

CORRECTED TRANSCRIPT

GENERAL PURPOSE STANDING COMMITTEE No. 1

Monday 15 November 2010

Examination of proposed expenditure for the portfolio area

TREASURY

The Committee met at 2.00 p.m.

MEMBERS

Reverend the Hon. F. J. Nile (Chair)

The Hon. L. A. Foley
The Hon. K. F. Griffin
The Hon. T. J. Kahn

Dr J. Kaye
The Hon. M. R. Mason-Cox
The Hon. I. W. West

PRESENT

NSW Treasury

Mr M. Schur, *Secretary*

Mr M. Ronsisvalle, *Deputy Secretary, Budget and Financial Directorate*

Mr K. Cosgriff, *Deputy Secretary, Fiscal and Economic Directorate*

Mr R. Timbs, *Deputy Secretary, Commercial Management Directorate*

Mr S. Brady, *Deputy Secretary, Expenditure Review Directorate*

Ms C. McLiesh, *Deputy Secretary, Human and Social Services Directorate*

Dr C. Gellatly, *Director, NSW Electricity Reform Project Office*

Office of State Revenue

Ms D. Barden, *Acting Executive Director*

CHAIR: I declare this hearing for the inquiry into budget estimates 2010-11 open to the public. I thank those witnesses who have returned for the supplementary hearing. Today the Committee will examine the proposed expenditure for the Treasury portfolio. Before we commence I will make some comments about procedural matters, and I thank the members of Treasury for their attendance again at this hearing.

In accordance with the Legislative Council's guidelines for the broadcast of proceedings only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photos. In reporting the proceedings of this Committee the media must take responsibility for what they publish or what interpretation they place on anything said before the Committee. Guidelines for the broadcast of proceedings are available from the table by the door. Any messages from attendees in the public gallery should be delivered through the Chamber and support staff or the Committee clerks. I remind witnesses that they are free to pass notes and refer directly to your advisers while at the table. I remind everyone to please turn off their mobile phones.

The Committee has agreed to the following format for the hearing: That the sequence of questions will be asked alternating between the Opposition, crossbench and Government members in that order, with 20 minutes allocated to each. The times are allocated to each of those groups to be used if they wish. The House has resolved that answers to questions on notice must be provided within 21 days. Transcripts of this hearing will be available on the Web from tomorrow morning.

All witnesses will be sworn in prior to giving evidence. A number of you have already been sworn. As you were sworn at the initial budget estimates hearings you will give evidence today under your previous oath or affirmation. Ms McLiesh and Ms Barden did not appear at the initial hearing, so I ask that you now take the oath or affirmations.

COL GELLATLY, Director, NSW Electricity Reform Project Office,
STEPHEN BRADY, Deputy Secretary, Expenditure Review Directorate, NSW Treasury,
MARK RONISVALLE, Deputy Secretary, Budget and Financial Management Directorate, NSW Treasury,
KEVIN COSGRIFF, Deputy Secretary, Fiscal and Economic Directorate, NSW Treasury, and
RICHARD TIMBS, Deputy Secretary, Commercial Management Directorate, NSW Treasury on former oath:
MICHAEL SCHUR, Secretary, NSW Treasury, on former affirmation:
CARALEE McLIESH, Deputy Secretary, Human and Social Services Directorate, and
DIANNE BARDEN, Acting Executive Director of the Office of State Revenue, sworn and examined:

CHAIR: I declare the proposed expenditure for the Treasury portfolio open for examination.

The Hon. TREVOR KHAN: Mr Schur, I think I will direct the question to you but I am somewhat in your hands. Can I take you back to September 2009? Are you aware that at that time a report was prepared entitled, "New South Wales Energy Reform Strategy"?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Was that a document that set out the New South Wales Government's final policy position for its energy reform strategy?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Do I take it that the final position for its energy reform strategy as at 15 November 2010 remains as it was published in the document of September 2009?

Mr SCHUR: I believe it does, yes.

The Hon. TREVOR KHAN: Well, you have not received any indication that the policy position of the Government has changed since September 2009, is that right?

Mr SCHUR: Yes

The Hon. TREVOR KHAN: You looked to your right—

Mr SCHUR: No.

The Hon. TREVOR KHAN: You looked to your right. Do I take it that that is confirmation that nobody else at the table knows of any change in the policy position either?

Dr GELLATLY: Obviously government makes decisions along the way. This document was done in September last year. There could be some changes along the way. I cannot tell you what they are right now.

The Hon. TREVOR KHAN: Dr Gellatly, you are not aware of any policy position change that has been made since September 2009, is that the case?

Dr GELLATLY: I am not saying I could be. I am just not sure what changes you are after. What sort of policy changes are you talking about?

The Hon. TREVOR KHAN: I am talking about policy changes with respect to the energy reform strategy for New South Wales.

Dr GELLATLY: Yes, there could have been some changes to the wording in that document along the way, as decisions were made in relation to components of the process.

The Hon. TREVOR KHAN: Mr Shur, are you aware of any amendments, addendums or alterations to the energy reform strategy that have occurred after September 2009?

Mr SCHUR: I do not think there have been any changes to the substance of the strategy. There may have been changes around implementation in the face of particular circumstances.

The Hon. TREVOR KHAN: Let us go to something in 1.1 of the document. That is the objectives of the energy reform strategy. Would you agree that the strategy is designed, firstly, to deliver competitive retail and wholesale electricity in New South Wales to increase the potential for the sector to respond dynamically and innovatively to market forces and opportunities?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Would you agree that the strategy is designed to create an industry and commercial framework to encourage pride of investment into the electricity sector and reduce the need for future public sector investment in retail and generation?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Further, would you agree it is to ensure New South Wales homes and businesses continued to be supplied with reliable electricity?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Finally, would you agree that the final objective of the strategy is designed to place New South Wales in a stronger financial position by optimising the sales value of public assets and reducing the Government's exposure to electricity market risk and reducing the State's public sector debt?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Therefore, could I take you to the issue of the Cobbora mine?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Is it the case that there had been a proposal for the Cobbora mine to be developed to supply coal for the generators in New South Wales?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: And is it the case that that remains the position?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Was it the case that originally it was proposed that a private developer would essentially take on the development risk of the project?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Is it the case that that developer was Whitehaven Mines?

Dr GELLATLY: I cannot comment on that. A commercial tender process went on.

The Hon. TREVOR KHAN: Well, was it Whitehaven Mines?

Dr GELLATLY: I cannot disclose that because of confidentiality.

The Hon. TREVOR KHAN: So, it appears in the paper but you cannot disclose it even though it appears in the paper?

Dr GELLATLY: That is right.

The Hon. TREVOR KHAN: Mr Shur, do you know if it was Whitehaven Mines?

Mr SCHUR: There was press speculation as to who it was but the confidentiality of the preferred bidder was always kept confidential on the transaction advisers.

The Hon. TREVOR KHAN: The end result is that there was no successful bidder or no successful arrangement entered into, would that be the case?

Mr SCHUR: That is correct.

The Hon. TREVOR KHAN: So we are now in a position where an unincorporated joint venture is to develop the mine?

Mr SCHUR: The Government will develop the mine.

The Hon. TREVOR KHAN: So, the people of New South Wales, in essence, through the offices of the Government of New South Wales are to take on the risk of developing the mine?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Would it be the people of New South Wales, through the offices of the Government of New South Wales, that will meet the costs of the development of the mine?

Mr SCHUR: I think the Government would take a view that the risks associated with the project are manageable.

The Hon. TREVOR KHAN: That is not what I asked. I asked about the costs of the development of the mine, not the risks.

Mr SCHUR: Yes, the mine will be financed by the Government.

The Hon. TREVOR KHAN: Are you aware of a final report prepared for the Cobbora unincorporated joint venture dated 23 December 2009 entitled "Cobbora coalmine preliminary environmental assessment"?

Mr SCHUR: I might refer that to Dr Gellatly.

Dr GELLATLY: I am not aware of that specific document.

The Hon. TREVOR KHAN: Are you aware that it was a document that was prepared by Environmental Resources Management Australia for the purposes of meeting the requirements of part 3A of the Environmental Planning and Assessment Act 1979?

Dr GELLATLY: Personally I am not aware of that, no.

The Hon. TREVOR KHAN: Are you aware that it suggests that an estimate of the costs of developing the mine over six years is anticipated to be approximately \$1.3 billion?

Dr GELLATLY: No, I said I am not aware of that report.

The Hon. TREVOR KHAN: Are you aware that the anticipated costs of the development of the Cobbora mine are approximately \$1.3 billion?

Dr GELLATLY: It is an estimate—from what I have seen, it is a matter for Cabinet in confidence. Government considered this matter and made a decision to proceed as they are and that sort of information was in the Cabinet document, which I cannot disclose.

The Hon. MATTHEW MASON-COX: Are you aware that this document appears in the Department of Planning website; this is not Cabinet in confidence?

Dr GELLATLY: I am not aware of that.

The Hon. MATTHEW MASON-COX: Mr Schur, are you aware of this document?

Mr SCHUR: No, I am not.

The Hon. MATTHEW MASON-COX: Is anybody at the table aware of this document?

Mr TIMBS: No.

The Hon. MATTHEW MASON-COX: Can you tell us then what your cost estimate is of establishing this coalmine?

Mr SCHUR: I do not know if there is an exact cost. I think there is a range for the capital cost of the project that probably would be covered by the number you mentioned.

CHAIR: Do you want to give the witnesses a copy of the document so they know exactly what document you are referring to?

The Hon. TREVOR KHAN: We will give you essentially the executive summary. I take it from what you say, Mr Schur, that a ballpark figure in the range of roughly—chucking in the air—\$1.3 billion would be pretty right?

Mr SCHUR: Roughly.

The Hon. TREVOR KHAN: Are there any other figures higher than \$1.3 billion that you blokes are sort of tossing around in the air?

Mr SCHUR: I am not aware of the details around the cost.

The Hon. TREVOR KHAN: Is anyone at the table aware of the details of the costs of the project that potentially are in the ballpark, sort of, maybe of \$1.3 billion?

Dr GELLATLY: As I said, information has been provided by way of a Cabinet document and I am not going to disclose that.

The Hon. TREVOR KHAN: It is more than a Cabinet document; that one is a publicly available document that gives a figure of \$1.3 billion. Mr Schur suggests it is one of the figures, it would seem, that it is about. I am not asking for Cabinet in confidence documents; I am asking for the knowledge of the people at the table as to whether other figures are being quoted, apart from \$1.3 billion, maybe, sort of, in that vicinity?

Dr GELLATLY: No, on my behalf.

The Hon. TREVOR KHAN: Does anyone else want to contribute to the conversation?

CHAIR: We are restricted to questions not conversations.

The Hon. TREVOR KHAN: Does anyone at the table know of any other figures, apart from \$1.3 billion, for the development of the mine on behalf of the people of New South Wales?

Dr GELLATLY: I reiterate, I know of other numbers; they are in a Cabinet document and I am not going to disclose it.

The Hon. TREVOR KHAN: We have heard from you, Dr Gellatly. Mr Schur, have you heard of any other figures apart from \$1.3 billion? Is that the figure we are to work on?

Mr SCHUR: I think government has made it clear that it will finance the cost of the project. I think the exact cost is still to be determined but \$1.3 billion is in the ballpark, yes.

The Hon. TREVOR KHAN: Being the head of Treasury, do I take it that you are minded, when figures of that quantum are being spoken of, to seek some details as to how somebody has come up with that—it is slightly bigger than the grocery bill that most of us would experience?

Mr SCHUR: Yes, and obviously we had some reference points for that number.

The Hon. TREVOR KHAN: What were those reference points?

Mr SCHUR: I cannot disclose what they are because they go to the commerciality of the negotiations with bidders but we have an idea, an indication of the capital cost of developing the mine, including the rail spur that would be required to be built to deliver coal to the mines.

The Hon. MATTHEW MASON-COX: Could I ask a question about the cost of the coal that will come from that mine under the Gentrader model. Can you confirm that the coal from the Cobbora mine will be supplied at \$A35 a tonne? Are you able to confirm that figure for the Committee?

Dr GELLATLY: No, again they are matters that are commercial in confidence and also Cabinet in confidence.

The Hon. MATTHEW MASON-COX: Which have been the subject of intense media speculation?

Dr GELLATLY: True.

The Hon. MATTHEW MASON-COX: Could you perhaps confirm what the spot price for export of New South Wales black coal is at this time?

Dr GELLATLY: Not at this time, no.

The Hon. MATTHEW MASON-COX: Let me put to you that last week it was \$95 a tonne and according to media speculation, which you will not confirm, the Gentraders will receive coal from the Cobbora mine at \$35 a tonne. When you do the mathematics on that, we are talking about a subsidy of in the order of in excess of \$1 billion, is that correct?

Dr GELLATLY: No, I think those numbers are wrong but I am not going to speculate on them.

The Hon. MATTHEW MASON-COX: You are willing to speculate that they are wrong but you are not willing to actually speculate whether the figures might be within 10 per cent or 20 per cent?

Dr GELLATLY: No, I do not think it helps people.

The Hon. MATTHEW MASON-COX: You are speculating they are wrong, Dr Gellatly, so at least you can give the Committee some indication about the magnitude of the order.

Dr GELLATLY: No, I just make the point we have material in the data room that bidders are looking at that is relevant to that question. That material is commercial in confidence. Obviously those numbers you had were speculating about what the future price of export coal will be. Clearly there is a difference between what is sold in the domestic market for the generators and what is sold on the export market. We discussed that last time we were here. Those sorts of numbers are commercial in confidence. They are in the data room for the bidders and they make their own assessment on what the likely future costs will be.

The Hon. TREVOR KHAN: The position is, is it not, that the domestic price of coal is presently in the vicinity of \$60 a tonne?

Dr GELLATLY: Yes, that is fact.

The Hon. TREVOR KHAN: Do I take it that the Cobbora mine is being developed to provide coal at a price less than the \$60 a tonne domestic price?

Dr GELLATLY: No, you have to take into account that the concept behind the Cobbora mine is the same as the Wilpinjong mine that Macquarie gets its coal from now. A certain amount of coal is provided at tonnage at a price that was potentially lower than the domestic market but the whole of the resource has other coal that then can be exported at the relevant price and there is a cross-relationship between those two prices, so it is a matter of having a look at the whole project and comparing how that works for the electricity generation industry.

The Hon. TREVOR KHAN: Do I take your answer to be, yes, the intent is to provide coal to the generators for less than the domestic price?

Dr GELLATLY: You take my answer to be the one I just gave. I just said what I believe.

The Hon. TREVOR KHAN: It is to provide coal for less than the domestic price, is it not, Mr Gellatly?

Dr GELLATLY: I said you have to look at the whole project. There is a quantity of resource there. The idea behind the project is that it has always been the intention that there is a quantity they are not committed to providing to the generators and which is sold on the export market. The cost of what they supply to the generators is lower than the export price, yes.

The Hon. TREVOR KHAN: I am not asking about the export price, Mr Gellatly, and you know that. I am asking about the domestic price. The intent of the project, the Cobbora mine, is to provide coal to the generators for less than the domestic price. Is that not correct?

Dr GELLATLY: No, I do not think you can say that. If you look at projections by ACIL Tasman on coal costs for the next 10 years for the generators they are in a range that is lower than export, whatever. You are speculating about what the future price is going to be for domestic provision.

The Hon. TREVOR KHAN: Is that fair dinkum?

Dr GELLATLY: Yes.

The Hon. TREVOR KHAN: The intention of this mine is not to provide coal at less than the domestic price—is that what you are saying?

Dr GELLATLY: It depends what the domestic price is going to be. Coal is sold to the generators now that is lower than other domestic prices and certainly lower than the export price. You know that.

The Hon. TREVOR KHAN: They are contracted prices, are they not?

Dr GELLATLY: Yes.

Dr JOHN KAYE: They are residuals from a deal long gone. Is that not true?

Dr GELLATLY: Yes. There is a market still happening out there.

The Hon. TREVOR KHAN: The reason for the development of this mine is because those long-term contracts are coming to an end, is it not, Mr Gellatly, and you have to find another way of getting cheap coal?

Dr GELLATLY: The idea behind the overall strategy was to provide coal when those long-term contracts go off so there was security of supply, true. That is a fact.

The Hon. MATTHEW MASON-COX: I understand the bids are due in today at 5.00 p.m., so—

Dr GELLATLY: No, 3.00 p.m. In a little while.

The Hon. MATTHEW MASON-COX: We are not watching the clock.

Dr JOHN KAYE: Are you nervous?

Dr GELLATLY: No.

The Hon. MATTHEW MASON-COX: Again, it is market expectation that the bids, which will come in at 3 o'clock today, will be in the order of \$4.5 billion to \$5 billion. That is the range that has been quoted. I do not expect you to give me any commentary on that. Obviously you will be opening those envelopes with great anticipation come 3.00 p.m.

Dr GELLATLY: No, I will still be here, unfortunately.

The Hon. MATTHEW MASON-COX: I want to examine the expectations in that regard. Are you aware that the multiples for similar power assets in the Victorian experience were based on 6.8 times earnings before interest, tax, depreciation and amortisation [EBITDA]? Are you expecting a similar sort of multiple in relation to these assets?

Dr GELLATLY: You know I am not going to speculate.

The Hon. MATTHEW MASON-COX: I put it to you that it appears, based on expectations in the market, we are looking at prices about 4.4 times EBITDA, which is a very significant discount of about \$2.5 billion in the value of these assets, if one compares them to a comparable model used in Victoria. Are you aware of that expectation?

Dr GELLATLY: No.

The Hon. MATTHEW MASON-COX: Do you have any comment in relation to the destruction in value caused by this transaction?

Dr GELLATLY: That is speculation.

The Hon. MATTHEW MASON-COX: Is this whole process in relation to the Cobbara mine not simply a way of trying to boost the headline price for this transaction by supplying coal at subsidised prices to these gentraders?

Dr GELLATLY: No.

The Hon. MATTHEW MASON-COX: Do you believe there is no subsidy in the pricing of coal to the gentraders? Is that your view?

Dr GELLATLY: I said before you have to take into account the whole project and the object of providing fuel for these generators in the future.

The Hon. MATTHEW MASON-COX: The question is, is there a subsidy?

Dr GELLATLY: We do not know yet. We will wait and see what the costs turn out to be and what the coal price is. It is too early to speculate on it.

The Hon. MATTHEW MASON-COX: One knows exactly what the spot price is for export—

Dr GELLATLY: That is today. The coal is not delivered until 2015.

The Hon. MATTHEW MASON-COX: It is not delivered until 2015 but, based on current spot prices for export and domestic coal, is there a subsidy in these contracts for the gentraders?

Dr GELLATLY: I think that is a wrong question to ask and I have no answer.

The Hon. MATTHEW MASON-COX: I think it is the right question to ask because the taxpayers of New South Wales are bearing this risk, are they not, Mr Gellatly?

Dr GELLATLY: There is a process about how the mine will be developed and the Government has made a decision and it has to be developed. We will see the end result of that.

The Hon. MATTHEW MASON-COX: Today at 3.00 p.m.

Dr GELLATLY: No, you will see the bids come in today at 3.00 p.m.

Dr JOHN KAYE: We will not actually see the bids come in.

The Hon. MATTHEW MASON-COX: It would be great if we could see the bids come in at 3.00 p.m. to assess what sort of level of destruction of value there is for these assets, would it not, Mr Gellatly?

CHAIR: We will move on to crossbench questions.

Dr JOHN KAYE: Mr Mason-Cox referred to the bids coming in. Is it correct that the bidders have signed confidentiality agreements to not disclose that they are bidders?

Dr GELLATLY: Yes. I think they could disclose that if they wanted to but we did not have the right to disclose their identity.

Dr JOHN KAYE: Are you telling us that bidders are allowed to disclose the fact that they have bid? Is that correct?

Dr GELLATLY: Yes, if they want to.

Dr JOHN KAYE: Are you saying there was no requirement on bidders to sign a confidentiality agreement to say whether they had or had not bid?

Dr GELLATLY: I will take that on notice but I am pretty sure that is the case.

Dr JOHN KAYE: Surely you know now. Mr Schur, do you know whether they are required to sign confidentiality agreements?

Mr SCHUR: No, I am not aware of the details around that.

Dr JOHN KAYE: Mr Cosgriff, were you aware? Mr Ronsisvalle?

Mr TIMBS: Some bidders that are listed entities may in fact be required under the Stock Exchange disclosure requirements to disclose that they are a bidder, particularly if there is a lot of market speculation around that, so you need to facilitate for that.

Dr JOHN KAYE: Mr Timbs, you seem to be on top of this issue more than Dr Gellatly is. Can you tell us what the requirements were, which bidders—

Mr TIMBS: I am not familiar with the specific confidentiality agreements but it is typical in these transactions, and I am sure it is the case here, that where a bidder is a listed entity and needs to disclose, if you had confidentiality you would carve out for them to be able to do that. That is pretty standard.

Dr JOHN KAYE: Mr Timbs, are you telling us that you think it is the case—Dr Gellatly does not know—that some bidders would be allowed to disclose and others would not?

Mr TIMBS: If they had to.

Dr JOHN KAYE: If they had to it would be in respect of whether their bidding may or may not have an impact on their share price?

Mr TIMBS: Typically.

Dr JOHN KAYE: So those entities that are listed on the Stock Exchange may be allowed to disclose the fact that they have bid but those that are not listed were not allowed to disclose?

Mr TIMBS: I am not familiar with the confidentiality agreements. I am simply saying that it is—

Dr JOHN KAYE: Dr Gellatly, would you take that on notice?

Dr GELLATLY: Yes, certainly.

Dr JOHN KAYE: Returning to the Cobbora story for a minute, Dr Gellatly, and I take your point that a subsidy may or may not be required on the coal, what plans have been made if there is a subsidy? Who will pay that subsidy price? How will that be collected? Does it come out of general revenue? Is there some other plan for gathering the revenue, which is speculated to be as high as \$3 billion? What are the plans for that, Dr Gellatly?

Dr GELLATLY: That is certainly contained in the Cabinet information, but I cannot disclose it.

Dr JOHN KAYE: So, you are not prepared to tell the people of New South Wales how they are going to pay for a subsidy that may appear to the gentrader bidders?

Dr GELLATLY: It is not my role to disclose what is discussed in Cabinet.

Dr JOHN KAYE: So the people of New South Wales at this stage may be looking at a bill that could, by some media speculation, be as high as \$3 billion and you are not disturbed by the fact that nobody knows how that is going to be paid other than yourself and some people in Cabinet and possibly Mr Schur?

Dr GELLATLY: That is the process of the way we operate—the Government, bureaucracy—

The Hon. TREVOR KHAN: In secrecy.

Dr JOHN KAYE: I understand that and I thank Mr Khan for his assistance. Dr Gellatly, what is the contract period that is going to be offered on Cobbora coal? You told us before that it began in 2015. How long will that run for?

Dr GELLATLY: That is commercial in confidence.

Dr JOHN KAYE: So, we are signed up to an unknown risk for an unknown period of time without knowing how we are going to pay for it, because it is commercial in confidence.

Dr GELLATLY: You do not know, but as you well know when there are commercial transactions like this going on it is not useful or helpful and is counterproductive to have open public speculation about certain commercial terms. That is not going to happen from me.

Dr JOHN KAYE: I understand you might think that having the public in your confidence might not be helpful but since you are asking the public to bear the risk of paying this amount there is some kind of moral obligation to provide that information or at least some outline of how long they are committed and how they are going to pay for it. You are saying that is not the case in New South Wales.

Dr GELLATLY: No, it is not a matter for me to decide.

Dr JOHN KAYE: Dr Gellatly, can we go to the issue of the ACCC informal inquiries into the two potential bidders for the assets AGL and Origin? It is a matter of public record—indeed, it was on the ACCC's website, was it not—that there are two informal inquiries, one into each of those, is that correct?

Dr GELLATLY: Yes.

Dr JOHN KAYE: Is it not also correct that at some time in the last three weeks there appeared on that website a statement saying that the formal inquiry would not be resolved prior to the 15 November deadline because the ACCC was waiting for information from the New South Wales Government?

Dr GELLATLY: Yes.

Dr JOHN KAYE: When was the New South Wales Government informed that it was requested to provide further information?

Dr GELLATLY: It was around that time, and there was—

Dr JOHN KAYE: What time was that?

Dr GELLATLY: Whenever it went on the website. I have not got it here. But we have had a number of meetings with them. The issue that changed, and the information we provided to them, was that we no longer required the bids to be unconditional. So they were allowed to put in conditional bids, which is basically subject to ACCC approval. And that is the more logical way to handle it—

Dr JOHN KAYE: That is the information that was requested of you, and that is the information you provided?

Dr GELLATLY: As I understand it—

Dr JOHN KAYE: So it took the New South Wales Government three weeks to say the word "unconditional"?

Dr GELLATLY: No, I did not say that.

Dr JOHN KAYE: It has been three weeks since that went on the website, and it was still on the website on Thursday of last week.

Dr GELLATLY: We let them know before, certainly pretty well straight after that.

Dr JOHN KAYE: You are saying that all the information required by the ACCC was required within a week of when you were asked for it?

Dr GELLATLY: Yes, certainly, as I understand it.

Dr JOHN KAYE: Why did the ACCC—?

Dr GELLATLY: You would have to ask them. We did our bit.

Dr JOHN KAYE: You provided that information. So, as far as you are concerned, there is no outstanding information between the New South Wales Government and the ACCC?

Dr GELLATLY: That is right.

Dr JOHN KAYE: And as far as you are concerned, all the information requested by the ACCC was provided at least two weeks ago?

Dr GELLATLY: Yes.

Dr JOHN KAYE: Even though throughout that period the ACCC on its website, which it says it updates every day, said, "We are still waiting for more information from the New South Wales Government"?

Dr GELLATLY: As I have said, it is not a matter for me what is on their website.

Dr JOHN KAYE: Dr Gellatly, you will recall that in a previous hearing I raised some concerns about the issue of confidential information about the cost structures of generators being provided in the data centres. Do you recall in vague terms that discussion?

Dr GELLATLY: In vague terms.

Dr JOHN KAYE: Is it so that the details of the existing contract or contracts between Macquarie and Delta, on the one side, and Norsk Hydro, the operators of the Kurri Kurri smelter, and Tomago, the operators of the Tomago smelter, are not part of the data room?

Dr GELLATLY: The Tomago-Macquarie contract is in the data room; the Delta-Hydro one is not.

Dr JOHN KAYE: It is not in the data room?

Dr GELLATLY: There is some information that they are saying they will not put in, which they said they would put in if Delta agreed to their extension. They seemed to be using it as some leverage on the intended extension of their contract—about putting data in the data room.

Dr JOHN KAYE: Is it correct that there was a Supreme Court case relating to this, and that an injunction was granted against the ability for the New South Wales Government to put that data into the data rooms?

Dr GELLATLY: Yes. That was last week.

Dr JOHN KAYE: To your knowledge, Dr Gellatly, if a bidder were interested in the Delta-Gentrader contracts, is it correct to say that they would have to estimate what the impact of the Hydro contract would be on their cost structures?

Dr GELLATLY: Yes, but in a fairly narrow band. It is commercial-in-confidence, but we have been able to provide some guidance to that price point. We cannot disclose the actual price point, obviously, because of the injunction and the refusal of cooperation.

Dr JOHN KAYE: In full knowledge of what the price point is, I presume you know what those price points are—I presume you know the details of the contracts? In fact, I have reason to believe you do know what the details of the contracts are.

Dr GELLATLY: Yes.

Dr JOHN KAYE: So you admit you know that. You were told by the Supreme Court that you cannot disclose that data.

Dr GELLATLY: We have not.

Dr JOHN KAYE: But has there been a wink-wink and a nudge-nudge?

Dr GELLATLY: No, I did not say that. I am just saying there are ways of disclosing what some reference prices are for a commercial contract of that nature.

Dr JOHN KAYE: Can you enlighten us, without telling us the numbers because that is clearly commercial-in-confidence and we are in New South Wales? Can you enlighten us as to how you do that?

Dr GELLATLY: We have expert financial advisers who provide us with a way of doing it.

Dr JOHN KAYE: But you are not telling us how you do that?

Dr GELLATLY: No.

Dr JOHN KAYE: Did you do it by a range of prices? Did you do it by some other—?

Dr GELLATLY: I am not going to disclose that.

Dr JOHN KAYE: You are not going to tell us how you did it?

Dr GELLATLY: How we did it is commercial-in-confidence.

Dr JOHN KAYE: But you are confident that you were entirely within the Supreme Court ruling?

Dr GELLATLY: Certainly, yes. We have had legal advice all the way about what we are doing.

Dr JOHN KAYE: But you would not disclose that information to the people of New South Wales?

Dr GELLATLY: No, I would not. It has been past history for as long as I can remember, 30 or 40 years, that you do not disclose the terms of those contracts—

Dr JOHN KAYE: This is not about the terms of the contracts. You told this Committee under oath that you did not disclose those contracts.

Dr GELLATLY: Yes.

Dr JOHN KAYE: What you said was that there are ways in which you could communicate that without breaking the Supreme Court injunction. You are prepared to give that to the bidders, but you are not prepared to give the information to the people of New South Wales?

Dr GELLATLY: It is part of the transaction and it is commercial-in-confidence information that we are giving those potential bidders.

CHAIR: Mr Schur, I would like to ask some general questions about the difficult situation of seeking bids and so on, on the eve of a State election when there appears to be a strong probability of a change of government. What impact has that has on your planning and thinking, in terms of locking in contracts when a new government may have a different policy in this whole area of handling future electricity generation?

Mr SCHUR: I think the timetable was deliberately scheduled so that we would avoid that difficulty. Obviously, we cannot enter into caretaker mode with uncertainties around resolving the energy transaction, so this is exactly why the bid date was today. The intention is to have the bids evaluated and assessed, and a final determination made before the end of the year.

CHAIR: It creates some sense of urgency, almost panic, in making those decisions now, in the rush before Christmas, given that the Parliament will obviously conclude its sitting days at the end of November or early in December.

Mr SCHUR: Again, I think Dr Gellatly can answer on the details, but the timetable was deliberately assessed to provide sufficient time to evaluate the bids and make a final determination before we get into caretaker mode.

Dr GELLATLY: Chair, if I could just add to that. It is not a time of panic. We have been well prepared for a long time and we have procedures in place and the relevant experts to help us along the way, so we are confident that we can do it within the time and in a professional way.

CHAIR: Was there any consideration at any stage that you try to develop this in a bipartisan way, by having discussions with the relevant opposition leaders?

Dr GELLATLY: That is not really a question for me; it is more for the Government to have a position on that.

CHAIR: There has certainly been no discussion with the Opposition on the proposals?

Dr GELLATLY: Not that I am aware of.

CHAIR: The other issue about which there is now a lot of speculation—and it is the reason why you are going through this process of seeking these bids—is that the supply of electricity in New South Wales is now at severe risk, and that the dramatic rise in the population and increased use of electricity, air-conditioners and so on, has put tremendous pressure on the supply of electricity. Do you see any concern at this stage about meeting that heavy demand?

Dr GELLATLY: The latest market information I have seen indicates that compared to the Owen report the crucial time for supply and demand with the current major coal-fired generation has now been pushed

out a bit to, I think, 2017, unless new capacity is brought in. But that could apply also to coal-fired generation. Key in the market is what happens with the Carbon Pollution Reduction Scheme [CPRS], the Commonwealth's carbon pricing strategy and gas prices. That will affect the relativity. From the latest information that I have seen I think there is no fear of a shortage of electricity.

Dr JOHN KAYE: To which coal generation were you referring in your answer?

Dr GELLATLY: The current coal-fired generation capacity.

CHAIR: You mentioned earlier carbon trading, carbon taxes and so on. Has any consideration been given to the effect that might have if some restrictions were placed on existing coal-powered generators?

Dr GELLATLY: Obviously it makes the gas-fired generators more competitive as it pushes up the carbon price, which in turn increases the cost for coal-fired generation. Depending on whether there is compensation or whatever, clearly a carbon price makes gas and other forms of energy more competitive.

CHAIR: Could it get to a serious point where it would not be economical to continue with coal-fired generators in the future?

Dr GELLATLY: Certainly in some markets, and people have speculated on that. From what we have seen I think in the next 20 or 30 years that will not be the case.

CHAIR: You mentioned a number of times that you were concerned that open speculation could have an impact on bidders. Could you explain that further? In what way would it affect bidders?

Dr GELLATLY: When you are running a transaction you prefer as little speculation in the market as possible because it gives false signals and it conveys false information. You would prefer people to be bidding on the basis of information that is in the data room, their own circumstances and their own general understanding of the market, rather than on information that is disclosed in the newspapers that is not put out properly. From a probity point of view it is very disturbing, in particular, if some bidders have access to information to which others do not. The whole basis of the probity of a transaction is that all bidders get access to the same information.

CHAIR: In some ways you will not know what impact it has had until you see these bids. It might affect the price that you get.

Dr GELLATLY: We do not really know.

CHAIR: Do you think it could have had an effect on the best price you were hoping to get?

Dr GELLATLY: I think there are many factors in this transaction because of its complexity, the uncertainty about carbon prices, issues relating to gas prices, demand levels and so on. It is just another one of the factors that are taken into account. You could not isolate one as being a major influence.

CHAIR: You could visualise a group of hard-headed businessmen in a boardroom being very nervous about moving into this area at all because of that degree of uncertainty.

Dr GELLATLY: True.

CHAIR: It has presented you with a big challenge to get good bids.

Dr GELLATLY: Yes, it has been challenging.

CHAIR: I have been trying to make some calculations about what might be called a reverse sliding scale. Instead of increasing the value that you get there has been a dramatic decline from the time discussions first started about the sale of the electricity industry in New South Wales. As you well know, the legislation was not supported by the Opposition—legislation that was introduced at the time by Treasurer Michael Costa—and that it was unsuccessful.

The Hon. TREVOR KHAN: It was not supported by a lot of Labor people either.

The Hon. LUKE FOLEY: Or by you.

CHAIR: The Opposition withdrew its support for the legislation.

The Hon. MATTHEW MASON-COX: You supported it.

CHAIR: Yes, I certainly supported it. What amount would you estimate was foregone in general terms through the loss of that proposition?

Dr GELLATLY: I am not in a position to answer that question and I do not know whether Michael Schur is in a position to do so. I have been concentrating only on the transaction.

Mr SCHUR: One cannot speculate. The point is that the erosion in value of these assets is a function of the changing environment in the sector, the fact that sooner or later we are entering into a carbon world, and the fact that the assets owned by the New South Wales Government are almost entirely coal-fired generation plants. Whether or not we sold these assets, clearly in that environment there would be erosion to value over time. I think that is the point we need to recognise. The other point we need to recognise is that at some stage in the future we need to increase our capacity in an environment in which demand is increasing. Either the Government was going to make that investment in new generation capacity or the private sector was going to do so.

CHAIR: The sale having gone through and taking into account the talk at the time, it would be true at that point that it could have been up to \$20 billion? We are talking now about \$4 billion or \$5 billion, so there has been a great loss to the taxpayers. Would you comment on that?

Mr SCHUR: I think that is just a fact. I refer to the point Mr Mason-Cox was making earlier with regard to the privatisation of the Victorian assets. Clearly, Victoria sold them at a time when there was less uncertainty about the carbon issue. Clearly, there has been erosion in value over time. I think that is just a fact; that is not in dispute.

CHAIR: Would that be true of what has been happening over the past six months or 12 months—constant attacks on the second stage plan of the gentrader proposition by both the Opposition and the Greens? What impact has that had on the potential sale price?

Mr SCHUR: Frankly, with respect to everyone, I think that is just noise. I think the people buying these assets focus on the fundamentals. They are in the energy business so they are aware of the carbon world that they face and they price the risk accordingly. I think what is happening around the transaction is not particularly relevant as far as they are concerned.

CHAIR: You do not think it has had any financial impact on taxpayers, or you hope it has not?

Mr SCHUR: I do not believe it will necessarily. I think at the end of the day they will bid on the contracts that they face in the data rooms. They will make their assessments and put in their bids accordingly.

The Hon. MATTHEW MASON-COX: Mr Schur, how long ago was the Government in the business of being a coalminer?

Mr SCHUR: It was before my time. I am aware of it but I might have to ask one of my other colleagues to answer that question.

Mr COSGRIFF: Since 2002 or 2003.

The Hon. MATTHEW MASON-COX: Why did the Government get out of being in the business of being a coalminer?

Mr COSGRIFF: The Government wanted to get out of the coalmining business.

The Hon. MATTHEW MASON-COX: That is true, but why did the Government want to get out of the coalmining business in 2002?

Mr COSGRIFF: Presumably because it did not want to be involved in the risk.

The Hon. MATTHEW MASON-COX: The commercial risk of running a coalmine?

Mr COSGRIFF: Yes.

The Hon. MATTHEW MASON-COX: Why does the Government want to get back into coalmining, given the commercial risks relating to coalmining in 2002?

Mr COSGRIFF: In different circumstances it led the Cabinet to a different decision.

The Hon. MATTHEW MASON-COX: Is it really in the interests of the taxpayers of New South Wales to be in the commercial and risky business of operating a coalmine?

Mr COSGRIFF: I will not comment on that. A Cabinet decision has been made.

The Hon. MATTHEW MASON-COX: It is a rhetorical question, Mr Cosgriff. I refer to this perverse outcome of the Government going back into coalmining in order to try to maximise the price for the privatisation of electricity assets. Does it strike you as perverse that in the one transaction we are privatising assets on the one hand and we are nationalising or setting up a government business to produce coal on the other hand?

Mr COSGRIFF: No, it does not strike me as perverse.

The Hon. MATTHEW MASON-COX: Was your advice to the Government that that was a good idea?

Mr COSGRIFF: I am not going to comment on my advice to the Government, or on the Treasurer's advice for that matter.

The Hon. MATTHEW MASON-COX: Mr Schur, as Treasury Secretary, do you believe this is in the best interests of the taxpayers of New South Wales?

Mr SCHUR: I will not comment on my advice either, Mr Mason Cox. However, I will tell you how the Government characterised it because I think it characterised it a bit differently from the way in which you are characterising it. I do not think Government would consider that it was going back into coalmining. The alternative was to accept a bid from a preferred bidder—and this was based on advice it was getting from its financial advisers and the energy market consultants working on the transaction. The advice was that the best offer by the preferred bidder was not recognising and being willing to pay upfront—and this goes to the point Dr Gellatly was making earlier—for the potential value associated with exporting coal. I do not think it is the Government's intention to go back into coalmining as much as it is to finance this particular mine and to get it to a point at which those risks have changed. At that stage the intention is to sell the mine. That is the Government's position on this.

The Hon. MATTHEW MASON-COX: So the Government has got back into coalmining and the Government also has an exposure to the commercial risk of establishing this mine, granted?

Mr SCHUR: Yes.

The Hon. MATTHEW MASON-COX: We have established that. The Government also has a risk in relation to an ETS, which no-one knows the form of—do you acknowledge that, Mr Schur?

Mr SCHUR: Yes, I think the Government would have a risk anyway.

The Hon. MATTHEW MASON-COX: I think Dr Gellatly made it clear that there were a number of risks and challenges to this sale process that the Government has had to deal with, which has made the process "very challenging"—I think they were your words, Dr Gellatly?

Dr GELLATLY: Let me just say, the fact that the gentraders were successful means the ETS risk will pass to them; it is no longer with the Government.

The Hon. MATTHEW MASON-COX: So the Government will have no risk associated with operating a coalmine?

Dr GELLATLY: In regards to the electricity you were talking about.

The Hon. MATTHEW MASON-COX: I was talking about risk also in relation to operating a coalmine.

Dr GELLATLY: You mentioned ETS.

The Hon. MATTHEW MASON-COX: Does a coalmine not issue gases in the production of coal?

Dr GELLATLY: In terms of the transaction—

The Hon. MATTHEW MASON-COX: Yes or no, Dr Gellatly?

Dr JOHN KAYE: He is talking about fugitive methane from the mining process.

Dr GELLATLY: Yes.

The Hon. MATTHEW MASON-COX: So there is an implication there, is there not?

Dr GELLATLY: True, unless it is sold before it actually operates.

The Hon. MATTHEW MASON-COX: Thank you, Dr Gellatly. Mr Schur, given that we have this range of challenges and, as you put to the Committee, an erosion of value in this carbon-constrained world, and given, as the Chair mentioned earlier, we also have a situation of a Government coming to the end of its term, is this really just privatisation at any cost?

Mr SCHUR: I think the point about erosion of value is a fact where you privatise these assets or not; that is happening regardless. So I think it is independent of the assessment as to whether you sell them. There is a process by which this transaction will be assessed after the finalisation of that transaction; namely, the Government has effectively signed up to a retention value for these assets and obviously post-transaction there will be an assessment of the process against this retention value. As long as the assets sell for the retention value or higher, all else being equal, and notwithstanding the fact that this retention value would recognise the fact that these asset values have eroded because of the future carbon environment, then we should have a process that provides the citizens of New South Wales with value for money under those circumstances.

The Hon. MATTHEW MASON-COX: Are you aware of UBS research dated 4 November that comes to the conclusion that the New South Wales Government offering cheap coal to the gentraders is likely to add \$1 billion in net present value to the price for the sale of these electricity assets?

Mr SCHUR: I am not aware of that, no.

The Hon. MATTHEW MASON-COX: Do you have any comment in that regard? Does it surprise you that the value is being increased by providing coal at a subsidised price to gentraders?

Mr SCHUR: In a sense it is obvious that if the cost of coal is lower than that it should enhance the value of the generation assets. Again, I think whether that is a subsidised price is an assertion and it is not the view that the Government has on this. The view the Government has on this is that the preferred bidder was not able to recognise or put on the table the value associated with export coal.

The Hon. TREVOR KHAN: If the public of New South Wales is to work out whether they are getting bang up for their buck, what we know at this stage is as follows is: there will be a price that is obtained for these assets, whatever that may be. Is that not right? There is speculation about \$4.5 billion—that is the speculation, is it not? Yes or no?

Mr SCHUR: I try not to follow the speculation.

The Hon. TREVOR KHAN: That is what the speculation is though, is it not?

Mr SCHUR: I genuinely do not know.

The Hon. TREVOR KHAN: From that figure, we are entitled to take the cost of developing the Cobbora Mine, at \$1.3 billion, are we not? That is a cost that is now going to be incurred by the people of New South Wales. Yes or no?

Mr SCHUR: I think the Government would take the view that it would have developed the mine and would have developed the mine independent of the energy transaction.

The Hon. TREVOR KHAN: The cost of developing this mine, at the time this is being put together, is \$1.3 billion? Yes?

Mr SCHUR: I would not characterise it that way. I would not see it that way. I think there is a risk attached to developing the mine that potentially creates a contingent liability for a government and the Government should recognise that and should offset that contingent liability, whether it is \$1.3 billion or something else.

The Hon. TREVOR KHAN: On top of that there is—at least if we accept what UBS has to say—\$1 billion worth of subsidy to the gentraders that arises out of cheaper coal.

Mr SCHUR: As I said, I cannot respond to that. I do not where that comes from.

The Hon. TREVOR KHAN: In a sense what we have—and I am inviting comment because we might be missing something here—is a price of maybe \$4.5 billion or thereabouts and we take off that \$2.3 billion to see what the public of New South Wales is getting out of this panicked transaction, I would suggest. Is that not so?

Dr GELLATLY: Can I make a couple of comments?

The Hon. TREVOR KHAN: Go ahead because everything is Cabinet in confidence or commercial in confidence, so it would be good to hear some substantive comment from you, Mr Gellatly.

Dr GELLATLY: I read in the newspaper today, the *Australian Financial Review*, that it is \$8 billion but I cannot validate that and say what it is compared with your \$4.5 billion. The other point is the thing you are missing on the Cobbora transaction is that, whatever figure you come up with for the cost of it, there are revenues generated by selling the coal for a long period that offset it. So it is a matter of the capital investment upfront, how that is funded, and, as Michael said, there may be some contingency until it is sold. It is not just a one-off.

The Hon. TREVOR KHAN: We do not know, because you will not tell us, whether the price received for the coal will exceed the cost of production. You could be putting us in the position where Cobbora Mine is a loss-making enterprise, which is worth precisely nothing, or continues to cost the people of New South Wales money every year. We do not know that because you are not prepared to tell us.

Dr GELLATLY: That is right.

The Hon. TREVOR KHAN: That is right?

Dr GELLATLY: I will not tell you because it is Cabinet in confidence.

The Hon. TREVOR KHAN: Trust us—is that what you are telling us?

The Hon. MATTHEW MASON-COX: Privatisation at any cost, Dr Gellatly?

Dr GELLATLY: No. Can I just say that there was a process outlined—I think it was in October 2009—and a timetable has been developed? We basically have stuck to that process and so in no way can you

say it has been panicked. It has been developed over the last 12 months and we have arrived at the bids coming in today despite a lot of scepticism by a lot of people along the way.

The Hon. MATTHEW MASON-COX: Despite the erosion of value and all the challenges along the way that you have noted here today.

Dr GELLATLY: But as Michael has said, the erosion in value would have happened if they were still in government ownership, so it is irrelevant.

The Hon. MATTHEW MASON-COX: A brave defence, Dr Gellatly, in the face of fierce public criticism.

Dr GELLATLY: It is not a matter of defence; it is just facts about what happened.

The Hon. MATTHEW MASON-COX: The reality of the public disquiet over this sale is—

CHAIR: Can we have questions rather than comments?

The Hon. MATTHEW MASON-COX: Yes. I will ask a different question of Mr Schur. Can you advise how much every Minister has in their ministerial discretion fund and the details of how these funds have been allocated over the past four years?

Mr SCHUR: No, I do not have those details. I am happy to take that on notice.

The Hon. MATTHEW MASON-COX: That would be excellent.

Mr RONISVALLE: I am sorry, I am not sure that Treasury has that information. I think we would probably struggle to find that information. Are you talking about a Minister's office or available to the Minister through his department?

The Hon. CATHERINE CUSACK: The department will have an amount allocated for the Minister's discretionary fund. I am sure you are familiar with the term?

Mr RONISVALLE: Yes.

The Hon. CATHERINE CUSACK: That is the figure he is asking for.

Mr RONISVALLE: Yes.

The Hon. CATHERINE CUSACK: And then he is asking about the allocation of that fund over the past four years. It is all accounted for.

The Hon. MATTHEW MASON-COX: Do your best, Mr Ronsisvalle.

CHAIR: You will take that question on notice subject to that material being in your office?

Mr RONISVALLE: Yes.

The Hon. CATHERINE CUSACK: Has the Treasurer been briefed on the progress and impacts of the Solar Bonus Scheme?

Mr SCHUR: Yes he has.

The Hon. CATHERINE CUSACK: What form of briefing did you give the Treasurer?

Mr SCHUR: My understanding was that the Minister for Energy initiated a review into the scheme sometime in August. We were asked to brief the Treasurer on the preliminary findings of that review. So we did that.

The Hon. CATHERINE CUSACK: When was that briefing?

Mr SCHUR: I believe we in Treasury were first aware of the findings of the review sometime in August, the second week in August. Sorry, October.

The Hon. CATHERINE CUSACK: Is it possible to find out the exact date the Treasurer was briefed?

Mr SCHUR: Yes, I am happy to take that on notice.

The Hon. CATHERINE CUSACK: Is there a problem?

Dr JOHN KAYE: Yes. Dr Gellatly has just picked up some food and left the room in the middle of cross-examination.

The Hon. TREVOR KHAN: Questioning.

Dr JOHN KAYE: Questioning, I should say. That is extraordinary behaviour.

CHAIR: He has left his coat there. He will have to return.

Dr JOHN KAYE: That is some kind of security.

CHAIR: Could witnesses please say "Yes" or "No" in answers to questions. A few nods have been given in answer, which cannot be recorded in *Hansard*.

The Hon. MATTHEW MASON-COX: I think he has gone to see what the bids were. It's 3 o'clock.

The Hon. CATHERINE CUSACK: Yes. We are hoping he will be back.

The Hon. MATTHEW MASON-COX: We can ask him about the bid when he comes back.

The Hon. CATHERINE CUSACK: I am sure he will come back to tell us. Mr Schur, was that the first time you briefed the Treasurer on the issue of the solar bonus program?

Mr SCHUR: It would have been sometime in October, yes.

The Hon. CATHERINE CUSACK: You were not aware that there were any problems with it prior to that?

Mr SCHUR: We were aware?

The Hon. CATHERINE CUSACK: Yes?

Mr SCHUR: We were aware of some of the information that the distributors were passing on to the Department of Investment and Industry, which was coordinating the review.

The Hon. CATHERINE CUSACK: What do you estimate the price to consumers will be from the blowout in the solar bonus program?

Mr SCHUR: I think that is too early to determine because, if you recall, when the Premier announced that the scheme was going to be changed she also called for a review into the capital cost structure and the operating cost structure of the businesses. My understanding is that that will feed into the process as well. I do not know currently what the impact will be.

The Hon. CATHERINE CUSACK: What advice did you give the Treasurer about the future of the scheme?

Mr SCHUR: I am not at liberty to disclose what our advice was to the Treasurer.

The Hon. CATHERINE CUSACK: Was that written advice or just verbal?

Mr SCHUR: It would have been written.

The Hon. CATHERINE CUSACK: Do you leave copies of your written advice with the Treasurer?

Mr SCHUR: Yes, we provide formal advice to him. Yes.

The Hon. CATHERINE CUSACK: Do you keep a record of what advice you give the Treasurer?

Mr SCHUR: Yes, we do.

The Hon. CATHERINE CUSACK: Does he normally keep your advice or does he just hand it straight back to you?

Mr SCHUR: Once his office has seen our advice it comes back to us with his signature on it.

The Hon. CATHERINE CUSACK: Does his office retain copies of the advice?

Mr SCHUR: I do not know. I presume they do, but I do not know.

The Hon. CATHERINE CUSACK: Is it possible to obtain the dates on which you gave advice to the Treasurer and the dates on which the advice was returned?

Mr SCHUR: I will take that on notice, yes.

The Hon. CATHERINE CUSACK: Do you have any estimates on the total cost of the solar bonus program?

Dr GELLATLY: No.

The Hon. CATHERINE CUSACK: Do you know how many people have taken it up?

Dr GELLATLY: No.

The Hon. CATHERINE CUSACK: Do you know how many applications are outstanding—not yet installed into the system?

Dr GELLATLY: No.

The Hon. CATHERINE CUSACK: When do you expect that you will be in a position to know that?

Dr GELLATLY: I do not need to know that.

The Hon. CATHERINE CUSACK: Are you saying it has no impact on your program of work?

Dr GELLATLY: Yes.

The Hon. CATHERINE CUSACK: Do you have any estimate of the current level of cross-subsidies that have been carried in the pricing system when the retail business is for electricity?

Dr GELLATLY: No.

The Hon. TREVOR KHAN: Do you play poker? I imagine you would be good at it. Mr Schur, will you explain how Cobbora meets the objective of creating an industrial and commercial framework that encourages private investment in the New South Wales electricity sector?

Mr SCHUR: Are you asking me to comment on government policy?

The Hon. TREVOR KHAN: No, I am asking you to explain how the undertaking of the project implements government policy?

Mr SCHUR: I think that is a matter for government. You should refer that question to the Treasurer.

The Hon. TREVOR KHAN: Can you explain how the Cobbora project reduces the need for future public sector investment?

Mr SCHUR: I am sorry, I am not sure I understand the question.

The Hon. TREVOR KHAN: How does investing in a coalmine reduce public sector investment in the electricity sector?

Mr SCHUR: I am sorry, I really do not understand the question.

The Hon. TREVOR KHAN: Don't you? Do you not see that investing at least \$1.3 billion, it would seem, into a coalmine runs precisely counter to what is identified in September 2009 as one of the strategic objectives of the State Government of New South Wales? It is not that hard, is it?

Mr SCHUR: I think that question has been answered in various ways. I think along the way the Government made a decision that, given the alternatives, taking the risk of investing in Cobbora was the best option available to it.

Dr JOHN KAYE: Dr Gellatly, are you aware that in last year's Macquarie Generation Annual Report a statement identified that the way the current supply contract with Tomago Aluminium was written the financial risk of a carbon price was entirely borne by Macquarie Generation?

Dr GELLATLY: No.

Dr JOHN KAYE: You are not aware of that fact?

Dr GELLATLY: I am aware that was a characteristic of the contract, but I did not observe that from their annual report. I have not read that, but I am aware of that fact.

Dr JOHN KAYE: My point is that you are aware of the fact that the current contract that grew out of the original contract has that as a feature? You are aware of that?

Dr GELLATLY: The current one until 2017?

Dr JOHN KAYE: Yes, until 2017.

Dr GELLATLY: Yes.

Dr JOHN KAYE: Will that be a feature of any subsequent contracts?

Dr GELLATLY: As you are aware, they have signed a new contract as of last Friday for an extension to 2017 for 11 years, and there are changed features in that contract. I will have to resort to my earlier response that that is commercial in confidence being disclosed in the data room, but I presume it will be a matter for Macquarie Generation to disclose as it does, if it does, in its annual report.

Dr JOHN KAYE: The bidders for assets in respect of Macquarie Generation will be aware of those risk features associated with that contract?

Dr GELLATLY: Yes.

Dr JOHN KAYE: Will the same be true for the bidders for the Kurri Kurri smelter contract?

Dr GELLATLY: The existing contract, do you mean?

Dr JOHN KAYE: No, the contract that will obtain after 2017?

Dr GELLATLY: That has not been agreed to.

Dr JOHN KAYE: The bidders for assets in respect of Delta Electricity will not know what will happen after 2017? They do not even know what is going to happen until 2017, but they will not have a clear idea of the risk factors?

Dr GELLATLY: As you have read in the paper, that has not been signed.

Dr JOHN KAYE: So they are not aware? The bidders will put in bids when they do not know what is going to happen after 2017?

Dr GELLATLY: They will know that there is a possibility of an extension. It may be one that they can then negotiate as a gentrader owning that energy output, rather than Delta.

Dr JOHN KAYE: Have you done any analysis on the impact of that on bid prices?

Dr GELLATLY: Of what?

Dr JOHN KAYE: The impact of the lack of knowledge about what is going to happen after 2017?

Dr GELLATLY: As I have said before, there are many issues, risks, uncertainties in this whole process. I do not think, in my view, that it would be a significant impact.

Dr JOHN KAYE: What percentage of Delta's output goes to the smelter at Kurri Kurri?

Dr GELLATLY: I think it is about 10 per cent. I would not be sure. It is around that. It is a significant amount.

Dr JOHN KAYE: It is actually more than that, but let us take it as 10 per cent. You are saying substantial risks over 10 per cent of their output, pricing for 10 per cent of their output, is not significant?

Dr GELLATLY: It is obviously an impact. As I said, there are a number of issues where there are uncertainties and other contract risks. But there was a decision made that was not a contract that should be signed now and put into the data room; that it should be held off for now.

Dr JOHN KAYE: Who made the decision, Dr Gellatly?

Dr GELLATLY: The steering committee that I chair.

Dr JOHN KAYE: So you were part of that decision?

Dr GELLATLY: Yes. We had our financial advisers and our economic advisers providing advice that they did not think it was appropriate to be signed at this stage. That is part of the process. The overall protocol through the transaction is that where they are to make significant decisions they have to come through the steering committee for approval.

Dr JOHN KAYE: That is protocol. In fact, the decision should have been made by the Minister for Energy, should it not?

Dr GELLATLY: It is a protocol.

Dr JOHN KAYE: It is a protocol.

Dr GELLATLY: The Minister for Energy comes into play if there is a direction issue.

Dr JOHN KAYE: Was not a direction given to the board of Delta Electricity over this matter?

Dr GELLATLY: Not on the contract.

Dr JOHN KAYE: You made the decision but you did not implement the decision. The decision was implemented by the board of Delta Electricity?

Dr GELLATLY: In the end, yes.

Dr JOHN KAYE: As a non-commercial decision, somewhere along the line an instruction was issued to Delta Electricity to not sign a contract?

Dr GELLATLY: No, it was not.

Dr JOHN KAYE: I am confused. On the one hand, you say you made the decision—

Dr GELLATLY: The views of the steering committee were that we did not consider it beneficial to sign that contract. As it has played out, in the end the Delta board decided not to sign that contract.

Dr JOHN KAYE: You are saying that the final decision was actually made by the Delta board?

Dr GELLATLY: Yes.

Dr JOHN KAYE: Without ministerial instruction?

Dr GELLATLY: Yes.

Dr JOHN KAYE: So there was no section 20N instruction to the board?

Dr GELLATLY: Do you mean to—

Dr JOHN KAYE: The board was making a purely commercial decision?

Dr GELLATLY: There were two. There was an issue about the data and the existing contract and whether that went into the data room.

Dr JOHN KAYE: No, I am talking about something separate here—about not signing the contract.

Dr GELLATLY: There was a ministerial direction in that regard, which you know was tabled. But in regard to the contract with Hydro there was no ministerial direction.

Dr JOHN KAYE: Therefore, by law, the board made that decision as a commercial decision?

Dr GELLATLY: Yes.

Dr JOHN KAYE: That is fascinating. That is something we should pick up later, Dr Gellatly. I want to now move to another issue and I direct my questions to you, Mr Schur. To paraphrase, you said you cannot enter caretaker mode with uncertainty about the future of privatisation; is that correct?

Mr SCHUR: What I said is you cannot be in a position where contracts need to be signed, sale agreements have to be signed, and you are in caretaker mode. Clearly, that would have to be resolved beforehand.

Dr JOHN KAYE: Is it not true that if there is not adequate competition in the industry—you have not introduced enough new players into the industry—there will be an IPO, an issue of public offering?

Mr SCHUR: Yes, correct.

Dr JOHN KAYE: I presume that IPO will not happen between now and when the Government enters caretaker mode?

Mr SCHUR: That is correct.

Dr JOHN KAYE: I suspect Dr Gellatly might have some view on this. He has just taken his food, gone outside and presumably made a phone call. In the event that there needs to be an IPO, is it not true, Mr Schur, that there will be huge uncertainty going into the election?

Mr SCHUR: Yes, there would be in the sense that the transaction would not be finalised. I believe you asked this question last time, Dr Kaye.

Dr JOHN KAYE: Yes, but I ask this question now in the context of what you told the Committee before, that it was unacceptable to go into caretaker mode with uncertainty about contracts, whereas what may be the biggest contract of all will be sitting there waiting—as you told us before and I confirm again with you.

Mr SCHUR: The point I am making here is that before we got into caretaker mode the Government would have to assess whether its objectives were met in the trade sale process and have that result before we got to the caretaker process.

Dr JOHN KAYE: So that will be resolved, then we will go through caretaker and an election and the potential change of government. What will be the arrangement with the industry if this happens? Some of the industry will be in public hands, some in private hands?

Mr SCHUR: I think we are speculating here, Dr Kaye. I think we should wait and see what happens with the prices.

Dr JOHN KAYE: I find that an extraordinary answer, given that we are talking about transactions over what used to be called \$10 billion worth of State assets. You are telling me that you have not thought through what the industry will look like through caretaker mode if an IPO is required?

Mr SCHUR: I think we are speculating.

Dr JOHN KAYE: I am asking a question. Have you thought through what the industry might look like if an IPO is required through caretaker and election mode and into next year? Have you given that any thought?

Mr SCHUR: I think the Government was aware always that the timetable was such that if an IPO was required it would have to happen post-March 2011. There has been no change.

Dr JOHN KAYE: That is a nice statement, Mr Schur, but you have not answered my question. Have you given any thought to what the industry will look like through that period with mixed ownership—some public ownership and some private ownership?

Mr SCHUR: I think we will have to deal with that if that situation arises.

Dr JOHN KAYE: This is a yes or no answer: either you have given it thought or you have not given it thought. Have you given it thought?

Mr SCHUR: I think that is a question for Government as to how they respond to that.

Dr JOHN KAYE: No, it was a question for Treasury. Has Treasury put any thought into this issue?

Mr SCHUR: Yes, we have.

Dr JOHN KAYE: Finally, we get an answer that you have put some thought into it. Did you at any stage raise concerns with the Treasurer in respect of this matter?

Mr SCHUR: Our advice to the Treasurer would have been given in the context of deliberations of Cabinet. I cannot indicate what that is.

Dr JOHN KAYE: Bang, we hit a brick wall again. Welcome to New South Wales. Chair, I think my time is up.

The Hon. CATHERINE CUSACK: The election is hardly a Cabinet matter.

CHAIR: Following up questions by Hon. Catherine Cusack about the solar panels, do you anticipate a dramatic decline in the response by the public to installing solar panels and how would that affect what was going to be a saving if the public installed those solar panels and reduced pressure on the supply of electricity? Do you anticipate a dramatic decline and, if so, how much?

Mr SCHUR: I am not an authority on this, Mr Chair. The scheme has changed pretty dramatically. I read the other day that the Federal Government is also talking about reviewing its subsidy for the upfront costs. There were two factors that drove the demand. It was the nature of the scheme here in New South Wales and also the fact that in many respects owners were not paying a great deal up-front for the cost of the solar panels themselves. So in many cases the payback period was about two years. That dynamic has changed now. So we anticipate a change to the take-up, yes. The other factor is that the change to the scheme now also has a cap in place, a hard cap. In the original scheme my understanding was that the scheme would be reviewed when we got to either three years into the scheme or 50 megawatts of installed capacity. We clearly have exceeded that point now and there is now a hard cap of 300 megawatt capacity with the scheme.

CHAIR: When the pink batts program was scrapped it was a disaster economically for many of the companies involved. Have you had any reports of the impact of the decision about solar panels on companies in the production or installation business?

Mr SCHUR: No, I have not.

CHAIR: Has that been of any concern? Have you had complaints?

Mr SCHUR: I think that issue was canvassed and the general feeling—although others might want to add to this—was that there was a very long order book associated with the installation of the schemes. There was at least a decent period of time for which there would still be ongoing business for the providers of the panels.

CHAIR: So that business will pick up if the Federal subsidies increase?

Mr SCHUR: Yes.

CHAIR: I have just another general question dealing with the Cobbora coalmine. As you know, there has been increasing public concern about new coalmines. Are you anticipating any residents' protests over the coalmine? Have there been any challenges to the coalmine itself?

Dr JOHN KAYE: This is Cobbora, Chair?

CHAIR: Cobbora, yes.

Dr GELLATLY: Not at this stage.

The Hon. MATTHEW MASON-COX: John will arrange one.

Dr JOHN KAYE: And Col will deal with it, if there is one.

CHAIR: I assume there would be special agreements with the coalmining unions for their cooperation with the new mine? Has that been a factor that you have been discussing?

Dr GELLATLY: I have not been aware of that, no.

CHAIR: That was the last of my questions. Do Government members wish to ask any questions?

The Hon. LUKE FOLEY: No.

CHAIR: That brings us to the conclusion of the hearing. We thank you very much for your attendance, particularly those who have attended a second time. You have 21 days to respond to any questions on notice. There were only one or two questions on notice. Ladies and gentlemen, thank you very much. Committee members, thank you. This is our last hearing for this session. The meeting is closed.

(The witnesses withdrew)

The Committee proceeded to deliberate.
