements prior to the changes to the tax Act, but had yet to draw down funds. Hence in their budgeting and the bid that they had put forward to us, they had not taken account of it.

The Treasurer met with representatives from the consortium in November 2003 and heard the case being put forward by the companies. The Treasurer and accepted that each consortium had

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calculated and budgeted for the loan security duty based on the law as it stood at that time, and that if they had known about the proposed change in the Act, they would have restructured their affairs and budgeted for the additional duty, in which case any payments to the RTA in respect of the project would have been reduced by that amount. Effectively the Treasurer conceded that there were grounds for accepting the submission. It is probably important to point out to people that the consortium were not excused from the payment of the additional duty—they still pay the duty—but the Treasurer approved of the RTA reimbursing the consortia for the amount of duty that is actually due to be paid by them.

Ms LEE RHIANNON: Mr Pierce, when you say "duty", which one are you referring to?

Mr PIERCE: The mortgage duty.

The Hon. GREG PEARCE: What was the quantum of it again?

Mr PIERCE: It varied over time because it depended on their draw downs. I think it spread over about four years and the representations were being made from both the M7 and the cross-city tunnel consortiums. I do not know what the split-up between the two was but in aggregate I think it was something like \$800,000 the first year and then \$3 million and \$3 million, and then it declined to very small amounts by the year coming. So at the end of, say, 2006-07 I think it is, or maybe 2007-08, it is nothing.

As I say, the major issue of concern and why there was a need, or why the Treasurer thought there was a need to accept the submission, was primarily because the financing arrangements had already been locked into place. Perhaps if they had not, the Government could have argued that they could have changed them to accommodate. In that sense it was really a commercial consideration—that it was reasonable for the RTA to reimburse them because they had been caught with a tax change during their particular stage in the negotiations. I would just like to conclude on that point. I am quite happy to take whatever questions the Committee may have. Obviously I am quite prepared to take any questions on notice, if I cannot do with them adequately today, and get back to you.

CHAIR: Thank you, Mr Pierce. Thank you for appearing before the inquiry with your associates. Was the cross-city tunnel project assessed against public interest criteria before it was put on the market? If so, what were those criteria? Who developed those criteria? Was there any input from the Executive?

Mr PIERCE: By "the Executive", do you mean Executive Government, or the executive of the Treasury?

CHAIR: The Executive Government—the Ministers and so on.

Mr PIERCE: I might start and if my colleagues feel as if I am leaving anything out, they can chip in after me. The public interest evaluation is an explicit component of our "Working with Government" guidelines. It covers areas such as: is the project going to be effective in meeting the objectives that the Government has set? Is the project consistent with the agencies' service delivery plans, their long-term infrastructure strategies? Does it basically fit in with what the agency's job is? Does the project allow for consultation with the people who are being affected by it? Are the project processes, and evaluation processes, transparent to allow the community to be informed about the key aspects of the project? That sort of explicit requirement in our guidelines on that public interest evaluation was accepted and made public in November 2001 and the procurement process for the cross-city tunnel by that stage had been going on for about 12 months. So the start of the cross-city tunnel project occurred prior to that being an explicit part of our guidelines.

However, in meeting those requirements incorporated within the guidelines—asking "How do you do all that?"—I suppose the response would be that it occurs through, essentially, the public consultation processes that occur with the planning process and the EIS. I think there was a full EIS in late 2000 and there was a supplementary EIS in 2002. Those included details around what was going to happen to William Street. I understand that there was consultation with South Sydney Council and City of Sydney council and various business groups through that EIS consultation process. So I think the best way I can answer it is that, whilst the formal requirement within our processes for this public

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interest evaluation to occur was written into our guidelines after this process had started, we would have expected that the normal processes associated with a project of this size and the environmental approval process would have allowed any information relevant to the consideration of the public interest to be made available.

The Hon. GREG PEARCE: Did Treasury at any stage give advice to the Government to the effect that, based on the public sector comparator, the public sector could not have delivered the project as well as the private sector could? Did you give any advice to that effect?

Mr PIERCE: I presume we would have because, given that the outcome of the process was the selection of a private sector proponent, we would have got to that position by comparing the bids with the PSC. That is effectively what we are saying: the private sector proposal gives greater value for money than the public system could deliver on its own, as reflected in the PSC. I might just point out that the PSC has two aspects. One is it is essentially just the Government's pre-tender estimate of what it would cost us if we were to do it. In that sense it is no different from any procurement arrangement. When we enter into any sort of procurement under any sort of contract form we require agencies to prepare a pre-tender estimate so that you have got something to compare what you get with. The other is that the public sector comparator is a set of numbers and that is highly relevant to making that comparison. But some of the consideration that would come up through the EIS processes, say, that we might broadly put under the public interest are qualitative factors and, when you compare the two numbers, you also include that information in the comparison.

CHAIR: When you do that comparison would you make a recommendation from the Treasury to the Government and say, "We recommend that it should be a government-funded project or a private-public project"? Are you asked for a recommendation? Did you make one?

Mr PIERCE: We get asked normally. What usually happens is that the agency and the Minister responsible put forward the recommendation. They make a submission, with their view on whether it should go ahead and the result of that comparison between the PSC and the bids and other relevant information. That submission from the Minister would go before the budget committee. Like all matters that appear before the budget committee, on the table when it is being considered would be the Treasury advice and that advice would say whether we support the Minister's recommendation or have a different view or support the recommendation with conditions. Certainly the Treasury view would have been on the table and known.

CHAIR: Is that confidential? Can you state what it was?

Mr PIERCE: That is advice that we provide to the budget committee and is covered by the sorts of conventions that surround Cabinet-in-confidence documents.

Dr SCHOTT: The public sector comparator itself is, as a matter of course, part of the contract summary. So it is available in that sense. I think it is important also that if the private sector did not beat the public sector comparator we would not do a project—we would not procure a project—in that manner because it would not be value for money and it would be more sensible for government to do it.

Mr PIERCE: If I may, as I said in evidence before the Public Accounts Committee recently, we place great importance on separating out the decisions of government to invest in things from the decision about how to buy it—what is the procurement method? The way we tend to approach this is the Government makes decisions about what it wants to invest in and procure and those decisions are based on what the Government thinks it will get out of the project—what the outputs are. Having done that, whether you do it through a PFP structure—whether you procure it through a PFP structure or as a traditional public sector project—is a separate question that you address after the investment decision is made.

Hence, we are quite interested in trying to ensure that that is consistently applied because if the public sector comparator does beat the private sector bids essentially we are saying that we are comfortable that it is consistent with the other budget parameters and for the Government to proceed with procuring its investment or to just do it by itself rather than through the private sector. So in that sense, in terms of managing the overall budget, we are quite interested in ensuring that the information

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that goes into the public sector comparator is as accurate as possible because that is what we are going to be budgeting on.

CHAIR: Did you use the same RTA traffic figures?

Mr PIERCE: Yes, I believe it would have used the same RTA traffic figures—the traffic figures that would have been in the EIS.

CHAIR: It would appear that the public sector comparator would have offered better value for money than the other proposal if you used the same figures.

Dr SCHOTT: The same traffic figures?

CHAIR: Yes.

Mr PIERCE: If we had used the same traffic figures as the private sector proponent or—

CHAIR: As the consortium.

Mr PIERCE: We had a public sector comparator that had RTA traffic figures and you compare that with the bids if you put the bidder's traffic figures into the public sector comparator then you are changing both sides of the equation. The relative position of the public sector comparator and private bid would not alter. I am not sure how you get to the conclusion that putting the private sector's traffic forecasts into—

CHAIR: No, using RTA traffic figures.

Mr PIERCE: If we put in RTA traffic figures we get a particular result. I am trying to tack down exactly what we are comparing. It is the public sector comparator with RTA traffic figures compared to the consortium's bid with different traffic figures. Is that the comparison that we are making?

CHAIR: Yes.

Dr SCHOTT: That is the comparison that was made in the bid and the PSC was not as good as the bid.

CHAIR: Can you repeat that?

Dr SCHOTT: The public sector comparator is based on the RTA traffic estimates, which are done by an industry expert, and there is a government view about what the traffic forecast is likely to be. That is the line in the sand, if you like; that becomes the comparison that we are using. The bid that came in had different traffic forecasts because they had a different industry expert and they had different views. Their bid was better than our public sector from a government value for money point of view.

The Hon. GREG PEARCE: When?

Dr SCHOTT: When it came in.

The Hon. GREG PEARCE: So at the beginning of 2002.

Dr SCHOTT: It is not a time-specific matter. Your volume is your volume.

Mr JOHN TURNER: But did you not say that you used two different sets of figures to get to it?

Dr SCHOTT: No, we did not use two different sets of figures. We had a set of figures and the bid people had a set of figures.

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Mr JOHN TURNER: That is two different sets of figures, surely.

Dr SCHOTT: But had we used their set of figures in the public sector comparator it would not have made any difference because all their figures do is put their assumed revenue up. It would have put our assumed revenue up too but it would not have changed the relative position at all.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is the revenue not a key constraint in the modelling?

Dr SCHOTT: It is a key variable.

Mr PIERCE: Yes, it is a key variable. How can we put this? If we had taken their traffic forecast numbers and put them into the public sector comparator, the revenue side and the public sector comparator would be higher. That revenue was already in the private sector's bid and the result of that comparison would not have changed the decision. I presume people recognise that there are levels of uncertainty around all these numbers and that there is obviously sensitivity testing of things like traffic levels. We could have put in our assessment of the PSC value with a probability distribution around that number. We could have put in higher traffic numbers and still have been within that probability distribution. If someone had put in traffic projections that were wildly above the Government's numbers, that would have caused us some concern about entering into that sort of contract.

Ms LEE RHIANNON: How would you define "wildly above"? Given that 90,000 was the figure they were running with, and even when it was free they got to 55,000, how do you define "wildly above"?

Mr PIERCE: Our extended parameter would be to take the estimates that we provided and vary it plus or minus 20 per cent.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And above that is wildly?

Mr PIERCE: Above that we start to get concerned, start looking for explanations and question how confident we are of our numbers and why they have provided a number like that.

CHAIR: Has Treasury assisted the RTA with negotiations? Is Treasury giving ongoing advice to the RTA about negotiations with the consortia?

Mr PIERCE: We are very involved in the process up to the point of the Government's accepting a preferred proponent, participating in evaluation panels and so on. At the point of a recommendation going to the budget committee—that being the result of the evaluation, recommending that it go ahead as a PFP and identifying the preferred proponent—the responsibility for finalising the contracts and negotiations with the preferred proponent tends to rest with the agency responsible, in this case the RTA.

The approval of the selection of the preferred proponent is provided on the basis of that being the result of the evaluation process. In that final stage, before signing the contracts and between the budget committee decision and signing the contracts, if things change, are altered or the agency thinks that it is appropriate to change things outside the initial approvals, the expectation is that they would advise us and go back to the budget committee to get an additional approval for those changes. We tend to be very involved up to the decision about the preferred proponent and less involved when it gets down to the nitty gritty legal things.

CHAIR: Once the budget committee makes a decision you are out of the loop.

Mr PIERCE: Yes, given that our main role is to provide advice to the budget committee about what the agency is doing.

The Hon. GREG PEARCE: I want to clear up the out-front payment, because we have had our usual obfuscation and secrecy from government witnesses. As I understand it, the budget

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committee of Cabinet approved the preferred tender in February 2002. That tender was referred to as the “80-kilometre long proposal”. Is that correct, Mr Graham?

Mr GRAHAM: Yes.

The Hon. GREG PEARCE: And in that tender there was a business consideration fee of \$100.1 million?

Mr PIERCE: That sounds about right.

The Hon. GREG PEARCE: Yes, it is in all of the RTA documents. At that point the RTA wanted to recover \$98 million of costs given that the original tender involved a \$2.50 toll, and it was the shorter version of the tunnel?

Mr PIERCE: Yes.

The Hon. GREG PEARCE: Can you assure me that no-one in government informed the tenderers of the amount of the business consideration fee that the RTA was looking for? The other short-listed tenderer at that stage was not prepared to pay any business consideration fee; in fact, as the former Treasurer admitted in evidence, the other tenderer wanted a payment, I think, of \$24 million for one option and \$43 million for the other. How did the successful tenderer know to put in a non-confirming proposal that involved \$100 million when the RTA was looking for \$98 million? Was it good luck?

Mr PIERCE: I cannot provide assurances in that sense about the rest of government; I can provide assurances only about Treasury.

The Hon. GREG PEARCE: So it did not come from Treasury?

Mr PIERCE: No.

The Hon. GREG PEARCE: They were just spot on, and it did not come from Treasury.

Mr PIERCE: I do not know about “spot on”. However, I point out, if I am not mistaken, that the successful tenderer did put in a non-confirming bid — a longer the tunnel, hence a slightly different project — and that effectively the RTA was attracted to the longer tunnel and bigger project.

The Hon. GREG PEARCE: Then the RTA had to go through the supplementary EIS process.

Mr PIERCE: Correct.

The Hon. GREG PEARCE: Because a non-confirming tender was not permissible under previous—

Mr PIERCE: It was a slightly different project and had different environmental impacts.

The Hon. GREG PEARCE: So you were happy to go with a totally different project without putting it out to tender again?

Mr PIERCE: Yes, on the basis that the advice from the RTA was that this was a better project.

The Hon. GREG PEARCE: Because it got the RTA the \$98 million up front?

Mr PIERCE: For whatever reason. All the bidders would have had an opportunity, if they had brighter idea than the RTA about how to build this thing and what it should look like, to submit their own views. One of the purposes of going through this sort of procurement method is to see whether we can extract from the private sector better ideas about how to design, build and operate these projects than the Government has been able to come up with.

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The Hon. GREG PEARCE: The difference between their \$100 million bid and the public sector comparator was about \$25 million, was it not? I cannot find the RTA document concerned.

Mr PIERCE: Unless one of my colleagues can confirm that, I cannot recall.

The Hon. GREG PEARCE: Please take that question on notice regarding the difference at the time.

Mr GRAHAM: The difference between the estimate of the public sector comparator?

The Hon. GREG PEARCE: Correct, and the tenderer selected. Interestingly, the tender process proceeded with the new EIS and there were some changes that added costs in addition to the stamp duty that you have mentioned. That included the need to provide the ventilation shaft, which was a government requirement. You might recall that the RTA agreed to the price increase, which was about \$37 million. You can take that as an RTA figure. The other big issue was the clause 18 network management. I know that you, Mr Graham, are very familiar with all of this. It was priced at \$24 million by the Cross City Tunnel consortium. Were you monitoring what was happening in terms of the negotiations over these additional payments and costs? Were you kept informed?

Mr GRAHAM: Is the period you are talking about after the budget committee had approved the preferred proponent?

The Hon. GREG PEARCE: Correct.

Mr GRAHAM: When that decision was taken there was uncertainty about whether it would be a full EIS or review of environmental factors. Subsequent agreement with the Department of Planning was that it would be a full EIS. We were not actively involved in the development of the EIS in that second phase. We were aware of the approval changes occurring due to the environmental process when they were consolidated, but we were not aware of them as they emerged. We got copies of the development approval conditions as they were coming out, but Treasury had not separately costed those.

Mr PIERCE: If I am not mistaken, we would have been informed of the financial consequences of that when the approval was sought for the new arrangements, at which point it is presented to us and we provide advice to the Treasurer about whether he should give that approval.

The Hon. GREG PEARCE: That is when the financial outcome was consolidated. We do not have time to go through all the steps. The interesting thing is that at the time the financial results were consolidated you allowed the RTA to agree to the increase in the toll and the toll escalation — the 4 per cent and 3 per cent — which, surprise, surprise, became the \$97 million up-front payment to the RTA. Were you happy with that process? Did you not see anything wrong with that process or any need to assess the amount or to re-examine the project? Were you quite happy to accept that they had negotiated new numbers for a new project and, surprise, surprise, got to the original result?

Mr PIERCE: To the extent that those changes involved increased costs, our concern would have been who would bear that cost. If the cost is to be borne by the RTA, that is fine, but on the proviso that it is paid for out of existing budget allocations — essentially it is paid for by not doing something else. That is a decision for the RTA. It was put forward to us through an increase in the toll. While maintaining the integrity of its budget allocation, the RTA can do certain things, and if it wants to change priorities within that, that is fine if it can negotiate successfully with the private sector, which we were told it had, for the private sector to pay for it as a trade off for the toll and the RTA's budget position is preserved. I think it is fair to say that it raised issues at that time in the sense of saying there were other alternatives with regard to how this could be treated; that is, through displacing other projects within the RTA.

The Hon. GREG PEARCE: Was that in writing?

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Mr PIERCE: I think some of those concerns have already been tabled in advice that went to the Treasurer when the first amendment deed was signed and the Government made a decision to do it the way it did.

The Hon. GREG PEARCE: So you were prepared to let them fund their upfront payments by increasing the tolls and later on you were prepared to let them do the amendment which allowed them to raise the money to fund works on Anzac Bridge, which were totally unrelated. I want to ask you two other questions. Does anyone remember what surplus was in 2003?

Mr PIERCE: I have done nine budgets, Mr Pearce. I am afraid I cannot recall.

The Hon. GREG PEARCE: Can you explain to me why, in the budget papers for 2003-04, the upfront payments for the M7 and for the cross-city tunnel were treated as "other revenue", which gave a \$300 million boost to the bottom line of the budget when there was supposed to be reimbursement of costs? The upfront payments effectively put \$300 million on the bottom line of the budget.

Mr PIERCE: I would have to have a look at the budget papers and the accounting at the time. Whether it put a \$300 million boost on the budget bottom line depends on the timeframe over which the revenue was received and the expenditure was incurred, the time periods over which that expenditure was recouped.

The Hon. GREG PEARCE: The payment was received when the contract was signed.

Mr PIERCE: Yes, but what I do not know of the top of my head is when the expenditure was incurred.

The Hon. GREG PEARCE: Will you take that question on notice and provide the information?

Mr PIERCE: Yes. The reason it would have ended up in that particular line item would have been because that is how you account for it.

Ms LEE RHIANNON: Does CCM pay land tax and, if so, how is that calculated and how much does it pay annually?

Mr PIERCE: Yes, it does pay land tax. As part of the project the owners are liable to pay any land tax. That is a tax that is assessed and paid to the Office of State Revenue [OSR] in the normal way that any land tax is paid. We did, through the process, inform all the bidders of the land valuations from the Valuer General and hence the tax liability associated with that from OSR so that they were all aware of what was going to be. We wanted to make sure the bidders were well informed about that because we did not want them putting a number into their budgets that was significantly higher than the tax that they would end up paying, in which case the cost would have been inflated by that amount. Everyone got that same information, that the tax is payable each year. There is a cap on it. From memory, I think the cap is—

Mr GRAHAM: The cap is \$170,000, escalated by the consumer price index [CPI] and the assessed value at the date at which the assessment was made for the longer tunnel and the funnel arrangement that was entered into, was \$110,000. The cap is set not just for land tax but for water rates, and council rates if they are actually levied.

Ms LEE RHIANNON: So the cap includes all those?

Mr GRAHAM: Yes.

Mr PIERCE: It was assessed on the basis of the expected liability that people would be paying in the normal course of events. The payment of land tax across these types of projects, the way in which that has been treated, has changed over time. If you go back to, say, the original part of the M5—I think we are talking the early 1990s—the position at the time was that the proponents would not pay land tax. As we have developed these models, and particularly the way in which the public

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sector comparator is put together, people are now generally required to pay land tax, but there is a cap on it.

Ms LEE RHIANNON: How do you work it out? What is your formula?

Mr PIERCE: The Valuer General provides the valuation, which is the basis for it. He is asked to give a valuation and OSR says, "if that is the valuation, this is the tax liability", and that comes to us.

Ms LEE RHIANNON: You are saying that the fact it is so low is not because you have a special formula; it is because of the valuation that is put on that land?

Mr PIERCE: The tax liability is based on the valuation just like any other land tax. There is no special formula.

Ms LEE RHIANNON: It is the same formula?

Mr PIERCE: Yes, the same formula. No special arrangement.

Mr GRAHAM: May I clarify something?

Ms LEE RHIANNON: Yes, please.

Mr GRAHAM: The cross-city tunnel as with most tunnel projects has two components. There is the actual land that is consumed on the surface and then there is a value that the Valuer General comes up with for the subsurface component. We took the estimate of the combined value—the land that was used by the consortium for their works and so forth that they are going to have a lease on, and the subsurface value that the Valuer General put an estimate on—according to a standard formula valuation that they use, and that was the total assessed value for land tax purposes.

Ms LEE RHIANNON: It sounds like we need to take that up with the Valuer General to work out how that is formulated. Is that the case?

Mr GRAHAM: In terms of how they value the substrata land in the tunnel, yes. I am not an expert on that area.

Ms LEE RHIANNON: Although you said that it is all done exactly the same as it is for everybody else, why are water rates part of the bundle? How does that happen? That does not happen for other people?

Mr GRAHAM: This was just an aggregated cost amount that they are going to be up for that was included in the contract and the cap on it is a realistic cap. It goes up by CPI. They should not be incurring any more than that under normal circumstances. It is more almost just a broad clause covering the duties, taxes and charges that may come from government agencies.

Ms LEE RHIANNON: How did you work out the cap?

Mr GRAHAM: Basically through the estimating technique that we applied from historical—

Ms LEE RHIANNON: In does sound different to how it works for everyone else.

Mr GRAHAM: In what sense?

Ms LEE RHIANNON: People on public land do not have a cap.

Mr PIERCE: No. It works the same as for everyone else, in the sense that this is the valuation and this is the tax that will be paid and we are putting that into a contract and putting a cap on it. Other sorts of commercial leases might have other types of clauses in them, pass-through clauses and things of that nature. We should think of it in this respect, the Government, not as a taxing agent but as a commercial entity entering into a commercial contract with another commercial entity and

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having negotiations within that contract about how particular charges and taxes are treated within the contract. Within other commercial contract there are all sorts of clauses.

Mr ANDREW CONSTANCE: But you have outlined about \$8 million of stamp duty exemptions that were granted by the Treasurer.

Mr PIERCE: Which is a separate set of issues to the land tax.

Mr ANDREW CONSTANCE: I understand that. Holistically it would be nice to know what concessions were granted in dollar terms by Treasury, but what I would particularly like to know is in relation to the stamp duty how there was this round-robin of cheques. Basically the consortium had to pay the Office of State Revenue and be reimbursed by through the RTA. It sort of lends weight to the fact that the Treasurer wanted to politically convey the message that there was no cost to government, whereas in actual fact the people of New South Wales have forgone a whole raft of concessions, be they water rates or stamp duty.

Mr PIERCE: Let me comment on the administration of the round robin, as you call it. Any concessions in any area, be it of payroll tax concessions for firms that are dealing with the Department of State Development or any arrangements like that, it has long been the practice in New South Wales—and, I believe, these days in other places—to require the external party to pay the tax as if they were any other normal taxpayer and then for the government agency that is procuring something from them to get a budget to be able to reimburse them.

Mr ANDREW CONSTANCE: Why did the Treasurer not just exempt them?

Mr PIERCE: Because the purpose of that is really (a) to help on the tax administration side, to make the tax administration jobs simpler because it means you a taxing everybody in the same particular way; and (b) to give greater control over or greater awareness of the provision of these concessions, because if you write these concessions into a tax Act they tend to just sit there and, admittedly, not get the same scrutiny through the budget process as having to provide an agency with a budget allocation that you are making them responsible for managing. On the one hand it is really about making the tax administration task less complicated than it might be and, on the other hand, at least from the viewpoint of Treasury, making what you are doing more transparent because you have an explicit budget allocation to achieve that outcome.

Mr MATT BROWN: This morning we heard evidence from Tony Harris who told us that the Government could have paid for the Sydney motorways if it had only reduced government debt by 50 per cent rather than eliminating it. Will you please explain what the implications on the State budget would have been if that strategy had been adopted? Would that have meant that other government services could not have been funded?

Mr PIERCE: Yes, most certainly. Where to start? There are two starting points. The first is in relation to PFP projects. I think Treasury has said publicly in documents we have put out, and as I articulated before the Public Accounts Committee recently and I think also at estimates committees in past years, that we operate on a thing called the "rose by any other name" principle. The objective of doing these PFPs is not to take liabilities off the public sector balance sheet. The objective is: do we get better value for money by buying what government has already decided it is going to buy anyway as a PFP or by doing ourselves?

Separating the investment decision and procurement decision is quite important because the investment decision is made with an eye to what the government can afford. Hence, what is an appropriate level of debt. The objective of doing the cross-city tunnel as a PFP was explicitly not to get to liabilities off our balance sheet. Bear in mind that we entered into it—it would give substance to that, if the public sector comparator and the judgments had been that the public sector should do it, Treasury is essentially endorsing the public sector going ahead and doing it on its own. Therefore the debt would have been on the public sector balance sheet. So, before starting this process we have got to be happy to have that debt there.

In relation to how you determine the appropriate level of debt in the first place, which rather is a project specific question but more one about fiscal policy generally, which gets to the heart of: Is

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inappropriate to have the level of debt that we have now or some higher number? I preface it by saying we do not have zero debt; we had close to zero debt in the general government sector certainly at that time, but what we have to manage is our total debt levels. Our credit rating is based on our total debt levels, which includes the debt—

Mr MATT BROWN: That includes private trading enterprises?

Mr PIERCE: Public trading enterprise debt, yes. As a people are probably informed, the current budget for both the general government sector and the public trading enterprise sector have significant increases in capital expenditure, which is being financed in part by increases in debt for both sectors. The issue that concerns us is not whether debt is good or bad; it is what it is being used for and why is it being incurred. One of the premises of the targets in their fiscal responsibility legislation is that we can use debt to manage mismatches in expenditure and revenue growth throughout the economic cycle. So, we have trend revenue growth, say, at 5 per cent a year and at this particular point in the economic cycle of revenue growth for low trends we are happy to incur debt in order to fund expenditure.

There is one more point. Debt is okay to manage cyclical impacts. What we do get concerned about is the use of debt to support expenditure over and above what government can afford to pay for anyway. Debt is a means of financing something. It is not as you pay for it. You eventually have to pay for it out of taxation revenue or by not expending as much elsewhere.

Mr MATT BROWN: Are you aware of any tax implications that could arise due to shadow tolling?

Mr GRAHAM: Yes, there is a Commonwealth tax. Under Commonwealth law there is a taxation part of the Act called section 51AD. Section 51AD is a fairly draconian part of the tax and it is for the Commissioner of Taxation's discretion as to whether a project is triggered or not under that provision. The Commonwealth Government has been reviewing that provision now for some three or four years. We understand legislation is in train to change the provision of the Act, but while ever that provision is in there a shadow tolling arrangement potentially puts a project like the cross-city tunnel, if it was shadow tolling, at risk of being denied all deductions associated with the private sector company.

The way we have been managing that risk in New South Wales is to ask the private sector proponents to go to the Australian Tax Office and to seek a binding ruling that the contract they are entering into will not be subject to section 51AD or the secondary provision, 16D. Without that binding ruling we do not provide the approval of the Treasury to that transaction. At this point in time there has been no tax ruling on shadow tolling. It is of such a nature that it could cause triggering of the Act from those experts who have looked at it, so consequently at this point in time until the Act is changed and clarification is given about shadow tolling we would always still be at risk on that course.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Were you happy with the contract summary of the cross-city tunnel?

Mr PIERCE: Yes, at the time, yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Why was it done by private sector contract rather than somebody involved in negotiations on behalf of the Government?

Dr SCHOTT: There is a small subset of experts who do contract summaries. As you would have seen from the tabling of the contract in Parliament, it is very complicated. It would take a long time and it is better to have somebody who is very good at summarising legal contracts to do it. That is all.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is it important, though, that the person who has been involved in it understands it perfectly, and is this not a good way of ensuring that they do?

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Dr SCHOTT: They do understand it perfectly but it is not a good use of their time to have them summarising it.

Mr PIERCE: The contract summaries have to be certified by the Auditor-General that the contract summaries summarise the relevant issues.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is that report available from the Auditor-General?

Dr SCHOTT: Yes. It is attached to the contract summary.

Mr PIERCE: And, I think, tabled in Parliament.

Mr PAUL McLEAY: Tony Harris said that the Government can borrow more cheaply than the private sector. Is this the case?

Mr PIERCE: The short answer is yes, we can borrow more cheaply than the private sector. You might go on to ask why.

Mr PAUL McLEAY: Why?

Mr PIERCE: The key point around this point of discussion is that the public sector can borrow more cheaply than the private sector, not because of anything to do with the projects that the Government invests in or the inherent innate risk associated with that project. The risk associated with those projects is the same. They are determined by the nature of the projects fundamentally, rather than because they are public sector or private sector. We borrow more cheaply than the private sector because we have a special power that is reserved for government, being the power to tax, and our credit rating reflects the general state of our finances and our taxation power.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And the low level of your borrowing?

Mr PIERCE: The credit rating does. The credit rating determines the price you have to pay for that borrowing. So, the better your credit rating the lower the cost of borrowing, and hence the cost of capital for a project is not just simply the cost of borrowings for the Government. The cost of capital reflects the innate risks and nature of that project, not what we can borrow. What we borrow from is essentially the taxpayer underwriting the investment decisions of the Government. If you like, it is the taxpayer with an implicit cross-subsidy on the project. Hence, when we are making these public sector comparisons we want to be explicit about the project costs.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But you get the best of both worlds—borrowing cheaply and being prudent, is it not?

Mr PIERCE: I would contend that is what we try to achieve every day and often at night.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But you are not borrowing as cheaply as you might?

Mr PIERCE: We are structuring the finances so we can purchase what government has decided it wanted to purchase as cheaply as possible, recognising the risks associated with buying the things the Government buys.

(The witnesses withdrew)

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COLIN GELLATLY, Director General Premier's Department, affirmed and examined:

CHAIR: Are you conversant with the terms of reference of this inquiry?

Dr GELLATLY: Yes.

CHAIR: Do you wish to make an opening statement?

Dr GELLATLY: No.

CHAIR: What role has the Premier's Department taken in the cross-city tunnel project?

Dr GELLATLY: Very little.

CHAIR: Could you amplify that?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Especially now.

Dr GELLATLY: As I think you have seen from the previous witnesses, particularly the RTA and Treasury, there is a well-defined process within government for dealing with infrastructure projects that relies of the proponent agency—in this case the RTA—and the processes they have in conjunction with Treasury in particular, and also the planning side, and the processes taken by the Minister to the budget committee of Cabinet. The decision is made further on in negotiations. I guess the Premier's Department has not been involved in those detailed negotiations, particularly on the cross-city tunnel. I obviously saw the documents as they go through the Cabinet process. Things are about to change or have changed in the past six months or so with the creation of the infrastructure implementation group in the Premier's Department but specifically in regard to the cross-city tunnel we were not directly involved.

CHAIR: You mentioned the infrastructure co-ordination unit?

Dr GELLATLY: The infrastructure implementation group.

CHAIR: Is that different from the infrastructure co-ordination unit?

Dr GELLATLY: Yes. An infrastructure co-ordination unit was established in Premier's in the mid-1990s, a small unit looking at the overall strategic plan for infrastructure in New South Wales, not so much individual project management. With the creation at the time of the Department of Infrastructure, Planning and Natural Resources that unit was transferred to that department and so was no longer in the Premier's Department. But, as I said, the Premier announced last year the creation of the new unit within the Premier's Department headed by David Richmond to look at and focus on the infrastructure implementation in particular and directly related to projects.

CHAIR: When was the unit transferred from the Premier's Department?

Dr GELLATLY: I think it was 1999, just after the election, with the creation of the new department and the new portfolio.

CHAIR: It had no role in the cross-city tunnel then?

Dr GELLATLY: No. The infrastructure co-ordination unit was more about the overall strategy of infrastructure right across the board and there is a particular role which was identified in the working with government guidelines on privately financed projects about unsolicited proposals and where the director-general of Premier's is the point of contact for unsolicited proposals.

CHAIR: What role, if any, does the Premier's Department play in strategic planning for Sydney's and New South Wales transport needs?

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Dr GELLATLY: Again, not directly involved. There is obviously the planning department, the Ministry of Transport and transport agencies and they are now co-ordinated within government through the infrastructure and planning Cabinet committee. Again, there might be some specific tasks it will get involved in along the way but in the overall responsibility and putting plans through the Cabinet process there are other relevant portfolio ministers.

The Hon. GREG PEARCE: Could you tell me how much the payout to Mr Forward for his wrongful dismissal is?

Dr GELLATLY: A payment was made to Mr Forward which was determined by the Statutory and Other Officers Remuneration Tribunal, which is in accordance with the Act. They are your words, wrongful dismissal. The words under the Act are for the end of their position within the chief executive service. A determination was made by the tribunal and I can get you the exact amount, but I think it was pretty close to the maximum allowed under the Act, which is 38 weeks.

The Hon. GREG PEARCE: Do you agree with Dr Richmond's conclusions in his review of motorways that there is an anomaly in the money that contract summaries has to be tabled and they have not been tabled by ministers on time but there is no requirement to table a variation?

Dr GELLATLY: It is not for me to comment on that sort of policy document. The Government has made it clear that it has accepted the recommendations of the Richmond report. That is now Government policy.

The Hon. GREG PEARCE: So you now accept that Mr Tripodi was wrong in sacking Mr Forward, claiming that Mr Forward had not complied with the requirements in providing the variation summary?

Dr GELLATLY: I am not sure by what logic you come to that conclusion. I am not going to comment on a Minister's decision. That is the Minister's decision.

The Hon. GREG PEARCE: Could I just ask you a question about the upfront payment on the cross-city tunnel project? How was it that the bid that the budget committee of Cabinet selected in February 2002 almost precisely matched the budget figure that the RTA wanted for the upfront payment? The RTA budgeted \$98 million and the tender was for \$100.1 million.

Dr GELLATLY: I am not in a position to answer that. I think there are people who have a lot better knowledge of these things in the RTA and Treasury that you have just talked to.

The Hon. GREG PEARCE: What about, after all the changes that occurred for various reasons, the fact that the figure at the end of the day was able to match that figure by way of increasing the tolls?

Dr GELLATLY: I have no answer.

The Hon. GREG PEARCE: Do you think there should have been a new tender for the cross-city tunnel?

Dr GELLATLY: I am not going to comment on that.

The Hon. GREG PEARCE: Why are you not going to comment?

Dr GELLATLY: Because those are Government policy decisions. The guidelines for appearing before these committees is that public servants do not comment on government policy decisions. We provide factual information. I have no factual information to give you on that question.

The Hon. GREG PEARCE: I will come back to that in a moment. I note that Mr Constance wants to ask you some questions.

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Mr ANDREW CONSTANCE: Dr Gellatly, at what point in time did you notify the then Premier about the investigation into two Cabinet Ministers following the alleged leak of information to the consortium?

Dr GELLATLY: Mr Chair, that is obviously part of an issue that is before the Independent Commission Against Corruption. I think that is the appropriate place for those questions to be asked.

Mr ANDREW CONSTANCE: Mr Chair, I would like to bring to your notice that the referral to ICAC is in relation to the Cabinet documents. Dr Gellatly, are you confirming that you are now being investigated by ICAC for not providing that information back at that time, given that the Premier himself has said very clearly that if he was aware of the information he would have referred it to ICAC at that time?

Dr GELLATLY: I am aware, obviously, that there is an ICAC investigation, and I have been interviewed by ICAC. That investigation is ongoing. The Opposition referred this issue to ICAC, and I am fully co-operating with ICAC. That is the appropriate place for these issues to be considered, and there is a proper process involved in that.

Mr ANDREW CONSTANCE: We have actually referred the Cabinet briefings—not your inquiry into the two Ministers, following which you gave no credence to Carl Scully's claims whatsoever. Why was that? Why did you not give any credence to what Carl Scully was saying?

Dr GELLATLY: Mr Chair, again I think this matter is more adequately handled by ICAC.

The Hon. GREG PEARCE: With respect, we agree, and do not intend to question you in relation to Mr Scully's letter in which he claimed that there was a leak to the consortium. But there is a separate issue, and that is that you were asked to investigate that claim, and you came to a conclusion. We are asking you about your investigation of that claim.

The Hon. AMANDA FAZIO: Point of order: Dr Gellatly has already advised that he does not wish to answer questions on this matter because he has been interviewed by the ICAC about a referral that was made by the Opposition in relation to leaked information regarding the cross-city tunnel. Nobody around this table, apart from Dr Gellatly, knows the line of investigation that the ICAC is undertaking. I submit it would be out of order for Opposition members to continue to push these questions, when quite frankly we do not know the scope of the ICAC investigation. I ask the Chair to rule the question out of order.

Mr ANDREW CONSTANCE: To the point of order: Dr Gellatly is on the public record as saying, "I had no grounds to give any credence to the allegations." Dr Gellatly has spoken on the public record in relation to that. That is what we are questioning him about, and we wish to continue with that questioning.

CHAIR: You are trying to clarify whether that is a correct quote of Dr Gellatly.

Dr GELLATLY: There is a statement issued and attached to a Premier's press release, which I presume is the one you are talking about.

Mr ANDREW CONSTANCE: My question is, Why did you not give any credence to what Carl Scully's was saying on that issue?

Dr GELLATLY: Mr Chair, I think that obviously is within the scope of what ICAC is investigating at present.

Mr JOHN TURNER: Point of order: Mr Chair, I believe ICAC is investigating a leak of documents from Cabinet to the consortium, not the investigation that Dr Gellatly undertook and subsequent statements he made in relation to Mr Scully.

Mr PAUL McLEAY: To the point of order: We have the dog chasing its tail. We are talking absolute causal relationships. How can it not be related?

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Mr MATT BROWN: It could prejudice the ICAC inquiry.

CHAIR: Perhaps we need to know whether the media report on which the questions are being based is correct.

Dr GELLATLY: If it is the media report that I think was issued, then I obviously stand by that. But from that point in time I have not communicated with anyone else about that issue, because the normal process—as happened this time—is that once an ICAC investigation begins you do not talk to other witnesses or do other things because of the potential that you could cause the investigation to go wrong and mislead. As ICAC mentioned in their Orange Grove inquiry, the fact that people talk publicly in say an inquiry like this as a witness clearly leads to the situation where other witnesses hear a person's ideas or knowledge and that sort of thing on the situation. It seems to me totally inconsistent with the whole purpose, when you are doing an investigation, that you separate people and they do not talk to each other about what is going on. Now, if we have the situation where people talk publicly about and answer questions in relation to those issues that have been referred to ICAC, then potential witnesses hear what is being said. It seems to me that that is totally contrary to the way that investigations are being conducted, and are always conducted, that you do not talk to the other person.

Ms LEE RHIANNON: Dr Gellatly, once the ICAC inquiry is over, will you then be willing to speak to us in full, or will you at that stage be saying, "It has all been dealt with by ICAC"?

The Hon. AMANDA FAZIO: I have a procedural point, Chair.

CHAIR: We are clarifying the point of order. We are still not in question time.

Ms LEE RHIANNON: I apologise, Mr Chair.

The Hon. AMANDA FAZIO: I ask you to rule on my point of order before we go on to further questioning of Dr Gellatly.

Mr JOHN TURNER: Could I address the point of order before you rule on it?

CHAIR: I think Dr Gellatly has answered the question by standing by what is in the media report, and that is as far as he can clarify the matter. I think that brings that matter to an end.

Mr ANDREW CONSTANCE: My question following that is then: Why did you not, as the head of the Premier's Department, notify the then Premier that you were investigating two of his Ministers?

Dr GELLATLY: Mr Chair, that clearly is a matter relevant to what has been referred to ICAC.

Mr ANDREW CONSTANCE: It is a simple question. You publicly stated that you did not give credence to what Carl Scully was saying in writing. I am asking you why you did not let the Premier of the day know why you were conducting an investigation into two of his Ministers.

Mr MATT BROWN: Mr Chair, I think this is directly relevant to the point brought up by Ms Fazio.

Mr JOHN TURNER: Mr Chairman, this morning you read a long preamble in which you said you would allow the challenging of all matters, including matters before ICAC.

CHAIR: It depends on the line of questioning. The way that Dr Gellatly has explained it now is that he believes it would compromise him if he gave further information as to the evidence he has given before ICAC. About the best we could do is put that question on notice and ask Dr Gellatly to give consideration to whether he can answer it.

Dr GELLATLY: I am happy to take that on notice.

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CHAIR: Dr Gellatly may need advice as to what more he can say.

The Hon. GREG PEARCE: Dr Gellatly, have you at any other time received a letter from a Minister suggestion the potential for corrupt conduct by one of the other Ministers?

Dr GELLATLY: I will take that on notice.

The Hon. GREG PEARCE: You will take it on notice?

Dr GELLATLY: Yes.

The Hon. GREG PEARCE: If you had received such a letter, what would you have done as a result of it?

Dr GELLATLY: Clearly, Chair, this is going to issues that are related to the ICAC inquiry.

The Hon. GREG PEARCE: It is not going to those issues. It is what you do as the Chief Executive of the Premier's Department in certain circumstances.

The Hon. AMANDA FAZIO: Point of order—

CHAIR: You would have to separate it from the current matters to make it a procedural question.

Dr GELLATLY: I am happy to try to answer the question. Clearly, as head of the Premier's Department, and as a public officer, under the Independent Commission Against Corruption Act, if I have sufficient evidence to suspect corruption, then I am obliged to refer that matter to ICAC, which I have done on a number of occasions in a number of areas. I actually encourage other chief executive officers to do that too. That is part and parcel of the job.

Mr MATT BROWN: Point of order: These questions are outside the terms of reference for this inquiry. The hypothetical workings of the Premier's Department are not addressed in the terms of reference for this inquiry. Mr Chair, you said in the lengthy statement you made this morning that the Committee will be sticking to the terms of reference for its inquiry. I would like you to rule on that point of order.

Ms LEE RHIANNON: To the point of order—

CHAIR: The witness has given an answer on the procedural matter, so that is finalised. We now move to Ms Lee Rhiannon's questions.

Ms LEE RHIANNON: Partly related to that are a number of questions that you felt you could not answer, Dr Gellatly. Will you be willing to answer those questions once the ICAC hearing is over, or would you at that stage be saying, "It has all been dealt with by ICAC, and there is nothing further to discuss"?

Mr MATT BROWN: Mr Chair, this is a hypothetical question, and it is way outside the terms of reference for this inquiry.

Ms LEE RHIANNON: It is extremely relevant, and I am sure Dr Gellatly would like to answer it.

Mr MATT BROWN: My point of order is that the question is outside the terms of reference.

CHAIR: It is outside the terms of reference, and it is a hypothetical question. When the House receives the ICAC report, it will decide what matters it will take up and what questions it will ask.

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Ms LEE RHIANNON: Dr Gellatly, did you discuss with the Premier whether he should attend this inquiry to answer questions?

Dr GELLATLY: No.

Ms LEE RHIANNON: So you had no discussion with the Premier?

Dr GELLATLY: No.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Given the whole-of-government approach to planning, why is there no overall strategic plan for Sydney?

Dr GELLATLY: As you are well aware, the Metropolitan Strategy was released last year, and I think it would be a fair planning strategy for metropolitan New South Wales.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Mr Sam Haddad gave evidence to this Committee that there was not an overall plan and that the job of the planning department was to evaluate proposals.

Dr GELLATLY: I can take it on notice and refer you to the Metropolitan Strategy that was released last year. That clearly fits, I think, the—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Does the planning group actually look at the proposals in terms of their opportunity costs, so that if you spent a large amount of money on roads you cannot spend that money on rail?

Dr GELLATLY: I am sure John Pearce and Treasury are always taking into account opportunity costs—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But their job is money. Surely you are taking an overall view of the State as head of Premier's Department. Surely it is more in your area than theirs.

Dr GELLATLY: I am sure the Treasury as economists would say they always take into account opportunity costs. It is not just purely financial. They would take an economic approach to the matter.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But that is into the use of money. Surely you must have a planning role between road and rail, for example.

Dr GELLATLY: No. As I have explained before, there is a Cabinet process, where there is an Infrastructure and Planning Committee, with various Ministers, including Transport, Roads and Planning, and other Ministers too, Environment and so on, being brought together in resolving those cross-portfolio issues. Clearly, those are cross-portfolio issues.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: As the metropolitan plan was not available at the time the cross-city tunnel was proposed, would that mean that because the RTA was first up and best dressed it got its proposal up, whereas any other rail project, not being potentially in the strategy and not being advocated for by the relevant department, actually missed out because of the non-holistic look at the problem of city planning?

Dr GELLATLY: At that stage they went to the budget committee of Cabinet—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Who are "they"?

Dr GELLATLY: The appropriate Ministers. The project was taken to the budget committee of Cabinet, and the budget committee of Cabinet, when it is looking at projects, has its terms of reference. It does not just take into account financial things; it looks at other impacts as well. That is the process.

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CHAIR: We will move on to Government questions now.

Mr PAUL McLEAY: What are the benefits of Treasury-funded projects and how is the Government assisting agencies to identify potential projects?

Dr GELLATLY: I think it has been made clear in various documents and in the general policy statements by government that there is a role for the private funding of infrastructure both in utilities and roads and in social infrastructure as well. The term broadly used is "public-private partnerships", and often it is privately financed projects. I think it depends on the situation. That has been a policy decision the Government has made and we have been working on and it depends on the specific areas. Clearly, toll roads generally have been regarded as a very successful approach in delivering infrastructure earlier and providing benefits. The more recent projects, particularly the schools projects and social infrastructure, have been very successful and there are other projects in the health area that are going on and particularly in the water area with water sewerage treatment plants and some of those sorts of things.

There is a long history over the years in New South Wales of having private involvement and partnerships in delivering projects. I think the policy position the Government has taken has been that it is not a panacea, it is not automatic but it should happen. As Treasury is often saying, you have to make the decision whether you want to have that type of infrastructure compared to other priorities, and then you look at the procurement method after that, whether it is budget funded or private sector or jointly.

Mr PAUL McLEAY: How do you deal with unsolicited proposals?

Dr GELLATLY: In this document "Working with Government", which goes through a lot of the guidelines on dealing with private sector and public sector comparator and that sort of thing, there is a specific section on unsolicited proposals. As I have mentioned, the Director-General of the Premier's Department is the point of contact. When people come up with an idea there is a process to go through. We do discuss with all the other agencies—if it is a road project with rail and so on. Then there is an evaluation made and issues like intellectual property and so on and an answer given to the unsolicited proposal about whether the Government is going to deal directly with it—which I must say is not very often because of the intellectual property issues, basic probity and efficiency, it means it is better to go to the market and have tenders.

Mr PAUL McLEAY: The Premier has highlighted the importance of successful infrastructure delivery to maintain the State's economic pre-eminence. You talked earlier about the Infrastructure Implementation Group [IIG]. Would you tell us a bit more about it, how it came about, how it works with the \$35 million plan, and what arrangements are in place for making infrastructure projects and how they work with the implementation group?

Dr GELLATLY: As you mentioned, it is a pretty big capital program. In terms of the next four years it is about \$35 billion: \$2.3 billion on health, \$9.5 billion on transport and roads and \$11 billion on electricity, water and sewerage and capital. So it is big program. The Premier, when he became the new Premier, indicated to us that he wanted a priority to make sure that infrastructure projects were delivered on time and on budget and that he wanted a detailed monitoring process. So he employed David Richmond, who obviously had a very successful role in the Olympics in delivering major infrastructure, privately funded projects in particular, on time and on budget. He gave a report to the new Premier which resulted in the Premier agreeing to the establishment of the Infrastructure Implementation Group within the Premier's Department. It reports directly to the Premier. There is also an Office of Infrastructure Management in Treasury which reports to the Treasurer, the Minister for Infrastructure and the Minister for Finance.

The Infrastructure Implementation Group has a small permanent staff, about four. It is located in Premier's and the key focus is on project delivery. It has a strong facilitation role, including working closely with the agencies to assist in the projects through the planning processes, to see if there are any impediments developing, particularly across agencies from other agencies, and making sure that high priority projects get delivered, as I said, on time and on budget. That role of facilitation can be either in just getting people in and monitoring where they are up to and what is happening or

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actually sitting on the project control group. The major ones at present that are being looked at are the Port Botany expansion, the metropolitan strategy and the Royal North Shore hospital redevelopment.

You would be aware there was legislation passed last year, which was the Infrastructure Implementation Corporation Act. That is a very strong mechanism that allows for a corporation to take over a project from an agency if it is determined that it is at risk and there is likely to be a chance that the project will not come to fruition and that there are difficulties occurring. It has a very proactive, strong role, making use of outside expertise with a small core staff to support it and David Richmond as the chair, if you like. We have just advertised for the full-time executive director. I think those ads close pretty soon and we will finish the recruitment process. I think the Committee is talking to David Richmond tomorrow.

Mr PAUL McLEAY: That is right. What arrangements are in place to ensure the economic and social prosperity of New South Wales?

Mr ANDREW CONSTANCE: Even you cannot keep a straight face with a Dorothy Dixier like that.

Dr GELLATLY: As a humble public servant all I can say is that the government of the day has in place policies and strategies that will achieve that. We are working hard as public servants to make sure they achieve that.

CHAIR: You cannot comment on government policy.

The Hon. AMANDA FAZIO: How does the major infrastructure group fit in with that concept of State significant projects where the Premier's Department did have a co-ordinating role? Do you still have a co-ordinating role or are they two separate entities?

Dr GELLATLY: Basically the Premier's Department always has an overall co-ordinating role in any sort of issue, whether it is public sector, industrial relations, social projects, environment, marine parks, a whole range of things. But the Premier has indicated that one of his priorities is that he wanted a focus on infrastructure implementation. So he has created the separate unit whose sole focus would be on that. The rest of the Premier's Department will continue its role in co-ordination across a whole range of areas. This is just creating a specific focus on infrastructure implementation.

Mr MATT BROWN: How does the infrastructure implementation group work in with the Office of Infrastructure Management within Treasury?

Dr GELLATLY: The framework, as I have mentioned before, all comes to the Cabinet process obviously. There is an infrastructure and planning committee which basically looks at whether the project should go ahead and fits in with the overall infrastructure priorities. Then it goes to the budget committee for the procurement and financings of things. In terms of working with the Office of Infrastructure Management in Treasury, their responsibility is the overall strategic plan: what are the priorities, what is the timetable, what are the procurement methods, and looking at how the \$35 billion is spent and providing advice to the Treasurer and Minister for Finance. Our group is basically about making sure things happen. Once the Government has decided that they are going to do it, we are concerned with making sure it happens. The infrastructure group in Treasury is more about the overall strategy priorities and their financing and how they are procured.

Mr MATT BROWN: Following the recently released Richmond Report, particularly as to motorways, are there likely to be any changes to Treasury's approach?

Dr GELLATLY: It is obviously a policy issue. As I said before, the Premier has announced that the Government has accepted all the recommendations of the Richmond Report. So they will be accepted—the specific issues relating to toll roads that are included in those recommendations and also the reporting requirements that have been tightened up. I think the overall policy position, as I still understand it, is on a case-by-case in terms of public-private partnerships.

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Mr MATT BROWN: You touched on earlier about the strategy by the Office of Infrastructure Management. To get it clear, you have these two groups and their inter-relationship with the budget committee of Cabinet. How does that committee approve the workings of those groups?

Dr GELLATLY: More of the infrastructure strategy will go to the infrastructure and planning committee. That is where the metropolitan strategy went to because it is across all the different portfolios. Again, the infrastructure strategy will go there, whereas the budget committee is more about how you procure it, how you finance it and what are the budget impacts.

Mr ANDREW CONSTANCE: Dr Gellatly, obviously at the time you were aware there was a dispute between the Sydney Harbour Foreshore Authority and the RTA. What was the nature of that dispute? What was that all about?

Dr GELLATLY: Clearly it is in the statements. It is about the relocation of the stack.

The Hon. GREG PEARCE: When you were reciting about the IIG you mentioned three of the projects it is supposed to be responsible for. You did not mention Liverpool Hospital stage 2. Why is that?

Dr GELLATLY: Mr Richmond will be able to tell you a number. I only mentioned three, I think. There is obviously a lot more than that. They are just three that I picked out. There are a lot more projects involved in that.

The Hon. GREG PEARCE: There is quite a strong feeling that the Government is sitting back waiting for the cross-city tunnel consortium to go broke and then to buy it and get out of the problems over the tunnel that way. What plans do you have to take over the cross-city tunnel when they go broke?

Dr GELLATLY: Can you ask that with a straight face?

The Hon. GREG PEARCE: It is a serious question. We have seen the Treasury and RTA e-mails where officers have looked at the potential costs.

Dr GELLATLY: I have no comment on that. I have no factual information I can provide you with.

The Hon. GREG PEARCE: No current information on that?

The Hon. AMANDA FAZIO: No, no factual information.

The Hon. GREG PEARCE: No current information on that. Given the Richmond review essentially dumped on the entire procurement method of the cross-city tunnel—the upfront payments, the lack of control over tolls, consultation problems and so on—would you do the cross-city tunnel the same way again if you had your time over?

Dr GELLATLY: The decision to build the cross-city tunnel and the procurement method is a government policy decision made at the time. They will make decisions in the future based on new information, including the Richmond Report.

Mr ANDREW CONSTANCE: What are your personal thoughts?

Dr GELLATLY: I am not in a position to provide personal thoughts. I am a public servant employed by the Government.

Mr ANDREW CONSTANCE: What are your professional thoughts then as a public servant? Would you do it all again differently?

Dr GELLATLY: I was not involved, as I said before, in the detailed process and negotiation. I think you have had the experts here. Clearly, people in the public servant sector learn from experience in projects. We will never do anything exactly the same because you always learn

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from previous experiences. Each project is treated on its merits and handled depending on the situation.

The Hon. GREG PEARCE: You said in answer to the Government members' questions that the new Premier had a priority to see infrastructure projects delivered on time and on budget.

Dr GELLATLY: Yes.

The Hon. GREG PEARCE: Why did the previous Premier not have that priority?

Dr GELLATLY: That is the new Premier's priority. He is entitled to it and that is what we will implement.

The Hon. GREG PEARCE: In relation to the process on the tunnel, the problem seems to me that the budget committee of Cabinet approved a tender back in February 2002, then essentially allowed the RTA to negotiate almost in a vacuum to get to the final deal. Are you going to do anything to change that and implement other steps in the process to ensure that what the budget committee of Cabinet approves is in fact what is delivered at the end?

Dr GELLATLY: As I said, there will always be lessons learnt along the way and for each project you try and improve on what went before.

The Hon. GREG PEARCE: What specifically have you done to prevent that situation arising again? The tender the budget committee accepted was non-conforming and it required a new EIS. Effectively, it was a totally new project and then after 10 months, in which there were all sorts of changes to pricing and other extraneous work brought in, as signed in one of the RTA or Treasury documents they acknowledge it had gone back to tender and the order of the various tenders changed. How did you let that process occur? Have you done anything to stop the practice occurring again?

Dr GELLATLY: Can I take that on notice and get back to you?

The Hon. GREG PEARCE: You can take it on notice. What did Mr Forward do for the four months that he was working for you in the Premier's Department?

Dr GELLATLY: Is that relevant to the terms of reference of the inquiry?

The Hon. GREG PEARCE: Yes, it is.

Dr GELLATLY: The Chair has acknowledged that it is not.

CHAIR: Thank you for your attendance before the Committee.

(The witness withdrew)

(Short adjournment)

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ANTHONY ROLAND BLACKSHIELD, sworn and examined:

CHAIR: What is your occupation?

Professor BLACKSHIELD: I am retired. I was a professor of constitutional law, and I still have the title of Emeritus Professor and various visiting professorships.

CHAIR: In what capacity are you appearing before the Committee?

Professor BLACKSHIELD: As a private citizen and as a writer on constitutional law.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Professor BLACKSHIELD: Yes, I have seen the terms of reference.

CHAIR: You have just tabled some documents. We will need to identify those.

Professor BLACKSHIELD: Perhaps I could explain them briefly. The first is that George Williams and I have just finished a new edition of our casebook on constitutional law. It is to be published later this month, but from the page proofs I have taken out the pages that deal with the constitutional principles that I think are relevant here. I thought it might be convenient to have that for a reference, although I will not in fact be referring to it in my evidence today.

Mr MATT BROWN: Is the Ansett case there?

Professor BLACKSHIELD: Yes, it is referred to in there. Also the other document is a longer submission in which I discuss the constitutional principles in more detail and also I try to talk about their application to the cross-city tunnel. I apologise for not having put that in as a written submission in advance but in fact I only finished writing it at about two o'clock today.

CHAIR: We thank you because obviously you have done a lot of work on that submission. We appreciate that very much.

Motion by Mr Matt Brown agreed to:

That the documents be received, become part of the submission, and be made public.

Professor BLACKSHIELD: Mr Brown, did you have a question about the Ansett case?

Mr MATT BROWN: I have to wait my turn for questions.

CHAIR: The documents are headed, "Australian Constitutional Law and Theory", and, "Inquiry into the Cross City Tunnel: Submission of Professor Tony Blackshield". I just have some general questions. On what basis do you think the cross-city tunnel contract was invalid? Do you still hold that opinion?

Professor BLACKSHIELD: Yes, and no. I am not sure of the answer. Indeed, one of the reasons I had to write this submission is that I was not sure what I was going to say until I had said it. The two questions that are pertinent are: first, does the cross-city tunnel contract effectively fetter the discretion of either the Roads and Traffic Authority or other levels of government to make changes to the regime in relation to the tunnel? The answer is that, no, it does not fetter those discretions. The second question is: what compensation would be payable in the event of deviations from the present arrangements; and, in particular, is clause 19.2 of the project deed binding in the regime that establishes the compensation? My answer is that probably this is not binding and that probably any compensation would have to be assessed on more general principles and not on the particular terms set out in clause 19.2.

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CHAIR: Do you think it would be beneficial for New South Wales to follow, say, the Victorian model? Are you aware of that with regard to contracts—in regard to contracts between a private consortium and the Government?

Professor BLACKSHIELD: I am not sure what details of the Victorian model you refer to. One of my recommendations is that, generally speaking, such contracts ought to be enshrined in legislation.

CHAIR: Thank you. What are the mechanisms for review of public-private private partnerships? Are they adequate? Should there be a role for agencies such as the Australian Competition and Consumer Commission [ACCC] in reviewing public-private private contracts?

Professor BLACKSHIELD: I think there should be more careful scrutiny of such arrangements than appears to have happened in this case. Again, my concern is principally with the constitutional principles. The level of scrutiny that I would particularly want to see is a greater level of scrutiny by lawyers, either in the Crown Solicitor's Office or Parliamentary Counsel, of the legal implications. This is one reason that I prefer to see such contracts enshrined in legislation because I think, in that event, before the legislation is passed, it is subject to that sort of scrutiny.

CHAIR: How can the government, this Government particularly and other governments, regain control of infrastructure in a State where there is a significantly growing number of public-private private partnerships?

Professor BLACKSHIELD: I am sorry, repeat that?

CHAIR: How do you reverse the process? How can the governments get control of infrastructure in the State if they have so many public-private private partnerships?

Professor BLACKSHIELD: You are asking not just about one particular contract but about the entire pattern. I think the pattern probably has to continue. I think, unless there are fairly remarkable changes in our approach both to politics and economics, we are going to see more of these partnerships and I do not think they are objectionable in themselves but I think they do need very careful scrutiny. It is at that level of scrutiny of such arrangements that I think there is need for reform. What must be said when we ask how governments can reverse the process is that, whatever the terms of the research contract, the government and ultimately the Parliament always retain the capacity to repudiate or override the particular contract activities if it is in the public interest to do so.

CHAIR: Are you aware of the Treasury's draft guidelines for the public disclosure of information arising from New South Wales Government tenders and contracts? Are you aware of that document?

Professor BLACKSHIELD: Only in general terms and I am aware of the difficulties that arose in relation to public disclosure in this particular case. I hope that they have been remedied but, again, that is not my primary concern.

CHAIR: Would you say that the actual guidelines are sufficient? Have you had a chance to evaluate the guidelines? Are they adequate?

Professor BLACKSHIELD: No, I have not evaluated them sufficiently closely to express that opinion.

The Hon. GREG PEARCE: I am sure the Government would be very keen on your opinion that the compensation provisions may not be enforceable. I have only had a quick moment to skim part of your opinion. Would you like to outline for us the general proposition that you are putting there in relation to the compensation provisions?

Professor BLACKSHIELD: Yes. The discussion of the compensation provisions begins, I think, at paragraph 27 which is on page 9 of the written submission. This comes after I have considered the question whether the arrangements envisaged in the project deed for traffic flow and so forth—I have considered the question whether those arrangements effectively fetter the discretion of

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the Roads and Traffic Authority, and I have decided that they do not. The principal reason for that is clause 2.3 of the project deed which says very clearly that nothing in the document shall fetter that sort of discretion. So, turning to the level of compensation: obviously, upon the face of the contract, what is envisaged is that there may be changes to traffic management and traffic flow but if such changes have a material adverse effect, then they will trigger the negotiations outlined in clause 19.2. The ultimate goal of those negotiations will be to give compensation to the developers, in particular up to the level of maintaining the kind of profit return that is calculated by reference to the base case financial model.

The first question I ask is whether that mechanism in clause 19.2 is itself a fetter on discretion. The argument would be that a public servant who knows that a particular decision he or she is likely to make would have the effect of landing the government with the liability for heavy compensation might well be deterred from making that decision, and so his awareness of that liability might effectively operate as a fetter on discretion, just as much as an explicit fetter would do. That is the argument.

I consider that argument in two contexts. First, I go back to clause 2 of the project deed, which expressly says that there are no fetters on compensation, and I ask: Is clause 19.2 a fetter for the purposes of that clause? In other words, does the contract itself negate any binding effect of clause 19.2? I say that, on the wording of clause 2.3, that is a possible interpretation but I do not believe it is a plausible one. This is not the kind of contract that says, "I promise not to make any changes, and if I do make them I promise to pay you compensation". In a contract of that kind the likelihood is that both promises would be unenforceable. Rather, this is a contract that says, "We don't promise not to make any changes but we do promise that if our promises have a material adverse effect we will compensate you according to that clause". That is the way this contract is intended to operate and to say that clause 19.2 is itself invalid as a fetter on discretion would not be consistent with that intention. So clause 2.3 does not operate, in my view, to wipe out clause 19.2, although an argument could be made that it does. I reject that argument.

Secondly, I turn to the general constitutional principle that prohibits any fetter on discretion. The effect is that any clause that does operate as such a fetter is invalid and unenforceable. For the purposes of that principle I think the argument that clause 19.2 is itself an invalid fetter on discretion is much stronger. I should say something here that I say at the very end of my submission: None of the arguments I review are conclusive. The question of whether any compensation is payable under any of the events that might arise, and if so what compensation, cannot be answered conclusively. The effect of the various arguments that I review is, in the end, one of uncertainty.

But that uncertainty is itself significant in two ways. First of all, it means that it is not correct to say that, whatever happens, the Government is now irrevocably bound either to accept the existing arrangements or to pay massive compensation. There is uncertainty surrounding that proposition. It is not clear cut. There are possible arguments that would negate that proposition. Secondly, in any serious negotiations with the developers that very uncertainty might itself strengthen the Government's hand. As I say in the submission, the developers might well be prepared to accept a lower level of compensation rather than face the possibility of not getting any compensation at all. So everything in this field is uncertain but that uncertainty is itself significant. For what it is worth—to come back to your question—I think there is a strong case for saying that clause 19.2 is itself a fetter on discretion and is therefore unenforceable.

Mr MATT BROWN: But you reject that argument.

Professor BLACKSHIELD: No, I reject that argument insofar as it is addressed to clause 2.3 of the project deed. But I accept it insofar as it is addressed to the general constitutional principle that a fetter on discretion is invalid.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But is there not a general principle that governments that are behaving like economic entities should enter into contracts like other economic entities? There is a global credibility, if you like, that does not necessarily go to precedents set three-quarters of a century ago or so.

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Professor BLACKSHIELD: There is undoubtedly a principle of that kind, and it operates on two levels. First of all, it operates as a matter of practical reality. Governments have to take their contracts seriously and do have to behave responsibly and they are going to get into trouble if they do not. Secondly, simply as a matter of principle there is, as you say, an expectation that governments should take their contracts seriously and when they are engaging in economic activity should behave as proper economic entities. But that principle is in conflict with the constitutional principles. The constitutional principles must in the end override the economic principle because the constitutional principles go very deep in our democracy. The ultimate function of government is to serve the public and the government and its various manifestations must always remain free to do whatever is in the public interest at the time.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But western governments complain that the Chinese do that and the infrastructure travelling around the world assumes that governments will meet their contractual obligations.

CHAIR: We have covered that point. Let us move on.

The Hon. GREG PEARCE: The Government has already obtained senior counsel's opinion on part of what you have said. I think in terms of the validity of the contract itself they have covered it but they have not really addressed the fetter that 19.2 might be—

Professor BLACKSHIELD: Particularly in relation to that argument about clause 19.2.

The Hon. GREG PEARCE: So I am sure that they will take that on board. I also note that you have some concerns about definitional issues, particularly the equity return and how that is defined and how, if there is compensation payable, it will be addressed.

Professor BLACKSHIELD: The reference to the base case financial model would lead to an expectation of compensation at a very high level. From what I have seen of both the notional estimates of traffic flow and the realistic estimates, that level of compensation may well be an unrealistic level. That is certainly one reason why I think clause 19.2 is a very onerous requirement and it is the onerous nature of it that I think strengthens the argument that it should be regarded as an invalid fetter on discretion.

I discuss in the submission the possibility that it might be possible to read down clause 19.2. There is some language in clause 19.2 that softens it—all the talk about negotiating in good faith and flexibility—and it might be possible to imply into that some more realistic principles for assessing compensation. The further you went in that way in modifying the effect of clause 19.2, the weaker the argument that it is an invalid fetter would become. I do not myself think that it is possible to read it down in such a way as to save it but I do acknowledge that possibility. If that possibility were pursued, the end result would be that clause 19.2 would be valid but that the negotiations conducted pursuant to it would lead to a lower and more reasonable level of compensation.

CHAIR: From what you have just said do you think it would be wiser for the RTA to try to negotiate that compensation like a settlement or leave it to the court to make a decision?

Professor BLACKSHIELD: No, I think there should be negotiation at this stage. It would be unfortunate for both sides if this matter were to finish up in court—although sometimes these things do. I might say that from time to time such arrangements do finish up in court and from time to time the end result of the court proceedings is that the Government in question is not bound by the contract. The Government has in fact successfully repudiated the contract. That happened in South Australia in the West Lakes case that I refer to and in Queensland in the Comalco case. While giving full weight to the economic principles that Dr Arthur Chesterfield-Evans referred to, the result in those cases has not been that South Australia and Queensland have lost their credibility as commercially negotiating governments. There may be particular cases of this kind where a government simply has to repudiate the contract and can do so without damaging its general credibility. Of course, repeated repudiation of that kind would clearly damage the Government.

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Ms LEE RHIANNON: Professor Blackshield, you have said publicly that while there are many provisions in the contract that can trigger renegotiation none relate to the public interest; all relate to commercial interests. Do you think that is a fatal flaw in the contract?

Professor BLACKSHIELD: It is certainly something that disturbs me. It is one of the things that led me to explore the possibility that clause 19.2 might be read down. Again, starting from what it says about good faith and flexibility, the kind of qualifications that one would try to imply from those words is, first, that any level of compensation must be reasonable; and, secondly, I think there is a general principle—which I have extracted in this document from the High Court decision in Grace Brothers and the Commonwealth, which of course was in a different constitutional context but I think it is a general principle—that when a government has to pay compensation to a private interest and when we are assessing what is fair, just or reasonable compensation, that is not simply a question of what is fair having regard to the interests of the developer.

You also have to take into account the interests of the Government and of the taxpayer. It is only when those things are brought into the equation that the question of what is fair and reasonable compensation can properly be assessed. As I say, it may be possible to read some of that into clause 19.2 as it stands—and the further you went along that line the more likely it would be that clause 19.2 would be valid after all. If, on the other hand, clause 19.2 is invalid that does not necessarily mean that there is no compensation payable but it does mean that compensation would have to be assessed on general principles and then the standards of fairness and reasonableness and taking the interests of the taxpayer into account would become fully relevant.

Ms LEE RHIANNON: Thank you. You have also queried publicly why the RTA relied solely on advice from Clayton Utz rather than getting independent advice from the Solicitor-General or the Crown Solicitor. What do you think we have lost by farming out legal services to the private sector in this way? You are concerned that we are not building up a corporate understanding of how to handle these contracts.

Professor BLACKSHIELD: First of all, the perspective that a private firm brings to such matters—even when it is a private firm that has had considerable experience in such matters—is not necessarily primarily directed to the kind of constitutional principles that I am talking about in this paper. Government lawyers, in particular I suppose the Crown Solicitor's office, would be more likely to have those at the forefront of their considerations. Secondly, there is a matter of the pattern—the continuing experience—in cases of this kind. If such matters were regularly scrutinised by government lawyers, their expertise in such matters would clearly be built up.

CHAIR: Should we include as a recommendation that contracts should be reviewed by the Solicitor-General in order to protect the public interest?

Professor BLACKSHIELD: Certainly, yes.

Ms LEE RHIANNON: I think you touched on this in your earlier description of the contract and fettering discretion. Could you explain to us the implications of this for the potential of the Government to renegotiate the contract?

Professor BLACKSHIELD: Again, I have considered that primarily by reference to the question of compensation. There is no doubt that the Government is free to renegotiate the contract; that is fundamental.

Ms LEE RHIANNON: That is clear.

Professor BLACKSHIELD: Yes. The question is what price tag such renegotiation would carry. The answers I have reviewed range from no compensation at all to compensation at the full base rate financial model.

Ms LEE RHIANNON: Right.

Professor BLACKSHIELD: I was surprised by one of the arguments at first, but I came to believe that it was plausible. I refer to it at the bottom of page 13 and continue on page 14. Were the

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Government to adopt some materially different regime in relation to the cross-city tunnel, the entire existing contract would simply fail by reason of the doctrine of frustration.

Ms LEE RHIANNON: You referred to a "fundamental material change". What do you mean by that?

Professor BLACKSHIELD: If circumstances change so much that it is no longer practicable to go ahead with the existing contract then the common law doctrine is that that contract is simply terminated and the technical term is that the contract has been "frustrated".

Ms LEE RHIANNON: Right.

Professor BLACKSHIELD: The significance is that if the contract has been frustrated neither party is entitled to compensation; it is simply a bad loss for everyone involved and each party suffers whatever losses they have sustained to that point. Obviously they will not incur any further losses. There is an exception to that principle, which is why I originally thought it was not applicable. The exception is that you cannot rely on the fact that a contract has been frustrated if it is through your own doing that it has been frustrated. My initial reaction was to say that if the Government itself induced the material change then it could not rely on that change to say that the contract was frustrated.

However, the arguments—in particular those I have quoted at the bottom of page 14—have convinced me that that is not necessarily so. If the Government were to make a material change for significant policy reasons, and that material change rendered the contract no longer pertinent, then the doctrine of frustration would apply. The idea that you cannot rely on that principle if you yourself have induced the frustration is limited to cases in which your inducement of the frustration involves some element of fault or wrongdoing.

The argument is that when the Government makes a new decision in the public interest that does not involve any element of fault or wrongdoing—on the contrary, acting in the public interest is exactly what governments should do—the exception about self-induced frustration is irrelevant. Again, this is a plausible argument. When we look at the consequences of any wider government decision to move to a different regime, there is a serious argument that that would amount to a frustration of the existing contract, and in that event no compensation would be payable.

CHAIR: Page 14 states with regard to the frustration doctrine that upon the contract being brought to an end the loss lies where it falls.

Professor BLACKSHIELD: Exactly.

CHAIR: Who would own the tunnel?

Professor BLACKSHIELD: The committee might have to help me here. The terms of the contract envisage that ultimately the Government will own it. However, at what time do the property and the goods pass? I am not sure.

CHAIR: At 30 years.

Professor BLACKSHIELD: At the expiration of the 30-year term?

Ms LEE RHIANNON: But it does not have to be 30, does it? They can extend it.

Professor BLACKSHIELD: They can. But if we simply terminate the contract and say the loss lies where it falls then the tunnel consortium might be left with the ownership of a tunnel that is not being used and the Government would be free to direct traffic away from the tunnel instead of towards it. The consortium would be left with a potentially valuable asset but one which was producing no income.

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Mr MATT BROWN: You said at the beginning of your evidence that you were finalising what you were going to say to this committee on these issues at two o'clock. However, you spoke on the Alan Jones breakfast program in November last year.

Professor BLACKSHIELD: I did.

Mr MATT BROWN: Had you read the project deed before that interview?

Professor BLACKSHIELD: Yes, I had. However, I have looked at it more closely since then. I do not remember exactly what I said then. It is possible that I have revised some of my opinions.

Mr MATT BROWN: I will not pursue that because your evidence today clearly demonstrates that you have. You were clear that there was a fetter on the discretion. When Alan Jones asked you whether you supported the legal argument that there was a way out of this because the RTA had been forced to act in an inflexible way you said that you did. Alan Jones later stated that that should allow the RTA and the cross city motorway at the very least to negotiate a fairer but more commercially viable new agreement, and you said, "Absolutely, yes." You have now clarified that.

Professor BLACKSHIELD: I do not know that I would necessarily alter either of those answers. Perhaps I should hear them again.

Mr MATT BROWN: You also state in the evidence you tabled today at paragraph 52 on page 16 that contracts of this nature should be approved by the Parliament.

Professor BLACKSHIELD: Indeed.

Mr MATT BROWN: Are you aware of Public Authorities (Financial Arrangements) Act, in particular, section 2C? Does that provision not do exactly what you are suggesting should happen?

Professor BLACKSHIELD: I considered that Act earlier in this document. My initial impression was that it did not really make any difference to the basis on which I was approaching the issue. The material terms of the Public Authorities (Financial Arrangements) Act are spelt out on the bottom of page 20. Section 2C, to which you have referred, does two things: It provides that the authorities given under that Act override any previous legislation and any later legislation, unless the later legislation expressly provides to the contrary.

CHAIR: Was that the bottom of page 20 or page 6?

Professor BLACKSHIELD: I am sorry; it is at the bottom of page 6.

Mr MATT BROWN: I have read that. You have answered my question.

Professor BLACKSHIELD: I can elaborate on something that is in brackets — that bit about expressly providing to the contrary may not be effective anyway.

Mr MATT BROWN: In the course of the interview with Mr Jones you said there are two sections, one of which provides that I must not do something and the other which provides that if I do it I must pay compensation. Why did you regard the project deed as saying the RTA must not do something when there are specific clauses—

Professor BLACKSHIELD: This relates to the effect of section 2C (3)—

Mr MATT BROWN: And section 18 (1).

Professor BLACKSHIELD: Yes. And at the time of the Jones interview I was conscious of the possible effect of section 2. I had not yet considered the effect of section 18.

Mr MATT BROWN: The heading says "No restrictions on RTA".

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Professor BLACKSHIELD: And I consider that in this document. Even now I would say that section 2 is the more decisive section in excluding any fetters on discretion, but they both have that effect. At the time of the Jones interview I was aware that on the one hand there seemed to be these various clauses that imposed fetters on discretion, and on the other hand that section 2(3) contained no fetters on discretion. I had not quite resolved in my mind how those two sections would work together. So I was contemplating the possibility that the more detailed sections might still impose effective fetters.

Mr MATT BROWN: Have you read Mr Brett Walker's opinion on the contract?

Professor BLACKSHIELD: Yes, I have seen a copy of that advice.

Mr MATT BROWN: Did you agree with his advice?

Professor BLACKSHIELD: On the general constitutional principles, I do agree. I certainly agree with his statement of the basic principles at the abstract level. In relation to the point that the contract does not in fact fetter discretion, I agree with him that it does not. He relies primarily on section 18 to reach that conclusion. I would rely primarily on section 2 or 3, but we reach the same result. On the question of compensation, I thought Mr Walker fudged the issue, and in the end so do I. We all have to; it is unclear. But it seems to me that there is a more powerful argument, certainly against the possibility of very large amounts of compensation - there are more powerful arguments than he has allowed for.

Mr MATT BROWN: The issue of compensation is a remedy when there is some formal breach of contract and there are other equitable remedies in addition to common law remedies. You mentioned the common law remedy of frustration. There are other equitable law remedies such as specific performance and injunctions. A host of these remedies are discussed in commercial contracts should there be a particular breached. I do not believe Mr Walker SC has avoided that. He looked at the issue of specific performance and injunctions in his written advice and made the argument that these were not suggested in the project deed.

Professor BLACKSHIELD: Yes, I think that is right.

Mr MATT BROWN: Would you agree that that is a further example of there being no fetter on the RTA's discretion, in that the project deed suggests that the parties negotiate rather than go to court and one party make another party do something or stop another party from doing it?

Professor BLACKSHIELD: Yes, I would agree that that is further evidence that the contract is not intended to impose a fetter on the RTA's discretion. You quoted what I said on the Alan Jones show, and I talked about two promises. One says we promise not to do x, and the other says that if we do it we will pay compensation. I now clearly state that this is not a contract of that kind; this contract states that we make no promise not to vary the traffic flow, but we do promise that if we do vary it we will pay compensation.

Mr MATT BROWN: That is my view of it. Mention was made earlier of the Ansett case. You would be aware that the High Court has stated that public confidence in government dealings and contracts would be greatly disturbed if all contracts that affect public welfare or fetter future action were held not to be binding on the Government or on public authorities, and that it would be detrimental to the public interest to deny to the Government or a public authority power to enter into a valid contract merely because the contract affects the public welfare.

It further stated that where an agreement is authorised then it is valid and will be enforceable against the Government by way of damages. It is obviously trying to rationalise the two clear principles in that if there are contractual arrangements with the Government they can be relied upon and to ensure that the Government does not fetter its discretion. Do you agree with those High Court statements and is there not also a principle that the public interest requires that neither the Government nor a public authority can by contract place a fetter on performing a statutory duty or the exercise of a discretionary power, and therefore it is implicitly necessary to rationalise those two agendas?

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Professor BLACKSHIELD: Yes, I do agree. Again, I apologise for not having been able to prepare this submission in advance. The passage to which you are referring to is quoted on page 5 of the paper. Yes, I do agree with it. Essentially, Mr Justice Mason is setting up a conflict between two principles. On the one hand it is important that governments keep their contracts; on the other hand there is what must in the Westminster system be an overriding principle that governments must remain free to do whatever is in the public interest at the time. The problem in this area is how to reconcile those two principles. That is what Justice Mason proceeds to do in the rest of his judgment. Generally I agree with it, although there is one category where he says that damages would be payable that I have some doubts about. Subject to that I think I agree with everything in his judgment.

I might just add this, that when I talk about these principles being fundamental to the Westminster system, you do get similar principles and similar issues in American law but they do not necessarily work out the same way. I think the principles do not necessarily have the same force under the American constitutional system as they do under the Westminster system, because the Westminster system is fundamentally based on the principle that governments must ultimately have unlimited power to do whatever the public interest requires at the time being, whereas the American system is fundamentally based on a concept of governments having limited powers. If you start from those two different premises you can arrive at different results.

Mr MATT BROWN: One last question. I want to be very clear that Professor Blackshield will then retract his statement to Alan Jones that the RTA has been forced to act in an inflexible way.

Professor BLACKSHIELD: Yes, I do, because although there were clauses that appeared to have effect, once I fully resolved the effect of clause 2 and Bret Walker's emphasis on clause 18, I conclude that the provisions that might have had that effect do not in fact do so.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Could I clarify one aspect with regard to the degree of compensation for MAEs. I gather it has never been tested. You are saying that, because of its uncertainty, that might write it down to a considerable extent, given that the other Sword of Damocles, if you like, over the head of the developer is that the Government could run it invalid anyway?

Professor BLACKSHIELD: Yes. There are serious possibilities that government might be able to abandon this contract without paying any compensation at all, and the developers' awareness of that possibility might well lead them to accept a more reasonable level of compensation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: We might still be able to get our public transport, even if it does have a material adverse effect?

Professor BLACKSHIELD: Yes, and my expectation is that probably in the end some compensation would be payable but that it is reasonable to expect that it could be held down to a reasonable level, certainly a more reasonable level.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Not punitive.

Professor BLACKSHIELD: Yes.

(The witness withdrew)

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MICHELLE ELAINE ZEIBOTS, Transport Planner, affirmed and examined:

CHAIR: In what capacity are you appearing before the Committee?

Ms ZEIBOTS: I am appearing as a private individual.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Ms ZEIBOTS: Yes, I am.

CHAIR: If there is anything you wish to give to us in camera the Committee will consider your request. Do you have anything you wish to remain confidential?

Ms ZEIBOTS: No, I do not.

CHAIR: Do you wish to make an opening statement or proceed with your power point presentation?

Ms ZEIBOTS: If I could have just explain what I have prepared. I have basically tried to select two very succinct points about the traffic volume projections. That is what I wish to focus on and then I have basically trying to put that issue within the context of the terms of reference so that you can see what position I am coming from. Then I would like to make some very brief suggestions about how to perhaps handle problems with the traffic volume projections that have occurred in this case. It is all right with the Committee on will proceed in that way. A lot of what I am presenting is visual in the power point presentation.

CHAIR: We will accept this document as a submission.

Ms ZEIBOTS: Just on that point, there is quite a lot of material I could have gone into—

The Hon. GREG PEARCE: We would like you to do that. This is just a formality.

Ms ZEIBOTS: Just to qualify that, what I thought I could do if it was seen as valuable or necessary—otherwise I will not—if there is something I can put in a written submission and for that to the Committee later I would be quite happy to do that.

CHAIR: Yes, the Committee would like you to do that.

The Hon. AMANDA FAZIO: Could that document be tabled?

CHAIR: Yes, it is entitled, "Submission to Select Committee on the Cross-city Tunnel".

Document tabled.

Ms ZEIBOTS: There are basically four points. First of all I would like to just go over the terms of reference and how it is that I have interpreted them in relation to the cross-city tunnel traffic volume estimates. Then I want to go over some very rudimentary points about transport science in relation to ceiling capacities for urban roads. I want to show you how it is that we calculate those, because the primarily point that I would like to make is that some of the traffic volume estimates that have been put forward by the consortium appear to be above what we would classify as the ceiling capacity for the road. That is another way of saying that it is very unlikely, it is virtually impossible that those volumes would ever actually materialise on the facility. I see this as a very serious technical problem with what has gone on.

CHAIR: Just to clarify one matter, you are not involved with any member of the consortium? You are doing this as a private person?

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Ms ZEIBOTS: No. I should explain that I am currently undertaking a doctorate dissertation at the University of Technology Sydney, at the Institute for Sustainable Futures, and I specialise in before and after studies of urban motorway development and the emergence of induced traffic growth. I am an academic researcher and I intend to pursue a career in academia.

CHAIR: You are doing this in the public interest?

Ms ZEIBOTS: Yes. I have also done a lot of work for community groups and non-government organisations. My work experience is largely from that area and the research sector, and I have worked some time in the private sector, but that is not most of the work I do.

CHAIR: Thank you.

Ms ZEIBOTS: I would like to go through those points and then compare that with the estimates that have been put forward for the cross-city tunnel. Then I would like to finish by making a few brief points on the reform of processes for the technical scrutiny of projects that I think might help in cases like this and in relation to other motorway developments. There are three points on the next slide. My understanding of the forecasts is that the consortium forecasts have been 98,000 annual average daily traffic movements for 2006—I think it is for 2006 or sometime around there.

In the environmental impact statement the forecasts were 52,700 annual average daily traffic movements for the tunnel, and including the traffic using Sir John Young Crescent it would be 69,600 by 2006. The actual volumes are considerably lower than that, as we know. If we think about what gets at the heart of the problem and the public discontent with the cross-city tunnel I think it is because of this enormous disparity between the forecast estimates, which determine whether or not we need the project and what the reality has been. That is the primarily point I would like to address.

Moving to the next slide, the points I would make in relation to this are that the public perception of the project is that it is not good value for money; that there is a high opportunity cost for it. The second point is the private sector involvement, because there has been this problem it means that there is need for the manipulation of surface roads to increase traffic volumes through the tollway, and there is the possibility of reduced public transport services or improvements to public transport services.

The third point, which I think is a very dangerous one and I would be very sorry if this were to increase in public perception, is that tollway building is about private sector business opportunities and not about meeting community transport needs. I think that that feeling, which I am sensing in a lot of the commentary I have seen on the cross-city tunnel, is something that is growing. I think it would be a shame if that were the case, because it would mean that we undermine potential sources for capital for transport development.

The reason I have made these points is because I think this public perception or these problems need to be addressed so that this does not happen again. If we could move to the next slide, I would like to start with the consortium forecast. The consortium has frequently been quoted as saying it would have 98,000 annual average daily traffic movements on the cross-city tunnel, I think by 2006 or very soon after that, and that the volumes would grow after that. The difficulty I have with that is that it is above what is called the ceiling capacity. I am going to show you in a moment what the ceiling capacity looks like.

The Hon. AMANDA FAZIO: May I ask a question? I do not have all of my papers for the inquiry with me, but my understanding was that the projection for 90,000-plus average daily traffic movements was not for 2006 but for a date in the future, perhaps 2016.

Ms ZEIBOTS: Even if it is in the future I cannot see how that—

The Hon. AMANDA FAZIO: I understand how that differs from your ceiling capacity, but I am not quite sure whether the date was 2006 or 2016.

Ms ZEIBOTS: Basically I am just going on what I have seen quoted in newspapers. I agree with you that that is quite likely to be incorrect, but, given what I am going to say, it is not really a

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moot point but it sort of is. The next slide shows some data for the Sydney Harbour Bridge. This is real data; it is not modelled estimates or anything like that. The point I would like to make is that you can see in the period from 1971, when the time series data begins, up until about 1985 there is a steady growth in the traffic volumes, but after that period it levels off or reaches a ceiling. That is what we call the ceiling capacity. In 1992 there is a dramatic drop in volumes on the Sydney Harbour Bridge and that is because of the opening of the Sydney Harbour Tunnel.

The next slide highlights the ceiling capacity. The figures on the left show that the volumes between 1986 and 1991 were moving around, bobbing around, between 180,000 and 184,000 or thereabouts. The point I would like to make is that in the real world all roads, no matter how much demand there might be for them, reach this ceiling capacity and then bob around on that ceiling capacity. They do not move away from it; they do not keep on growing ad infinitum. Some of the volumes and estimates that we see in some technical documents would suggest that there is just this constant growth. That does not happen. That is the point I am making there.

As you can see, when the Sydney Harbour Tunnel opened a lot of traffic then shifted down into the tunnel. At the next point on the presentation we can see that there was a very steep jump in the year immediately after that. We call that the "ramp up period", as you are probably aware. After that we are into steady growth until the facility reaches its ceiling capacity once again. That is the pattern. That is what normally happens.

The point I would like to make now is in relation to what is the ceiling capacity, or how we would calculate the ceiling capacity for the Sydney Harbour Bridge. I want to run through that very quickly with you. It is a very simple calculation and it has three parts. First of all we take the maximum lane capacity per hour, multiply that by the number of lanes on the facility and then multiply that by an expansion factor. I will now move to the next slide and briefly explain to you what each of those three components means, and illustrate them.

With respect to maximum lane capacity, all countries throughout the industrialised world have roadway capacities or highway capacity manuals. So, we have a set of standards we all use. This is the Australian standard, which is put out by AustRoads. The next slide shows a key table on page 20 of the roadway capacity manuals that shows what the ceiling capacity is proposing freeway segment. The ultimate ceiling capacity is 2,000 vehicles per lane. That means if you look at one point on a road, 2,000 vehicles will pass that point in an hour when the facility is at saturation point. That is one vehicle past every 1.8 seconds. Sometimes you can get a bit more than that but usually you do not because the traffic flow becomes very unstable, so headways begin to encroach on one another and there are problems with traffic density. I will not go into that in a lot of detail but that is about the most you can shove through a standard lane of the freeway segment. So, as a rough rule of thumb we would say on a basic freeway segment the maximum lane capacity is 2,000.

The next slide shows that on the Sydney Harbour Bridge before the tunnel was opened and when the facility had reached its ceiling capacity eight lanes were operating on the deck of the bridge. Now there is the transit lane shown in this photograph, but that was not in operation at the time. However, the deck was also operating under tidal flow conditions. So, in the peak hour there were five lanes in the direction of the peak traffic and three lanes in the direction of the contra-peak. Sometimes that would increase to six lanes. It was variable and depended on what the traffic engineers were looking at in trying to manage the queues. Operationally the Sydney Harbour Bridge has an operating lane capacity of nine lanes. That is the point I am making: even though there are eight lanes, because it is a tidal flow system it is nine.

Ms LEE RHIANNON: I do not understand how it can be nine. I understand the tidal flows but how do you get nine?

Ms ZEIBOTS: Because in the peak period the lanes are operating at peak capacity whereas in the off-peak you have spare capacity on all of the lanes.

Ms LEE RHIANNON: So, are you saying you are averaging nine out over a day, you do not mean nine at any one time?

Ms ZEIBOTS: No, it is over a day, because in the peak period in the opposite direction—

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Ms LEE RHIANNON: I understand now.

Ms ZEIBOTS: This is data that shows the hourly traffic volumes for the harbour bridge for 1985, 1989 and 1996. The volumes for 1985 and 1989 are when the facility is at its ceiling capacity. As you can see, there is a pattern to that. Expansion factors are basically like a fingerprint. They represent the pattern of traffic on a particular road. So, we take into account the daily traffic flow. As you can see there is only one peak in one direction, whereas on some roads, a very limited number of roads, you get two peaks. You will get a peak in both the morning and the afternoon on the same side of the road, whereas this is only for traffic that is due south. It has a morning peak and in the afternoon the peak is on the other side of the facility.

With the harbour tunnel at the moment you get a peak volume in both directions. That is a road that is carrying a lot of traffic and as a result it has a higher expansion factor. For roads that have this sort of pattern—if we go to the next slide—and when taking into account the seasonal fluctuations over a yearly period, this graph shows weekly average traffic volumes for the Sydney Harbour Bridge and you can see that once you take into account the holidays at Easter, Anzac Day, the Queen's Birthday weekend and perhaps the October long weekend, you tend to get this saddleback type of pattern. When we take that into account and we take the daily traffic volume into account, when a road is operating at its peak capacity, we get an expansion factor of about 10. If we look at the formula again on the next slide, 2,000 by nine by 10 it gives us 180,000, which is a pretty good fit for the harbour bridge. So, as a quick and dirty calculation, if you like, that is how we get to see what the ceiling capacity of the facility would be.

If we do the same for the cross-city tunnel and take a rough guesstimate that there are two lanes in each direction and there is a maximum lane capacity of 2,000, the number of lanes is four, the expansion factor is 10 because it is a single peak road as far as I can tell, we get a ceiling capacity of about 80,000. The point I make is that even a rough estimate—and if you start taking into account merging and what have you, the capacity is beginning to go down—the 98,000 annual average daily traffic volume that has been put forward by the consortium is above the very rough estimate of what the ceiling capacity would be. I am quite concerned about this, that numbers like this are being used—if they are being told to put forward to the shareholders or the general public, it does not matter, but they are wildly inaccurate.

Ms LEE RHIANNON: How do you get the 2,000?

Ms ZEIBOTS: If you assume this is a basic freeway segment and it has a basic capacity according to the manuals of 2,000.

Ms LEE RHIANNON: It is common to motorways?

Ms ZEIBOTS: That is industry standard. In practice it would probably be lower here because you have merging. I am being as generous as I can but the reality is the ceiling capacity is probably lower than the 80,000 I have estimated here. I would also acknowledge there is traffic coming off at Sir John Young Crescent and it is coming in as well. So, it could be a bit more but they are coming in off ramps and once again the capacity goes down.

The Hon. AMANDA FAZIO: You said you estimated the maximum lane capacity at 2,000. Does the speed limit that applies to different segments of road have any impact on the maximum lane capacity and is it the higher the speed the higher the lane capacity? I do not understand.

Ms ZEIBOTS: That is fine. When a road is operating at capacity it is probably not operating at what we call it is design speed. So even though the speed limit might be 110 kilometres, or 80 kilometres or 90 kilometres, the maximum the traffic travelling for that level of capacity would be about 48 kilometres per hour. As a road becomes more congested people need to have a safe stopping distance or a headway between the vehicle in front of them. Once you have more cars on a road the headways begin to encroach on one another. Because we can sense that as human beings and think that if I have to stop suddenly I will not be able to stop in time, I am going to slow down. That is why the traffic slows down as it reaches its capacity. So, it is not operating at its design speed when it is at that 2,000 mark.

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The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If there are two different roads, for one to Sir John Young Crescent and the one from Sir John Young Crescent to the Eastern Distributor—you could say there are two different roads—the segments could be considered discreetly because some cars come off halfway and some cars come on halfway. So there are not just four lanes there are two lots of four lanes. Admittedly in some of them the car goes straight through so that is effectively two lanes, but could they not stay at the 98,000 because some of them come on halfway and some of them go off halfway?

Ms ZEIBOTS: I agree with you there, and I will get to that point as well. Another point is there are choke points in the network before the vehicles get onto the motorway. I will come to that. I emphasise that these are very quick and dirty calculations. The point I am making is even if you do some back-of-the-envelope calculations those figures that have been quoted begin to look very unrealistic, and that is what I am concerned about.

If we go to the figures in the EIS forecast, they are below what you would estimate as the ceiling capacity, however there appear to be problems because there are choke points in the immediate vicinity of the cross-city tunnel that appear to have reached their ceiling capacity, and they are below the figures that have been quoted here. I would like to look at those. I would also like to have a brief look at the material that has been presented by the RTA consultants in relation to ramp up periods for the cross-city tunnel.

On the next slide I would like to show you some data from a point at William Street and the Kings Cross tunnel, which is the eastern entry. That has not come out very well, so on the next slides you can see that in 1991 it looks as though it reached a ceiling capacity of somewhere between 52,000 and 53,000. The figure for 1996 of 55,100 is where I think the amount has malfunctioned, and we have not checked through that as yet. That happens quite a lot with this data. You get little blips like that. I would say in the intersection that is immediately to the east of the entry portals some constriction point is operating there, that would be the intersection.

If we look at the real data once again we find the figures are very low. Not all the traffic at this point has destinations on the other side of the cross-city tunnel, it has destinations within the central business district. I understand from general reports that the split is 40 per cent with destinations on the other side of the CBD and 60 per cent as CBD destinations. So, if you do a 60:40 split for that figure of, say, 52,000 or 53,000 you begin to get around 21,000, which is beginning to get to what is on the facility at the moment. That being the case, I am unclear as to how the EIS figures were achieved. It seems to me that maybe the constriction in that intersection was not taken into account. It seems extraordinary to me that that sort of aspect of a project would be given more consideration than it appears to have been.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is that the one down New South Head Road?

Ms ZEIBOTS: Yes, so it is a fairly large one.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The one on Beach Road and New South Road?

Ms ZEIBOTS: I do not have a street directory with me and I do not go there very often. So I am not familiar with that.

CHAIR: You used the word choked, that it becomes a chokepoint, is that what you call it?

Ms ZEIBOTS: A chokepoint is similar to a ceiling capacity. It is a point in a network. Networks are very complex, so there is one point in a network that has the smallest amount of capacity. That chokepoint basically determines what is going to occur in the rest of the network, because the network is only as good as its smallest or weakest part. If you recall the picture I had there of the Sydney Harbour Bridge, of the roads leading up to the bridge, at some point it is 16 lanes across the Bradfield Highway so you have kilometres and kilometres of restricted access carriageways or freeways leading into that chokepoint, which is on the bridge. In the case of the cross-city tunnel, on

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the eastern side at least you have very constricted intersections and there is not much scope there for increasing capacity. I do not think the local community would really want the capacity increased substantially there. So, for the life of me, I cannot see how a lot of these estimates are achieved given the nature of that part of the network.

Mr MATT BROWN: Does the Sydney Harbour Tunnel not carry more than 80,000 cars, up to 105,000, and it is 80 kilometres?

Ms ZEIBOTS: Yes, but it is a double peak road.

Mr PAUL McLEAY: So the expansion factor is more than 10?

Ms ZEIBOTS: The expansion factor is more than 10. It might be somewhere between 12, maybe 13 even. But double peak roads are very rare.

Mr PAUL McLEAY: You say the harbour bridge is 10?

Ms ZEIBOTS: Yes.

Mr PAUL McLEAY: Yet the tunnel is 12?

Ms ZEIBOTS: Yes.

Mr PAUL McLEAY: So, 20 per cent more?

Ms ZEIBOTS: Yes, and the reason why a lot of the traffic is using the tunnel, you have people coming in from the north and they are going to destinations in the south for their journeys to work and in the south, because there has been a lot of employment development within North Sydney Chatswood and St Leonards, a lot of people—

Mr PAUL McLEAY: So these will be the same people on the on the Eastern Distributor and the cross-city tunnel because it is joining that group so therefore would not that tunnel, particularly Sir John Young Crescent, that is going to be the same concept, it will be the same area, so that would have to have an expansion?

Ms ZEIBOTS: Not necessarily.

Mr PAUL McLEAY: There are two tunnels, and then you have Sir John Young Crescent, which has another two lanes. So we are talking about four.

The Hon. GREG PEARCE: You are beyond four.

Mr PAUL McLEAY: That is right. We have five lanes.

Ms ZEIBOTS: Sir John Young Crescent has only one lane. So you are talking about 20,000 vehicles on that one.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But you have the Eastern Distributor as well as the New South Head Road outlet.

Ms LEE RHIANNON: But one goes off and one comes on.

CHAIR: Perhaps we should let the witness finish the presentation.

Ms ZEIBOTS: That is why I would have liked to put the configuration up on screen. I have tried to make this very simple. The point is that a lot of volumes cited in technical documents are above what I think would be a credible and basic calculation of what the facility could actually carry. I can speculate on the motivation for that, but I do not know what it actually is. I do not have access to the documents that passed between the consultants and the RTA, or indeed documents with the consortium. So what that is, I do not know.

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I would now move on to the final points that I would like to make. I suggest some sort of mechanism or process or body developed within the machinery of government to which Ministers or Parliament or Cabinet could refer basic technical issues, and feel that that body was independent and that the technical people on it were good technical people. There are many very good academics in Australia who are not working primarily as commercial consultants, such as Professor David Hensher, or Professor Mark Taylor at Flinders University. You might even avail yourself of overseas experts like Professor Phil Goodwin from the United Kingdom. I am sure if you were to take this sort of material and give it to a body of people like that, they would sort out these sorts of fundamental and obvious problems, and as a result save a great deal of grief.

In a submission made by the RTA consultants there is speculation about what figures might be achieved by the end of 2006, on the basis of what might happen during the ramp-up period, given the figures we have so far. The consultants have given you a linear model and a logarithmic model. With the linear model, the figures might get up to as many as 50,000 annual average daily vehicle movements. With the logarithmic model, the figure is down around the 20,000 AADT mark.

On the graph slide, I have circled down the bottom the ramp-up period for the M4 from Mays Hill to Prospect. This is what happened on that road in the immediate aftermath of that motorway operating. What tends to happen is that you get a very steep period of growth, which lasts for about three months. That pattern is standard for most motorways within Sydney that I have looked at. Then you will get steady growth after that period. But you do not tend to get the linear growth that was shown in the previous graph going on for more than a year. Certainly, the growth after the immediate three months after the opening of a new facility will be steeper than it will be in say five or six years time. You get a gradual tapering off. There is not the linear growth rate that was being discussed in that submission, so I am concerned as well that that would be put forward as a possibility. That is very much against the norm.

I would like to make some suggestions for the Committee's consideration. When looking at the way in which experts are used to regulate experts, there are some very good examples or precedents that have been set in the United Kingdom. In particular, there is the Standing Advisory Committee on Trunk Route Assessment [SACTRA]. Primarily there are academics serving on that standing committee, and from time to time they are asked to investigate technical questions that come up in the transport area. If there was a like body within New South Wales to assist Parliament and government on matters such as this, that would be very useful. That committee is chaired by a Queen's Counsel, so that everything done by the experts is under the rules of evidence, which imposes a good discipline on the proceedings.

Another point I would make is that the United Kingdom has altered or updated the whole EIS process to what they now call NATA 5. The NATA 5 process includes multi-modal studies and economic impact statements as part of the lead-up to the eventual finalisation of a particular project that government is wishing to pursue. The multi-modal studies provide a more robust opportunity to look at alternatives to a motorway. At the moment, I do not think we do enough of that, and consequently not only are we overlooking opportunities but we are losing the opportunity for cross-government or interdepartmental negotiation on projects. At the moment, what tends to happen is that the Roads and Traffic Authority pursues a motorway development, and I think everything else is left by the wayside when that happens.

A further point that I would like to make is that I would very much hope that the Committee does not just focus on the cross-city tunnel but actually acknowledges what is happening here has happened to varying degrees with other motorway projects. I think we need to find some way of improving the way in which we test the technical acumen of the documents and the analyses that we use to determine whether to proceed or not proceed with a project. Otherwise, we are at great risk of repeating the same errors. I am thinking in particular of the M4 East, which is now being considered. I am aware of technical material relating to that project that suggests there are deep problems with it as well.

If we remain within a system whereby technical acumen largely remains unchecked, without provisions in the Environmental Protection and Assessment Act and regulations to put a halt to a project because of technical discrepancies or technical fault in the analyses, that is a very weak side of

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the overall system. In relation to the cross-city tunnel and other motorway developments, if we can improve that component then a lot of these problems, as well as a lack of faith that the public has in our ability to produce good infrastructure, might be overcome. That is largely what I would like to say in this presentation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: What are the implications for the cross-city tunnel and other motorways?

Ms ZEIBOTS: Obviously, we would not want a repeat of what we have seen with the cross-city tunnel. Of all the motorway developments that I have seen take place in Sydney, I have not seen as much general discontent within the community as I have seen with this one. There seems to be a lot of suspicion about not just the way in which we are going about the construction but how we are putting together packages and involving the private sector in the provision of infrastructure.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are you saying that NATA 5 would be a better assessment process, or are you saying that this is not actually economically viable and that there is a flaw in the financial assessment?

Ms ZEIBOTS: If the volumes are as inaccurate as they appear to be, the project would not have been economically viable; it would have a BCR (Benefit Cost Ratio) of less than one.

CHAIR: The tunnel is supposed to be returned to government ownership in 30 years, but factored in is a provision that if we do not get the projected income or number of vehicles using the tunnel, the consortium will continue to own the tunnel.

Ms ZEIBOTS: I see.

CHAIR: If those figures are wrong, that will assist the consortium to keep the tunnel indefinitely, because they will never achieve the figures.

Ms ZEIBOTS: I was not aware of that.

CHAIR: I am not sure that is how it would work out, but it has been suggested to the Committee.

Ms ZEIBOTS: I do not know the exact volumes that have been written into the contract, but if those volumes are never going to be achieved it would have been in the Government's best interests to make sure that everything was technically sound, and I do not believe that has happened. Generally, there is a long history of there being a lot of problems with traffic forecasts that have been put forward by the RTA. I do not think that should continue. If there were independent scrutiny, then those sorts of problems would be overcome. I have tried to show the Committee that it is not rocket science to get the basic things right, and yet even on basic things we seem to be failing very badly. So we need to find a mechanism to correct that problem. If you look at the M4 East, for example, on the technical material I have seen to date for that, that project does not appear to be economically viable. It has a BCR of less than one. So do we proceed with that? Would the community be happy with us proceeding with motorways on a regular basis if they have VCRs of less than one? What is the opportunity cost of that?

The Hon. AMANDA FAZIO: You said the estimates that you gave the Committee for ceiling limit for cars using the cross-city tunnel were from a rough exercise in calculations. But is it not the case that if you used an expansion factor greater than 10—say an expansion factor of 11.25—that would give a ceiling capacity of 90,000 vehicles, which is pretty close to the 91,000 vehicles a day, which I think ended up being the projection by the RTA of the usage of the tunnel by 2016? Your whole hypothesis is based on the premise that you could never reach that estimate because there is not the capacity in the tunnel. But, if you are using just estimates of expansion factors, surely there is the capacity in the tunnel to achieve 90,000 vehicles.

Ms ZEIBOTS: Provided it is a double-peaking road. But, from the daily traffic figures that I have seen for William Street, it does not appear to be that. It is very rare in any city to find a double-

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peaking road. I will explain again what I mean by double-peaking road, because I probably have not done that very well. On all roads there is traffic going in two different directions—

The Hon. AMANDA FAZIO: I understand that concept, because I lived for about 25 years on Parramatta Road. So I have a fair idea of double peak hours.

Ms LEE RHIANNON: You seem to be saying something different. You are saying that it is not a double peak; that there is just one peak.

Ms ZEIBOTS: William Street is not a double-peaking road.

The Hon. AMANDA FAZIO: I was just saying I understand the concept of double peaking.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You are saying that the tunnel is a double-peaker because you have residential areas and work areas in both North Sydney and the Botany area.

Ms ZEIBOTS: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But have you not also got work areas in the Eastern Suburbs and work areas in the Western Suburbs, so that you will have double-peaking between those two areas? You have work areas and living areas in both places.

Ms ZEIBOTS: You do not have several CBDs in the Eastern Suburbs. You have a couple of suburbs and then you have the Pacific Ocean. Ultimately, that is one of the big problems in that the catchment area for that side of the motorway really is not very large, and I do not think that was taken into account either.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But it does feed into the Eastern Distributor, which goes down to the south as well. So that, if you are going to much of the western part of Sydney, it is better to go through the tunnel than down the Eastern Distributor, rather than wind your way through Annandale.

Ms LEE RHIANNON: But there is still only one peak, Arthur.

Ms ZEIBOTS: There is still only one peak. It is very rare, on any road, if you look at the patterns—and it is all about pattern recognition and looking at the patterns in dark colour for different parts of the network—that you actually get a double-peaking road. The tunnel is an exception. It really is an exception. A lot depends on the geometry of the land use area and the catchment area, and then the geometry of the roads. Though someone wants to have more than 20,000 vehicles a day go through the Sir John Young Crescent lane in order to beef up the volumes really, it is clutching at straws to get to the sorts of volumes that are being talked about.

The Hon. GREG PEARCE: In the slides in relation to the maximum lane capacity you showed us the extract from the roadway capacity document and the table with the various speeds and so on. One of the issues with the cross-city tunnel was that the original project envisaged a 60 kilometres per hour passageway through the tunnel, and at the end it was expanded in length mostly to get it up to an 80 kilometres per hour speed. Does that have any impact on the vehicle numbers per se or was their thinking really more an attractiveness as a way of getting people through the tunnel even faster?

Ms ZEIBOTS: I think I know what you are getting at. Basically in order to get the number of vehicles that are mentioned there in the lane capacity table you have got to have several kilometres of fairly unrestricted motorway segment feeding into that particular point at which you are making the measurement. In the case of the cross-city tunnel you have got intersections that have relatively low capacities by comparison with motorway segments. Even if you were to extend it by one kilometre or two, I would not think that that would ultimately make a great deal of difference.

Mr MATT BROWN: It would probably reduce the expansion factor further.

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The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The more they can blend in and get a reasonable speed up when they enter you get a higher feed rate.

Ms ZEIBOTS: Yes, you get a higher feed rate. It will not necessarily change the expansion factor. The expansion factor to a large degree is determined by the relative geometry of the facility to what is going on with the patterns of land use development. To get a double peaking rate you have got to have a road with two CBDs on either end of it, for example.

Mr MATT BROWN: Can I inform the witness, the Chair gave you some evidence we heard this morning that until certain traffic volumes go through, the length of the contract would extend. That is not the evidence we have received from the RTA. In effect, the cross-city tunnel will revert back to the taxpayer in 30 years. It is not dependent on traffic flow.

Ms LEE RHIANNON: That does not automatically happen. There is an option to extend.

Mr MATT BROWN: It has to be exercised though.

Ms LEE RHIANNON: The way you have presented it, it is as though it is going to happen. It may happen but it does not have to happen.

Mr MATT BROWN: I am presenting it in that it is not dependent on traffic flows, as was the evidence we heard this morning.

Ms ZEIBOTS: I am not in any position to talk about legalities. I do not consider myself to be a legal expert at all.

CHAIR: We will clarify that with the RTA tomorrow.

Ms LEE RHIANNON: As to a technical matter, Ms Zeibots referred to a PowerPoint presentation. Can we make that clear in the transcript?

Mr MATT BROWN: Mr McLeay has already moved that.

CHAIR: You will send us a written submission?

Ms ZEIBOTS: Given the questions, I can do that for you. One thing I would like to make some advice on, it might be worthwhile to get somebody who does this regularly as a job to go and do a ceiling capacity calculation for you. I could do one but that is not something I do a great deal of and I am trying to finish off a doctoral dissertation at the moment as well, so I am just pressed for time. I think that is critical and would possibly solve a lot of problems.

CHAIR: Thank you very much for all the work you have done. We appreciate that and it is a great help. Thank you for attending before the Committee.

(The witness withdrew)

(The Committee adjourned at 5.05 p.m.)