

VERIFIED VERSION

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into Effective Decision Making for the Successful Delivery of Significant Infrastructure Projects

Melbourne — 20 March 2012

Members

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Witnesses

Mr B. Lyon, Chief Executive Officer,

Mr G. Powell, National Policy Manager, and

Mr A. Dwyer, National Policy Manager, Infrastructure Partnerships Australia.

**Necessary corrections to be notified to
executive officer of committee**

The CHAIR — I formally declare open the Public Accounts and Estimates Committee hearing on the inquiry into effective decision making for the successful delivery of significant infrastructure projects. On behalf of the committee I welcome from Infrastructure Partnerships Australia Mr Brendan Lyon, chief executive officer; Mr George Powell, national policy manager; and Mr Adrian Dwyer, national policy manager. Members of Parliament, departmental officers, members of the public and the media are also welcome.

In accordance with the guidelines for public hearings, I remind members of the public gallery that they cannot participate in any way in the committee's proceedings. Only officers of the PAEC secretariat are to approach PAEC members. Members of the media are also requested to observe the guidelines for filming or recording proceedings in the Legislative Council committee room, and no more than two TV cameras are allowed at any one time in the allocated spaces. May I remind TV camera operators to remain focused only on the persons speaking and that panning of the public gallery, committee members and witnesses is strictly prohibited.

As previously advised to witnesses here today. I am pleased to announce that these hearings are being webcast live on the Parliament's website. All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act 2003, attracts parliamentary privilege and is protected from judicial review. However, any comments made outside the precincts of the hearing are not protected by parliamentary privilege. This committee has determined that there is no need for evidence to be sworn; however, witnesses are reminded that all questions must be answered in full and with accuracy and truthfulness. Any persons found to be giving false or misleading evidence may be in contempt of Parliament and subject to penalty.

All evidence given today is being recorded. Witnesses will be provided with proof versions of the transcript to be verified and returned within two working days of this hearing. Verified transcripts and presentations will be placed on the committee's website within two weeks of this hearing. I remind people to turn off all mobile telephones.

I now pass to Mr Lyon for any opening comments of no more than 4 minutes duration, if desired. Brendan, would you like to make any opening comments?

Mr LYON — Indeed, thanks to you and all members of the Public Accounts and Estimates Committee. Achieving the best value-for-money outcomes from public infrastructure procurement is an issue of profound importance not just to Victoria but indeed to all jurisdictions across Australia.

By way of background, Infrastructure Partnerships Australia is the nation's peak infrastructure industry body, and we are comprised of public and private sector executives. We seek to focus on how market frameworks could be reformed to allow more efficient allocation of infrastructure investment and indeed how matters can be resolved to sustain a greater level of investment so that we can begin, piece by piece, to address the infrastructure shortfalls.

Victoria is, in many senses, Australia's best skilled jurisdiction in the identification of funding, financing and delivery of major infrastructure. Successive coalition and Labor governments have continued a very strong reform curve, and Victoria has amassed substantial skill across its public sector in the delivery and operation of capital assets. But the committee's review is timely because best practice demands continuing reform. I would like to talk about a number of key areas where Victoria could improve the delivery of major projects. First is the development of a dedicated, long-term infrastructure strategy with an attendant state priority list of projects to give industry, the public sector and taxpayers much greater certainty about what projects will be coming to market and, finally, improvements to the review process for major projects, irrespective of their delivery model to ensure that we are getting full transparency about actual performance and that we are capturing the lessons that are learnt.

The CHAIR — Have you concluded your statement?

Mr LYON — Yes.

The CHAIR — As awkward as telephone meetings are, we are very grateful for your contribution today, noting that we did meet with you in November of last year, albeit that that was not an informal and we took some useful notes. The purpose of this hearing today is to put on the public transcript some of your views. I apologise if you think we are asking you questions we have already asked you before, but it is important and I am grateful for your time.

In relation to our terms of reference, which you have considered, I would like to ask: are there any aspects of the terms of reference specifically, beyond your opening statement, that you would like to address in terms of the context of the leading edge position on infrastructure projects? More particularly, I am interested in your views about the development and sustainability of the skill set. Where I would like some of our discussion to go today is in terms of the competencies and skills in relation to project governance and project management which are evident to IPA from a successful delivery perspective, and noting you have an annual awards program, which includes published case studies, are you able to comment on the relationship between that awards program and analysis and your view about the sustainability of the skill set in the delivery of infrastructure?

Mr LYON — Yes, certainly. In a framing sense, I would say that certainly since 1994 with the infrastructure investment policy for Victoria, developed under the Kennett government, the Victorian taxpayer has been very well served by a well-formalised process for the management of major PPP projects. We have seen a continuing evolution through to the creation of the Partnerships Victoria unit within the Treasury in 2000 and the establishment of frameworks for the delivery of major economic and social projects under PPPs.

At the same time Major Projects Victoria, which sits within the Department of Business and Innovation, has also been a very important project governance instrumentality, because it is specifically designed to assist procuring agencies, line agencies, to procure complex projects that are beyond their skill set. Particularly in terms of the Victorian Treasury's role in the capacity it has to cycle skilled procurers down into line agencies to assist with complex projects, which has recently been expanded through the high-value, high-risk framework that has been brought through, has been very important, because it allows central agencies to have oversight of the outcomes of major infrastructure projects but does not introduce the same level of interface risk that you could expect if the procurement of a major project was taken away from the client agency.

I think it has been a very mature structure. It has been one that has developed well, and it is one that allowed for a natural sharing of skills across the public sector and allowed for a high degree of oversight about outcomes. But to date that level of oversight has been largely restricted to public-private partnership projects. One of the things that the committee might consider in terms of the further requirement and development of best practice and skill is whether that same level of focus from policy makers from central agencies, from media and from taxpayers that is directed towards major PPP projects should also, in an institutional sense, be directed to all major capital projects, particularly in terms of an ex-post review of the actual outcomes of non-PPP projects against their initial business case. That way you can begin to capture best practice. You can begin to capture much more robust case studies of where project outcomes have been good, where they have not been good and what the learnings are and allow those to be propagated and shared across the Victorian public sector.

The CHAIR — That is a useful response. I will ask my deputy, Martin Pakula, to intervene.

Mr PAKULA — I am just using my recollection and some scratched-out notes from the conversation we had late last year. Just to follow up from your last point where you talked about ex-post analysis, my recollection is that you went on to talk about having a structure that drives continuous improvement which might also allow for some distance from a sort of screaming front-page headline — that is, the fact that full transparency would give you better public sector performance, and it would be a more regular or normal part of the delivery of projects. I ask you to just expand on that a bit, but also in doing that, in terms of the ex-post analysis, could you comment on the role of the Auditor-General. We spoke to the Auditor-General this morning. As we discussed last year, auditors-general, particularly ours, have a view about a role for themselves in examining the private partners of government in a performance review sense. I would be interested in your comments about how the private sector might react to that.

Mr LYON — In terms of ex-post analysis and transparency, one of the problems we found in the major study we undertook with Melbourne University in 2007 was that the details and outcomes of public-private partnership projects are quite transparent and were readily available. What we did not find was that the publicly managed or traditionally procured projects had the same level of transparency. If you are not making the actual outcomes of procurements transparent, it means you are unable to improve the processes, the frameworks and the approaches the public sector agencies are having. It also means that when large projects run off the rails as a result of either poor procurement practices or policies you get the screaming front page because it is suddenly a scandal.

What we should be trying to move towards in all jurisdictions in Australia is a routine publishing of the cost and time performance outcomes for major public sector investments into capital projects. Perhaps all projects of a procurement value above \$20 million might be a legitimate place to draw the line in the sand. Let us publish the results so that we are able to harness best practice where it has occurred.

In terms of the Auditor-General, I am aware that Mr Pearson has a number of times sought additional powers to be able to access the private records of private consortia partners with the government's delivery of major projects. In our view, and indeed in the view of many senior public servants in the Victorian bureaucracy, those powers would act as a disincentive to the private sector in terms of engaging the public sector in a robust sense and would also extend the powers well beyond what is required to meet the outcomes that Mr Pearson is seeking. He has already got substantial powers to call in all of the documents that are relevant to the assessment of performance audits of major PPP projects, and I do not believe that it would serve the public policy outcomes for those to be extended to the degree that he seeks.

I have met with Mr Pearson a number of times and expressed that view to him. I have also expressed to him a similar view to what I have just put forward to the committee now, which is that the poor-value outcomes do not tend to be accruing in terms of the major PPP projects that are well scrutinised, well reviewed and subject to a very strong degree of fascination from the media in particular. It appeared to me that it is likely to be the projects below \$100 million but above \$20 million which are not being assessed by the central agencies in the same way that major PPPs projects are, and it may well be that the delivery of greater value out of the capital program may be from implementing a structure to ensure a routine interrogation of the outcomes of those types of projects.

Mr PAKULA — Brendan, could I just follow that up. I do not want to have a sort of remote cage match between you and the Auditor-General without him in the room, but given that we spoke to him this morning, I suspect what he would say in response to that is that the only — what he says to us is that the only power he is seeking is that in regard to a private partner of government, whether it is in a PPP or a traditional alliance, he would seek to perhaps interview a private sector project manager, not trawl through the books in an audit sense but interview from a performance audit point of view, in order to hold the public official to account for the delivery of the project. On the face of it what you are talking about and what he is talking about seem to be two rather different things.

Mr LYON — That could well be the case, and I should add for the record that I have a very strong degree of respect for Mr Pearson. I enjoy a good relationship with him and have respect for him and his office. I am not familiar with his more recent approach, but certainly a number of years ago he wrote to the government of Victoria and requested powers that at that point would have allowed him to trawl through the books in an audit sense and give a very high degree of access to potentially commercial-in-confidence information that is unrelated to the delivery of a performance audit on a public sector investment.

The private sector has no problem with transparency other than some very minor degrees of commercial-in-confidence technology innovations or similar that might appear within a PPP project, but the private sector does have a right to expect that its own commercial-in-confidence information unrelated to the delivery of a public infrastructure project should be rightly protected and I think any extension of powers that were to imperil that kind of sensitive information would have a negative impact in terms of the Victorian infrastructure program.

The CHAIR — Could I just tease that out, and I would be grateful for your patience? I just want to pursue this a little further because it is clear that the Auditor-General has a very strong view which in other jurisdictions has already been agreed to, and that is effectively to follow the money in relation to publicly funded projects. My understanding is that essentially this may be a language issue. With respect to the understanding of the different parties it may be that there is a slight bit of confusion. It is clear to me that the Auditor-General is seeking a power which is narrow and defined in terms of the project that is being specifically funded by the public purse for the purpose of delivering a benefit for the state, which requires some form of transparent accountability. At the moment we have had an evolution over a couple of decades of the way that projects are being delivered to the extent where projects that were fully developed within the government sector were able to be scrutinised quite transparently, and today that is much more difficult.

I think the auditor has certainly expressed to the committee on a number of occasions that he is simply seeking an extension of his capacity to do what he does within the public sector in relation to a narrow performance audit, in effect. I am not sure that that is as clear as it could be in your reflections. Your presumption is that he has been wanting to get a power to look at the accounts, if you like, the ledgers of private sector organisations, when in fact our understanding is simply that it is a narrow remit to look at the project specifically.

Mr LYON — I would say that this is not an issue that I have followed with perhaps as much attention as I should have, given today's hearing. I am certainly aware that he did request some fairly substantial intervention more than a year ago and that there was a degree of hesitation and concern made known at that time by members of the Victorian public sector rather than the private sector. Again, it is an issue of which I do not have a deep understanding, other than to say that transparency in general terms is a laudable outcome and one that is supported by everybody. Again, care and consideration needs to be given to ensure that we are protecting legitimate commercial-in-confidential requirements. Most jobs with contracts for major PPP projects in Victoria are routinely published on the Web and are available to people to interrogate and view. Again I would suggest that perhaps the committee is in a better place to make a determination and consultation about what appropriate access might be. I have not followed this issue closely.

A modest extension of powers may be useful, but we would caution the committee to be cautious that private sector IP is protected as part of that process.

The CHAIR — Thank you for that commentary.

Mr MORRIS — Brendan, term of reference (f) for this inquiry requires the committee to consider the relative merits of decentralised versus centralised strategies for the provision of specialist services, particularly for PPPs but I guess for other purposes as well. I was wondering whether you have any comments in this area, particularly regarding the importance for organisations to achieve a reasonable balance between the use of internal and external specialist services, rather than relying perhaps too much on either in-house or contract services?

Mr LYON — The debate about centralisation of procurement is one that comes up every 5 or 10 years within any government structure. What I would say to the committee is that while it might appear that centralisation of procurement is a desirable outcome, I would caution you about the very real prospect of interface risk between the client agency and the procurer because of a disconnection between them and an inability for a centralised procurer to ably specify the outcomes that are being sought from a capital investment.

Instead I would suggest that a model that provides central agency oversight and empowers line agencies to be skilled procurers, particularly through the cycling down of expertise out of central agencies and others such as Major Projects Victoria is a very good model, because it leaves behind residual skills within those line agencies but also ensures that there is an embedded but skilled procurer within an agency that may not be routinely buying large capital assets and the services that they underpin. I think that sort of model is one that has proved to be very successful in terms of the Partnerships Victoria unit within Treasury, within Major Projects Victoria. Indeed the creation of projects or asset-specific procuring agencies such as the Linking Melbourne Authority also has much to commend it, because it allows you to bring together the right balance of skills.

In terms of the capacity and flexibility to contract in external skills, I think that is very important, because — and a number of submissions to your inquiry have made this point — it ensures an understanding between the public and private sectors about the drivers from each side of the deal table. It also allows the Victorian public sector to contract in very expensive and very complex skills that may not be required routinely as a matter of procurement but instead allows them to be contracted in efficiently and last only as long as the procurement of an individual asset.

I think the flexibility to employ outside the established public sector pay scales is very important in that process. It means that the Victorian public sector will be able to source from a global pool of talent in terms of capability to specify the outcomes and deliver a very well designed and well contracted capital asset.

Mr SCOTT — One of our terms of reference deals with different models of procurement. I would be interested in your views on PPPs versus alliancing versus D and Cs and the relative benefits or otherwise of each of the models. There is a model that we have become aware of during the committee's deliberations which

is a more competitive form of alliancing. What are your views on those and the benefits that can accrue to the public of the different forms and when they are appropriate or not?

Mr LYON — It is a very good question and one that comes up from time to time, particularly as the various proponents or acolytes of different models push the particular model as the solution to everything. My view is that governments need to take an agnostic view on procurement. They need to be agnostic about the procurement models and ensure that they are selecting the model that is going to deliver the best value for money back to taxpayers. Naturally public-private partnerships in Australia have leaned themselves to the delivery of very large, very complex assets because of the ability to apportion, I suppose, risk and reward efficiently and to align the private sector's interests towards the public sector's good outcome.

In terms of alliances, the alliance model lends itself in particular to the delivery of projects in which risk is not easily, efficiently or possible to be scoped. Because it does not put a fixed price on the delivery, it means that it suits itself either to projects that are very urgent in terms of particularly some of the water network augmentation projects that were delivered in Queensland in the shadow of impending and imminent water shortages or to projects where the complexity means that the risk cannot be efficiently apportioned. An example might be delivering an expansion brownfield light railway network where things like access to the track and so forth cannot be guaranteed or where ground conditions are not known.

Design and construct is a very good model and overwhelmingly the most commonly utilised model of procurement. You get a fixed price contract, your competitive bid price test and then the project is delivered. I do not think there is any particular delivery model that lends itself to being routinely applied. What I would say is that the Victorian Treasury's work in terms of driving better procurement outcomes from alliance contracting in particular has been very important. Because there is not a fixed price to apportion those projects — instead of use of a pain-or-gain share mechanism — it can lend itself to poorer outcomes if it is overused, because you do not have that same degree of certainty about cost and you do not have the same drivers on either party to ensure better value. I think the work the Victorian Treasury has led with the other treasuries around the country has been very important in terms of delivering a more competitive process but also better decision making about what sort of procurement model should be applied to any given project.

Mr ANGUS — Just in relation to term of reference (e) of our inquiry, which involves the committee examining the relevant national and international strategies for enhancing public sector expertise in the delivery of infrastructure projects, the committee would be interested in any comments or suggestions you might have in relation to any research or knowledge you are aware of in relation to that particular term of reference.

Mr LYON — Thank you. That is a very good question, because it is not one I have given a great deal of thought to.

The CHAIR — Tricked you!

Mr LYON — Indeed. I think, routinely, the practices that have been applied in Victoria have to a large degree driven transparency and accountability. It leads toward a mega-type project. I think the desalination plant is fairly contentious and newsworthy at the moment, but there has been a high degree of transparency about the contract in terms that sit within that project. Again, I think a greater level of oversight and accountability for the non-PPP projects should be an area in which the committee makes some firm recommendations and indeed makes recommendations about the routine interrogation part of major projects. Again, with an agnostic approach to their procurement model, measuring the actual performance against the initial business case would be a very good outcome for Victoria and a very good outcome for the Public Accounts and Estimates Committee in terms of its mandate.

Mr O'BRIEN — Following on from Mr Scott just talking about the different types of projects and the different decision-making environments — you have probably not seen all of the submissions, but there is a submission from Foster Infrastructure which talks about the impact of public statements in relation to a project. We had some evidence earlier about a phenomenon whereby the business case is effectively tailored to public announcements. The Foster submission says:

For significant projects, the relevant minister will often have made public statements about the cost or timing of delivery of the project. In these circumstances, public sector managers can either be directed or feel obliged to ensure that an outcome is delivered

that is consistent with the minister's public statements. Such an outcome may result in a compromise on long-term value for money and public interest considerations.

Then there is another section on decisions made in crisis situations, and effectively there is also that need for government to make decisive decision making from time to time. It goes on to say:

There is a tension between the desire for transparency in the early stages of a project and the perverse outcome that results when that transparency leads to the project later being managed for the short-term political expediency of delivering on a minister's statements, thus compromising accountability for long-term outcomes.

Having regard to the various types of project financing and funding and your detailed answer to Mr Scott, are there certain types of project in this decision-making spectrum that lend themselves to one style of funding or delivery as opposed to other types of projects?

Mr LYON — Generally public-private partnerships are applied to the large, more complex infrastructure projects. Examples are motorways, where they traditionally lend themselves to both the funding and the financing of those assets, and, particularly in recent times, large clinical hospitals with complex and labour-intensive operating costs, because of the opportunity to harness innovation and design and because you are putting private sector equity on the line in terms of meeting clearly specified outcomes. Alliances lend themselves very much towards projects with unescapable risk, and 'design and construct' is a more traditional model of delivery and lends itself to the smaller capital projects, like the duplication of existing roads and so forth.

In terms of the specific point that was made in that submission to the committee, I think I will make a statement by just retreating north of the Murray for a moment and using the CBD Metro experience in New South Wales as an example to prove the point. That project was announced with a very rubbery costing by the New South Wales government because they had not put in place the long-term planning and because they did not have a real focus on how the CBD Metro project was going to fit within the broader transport outcomes they were seeking for Sydney.

That really points to one of the things I would like to highlight for the committee, which is the procurement model itself is very important, but the quality and prioritisation of the project and the degree of planning that takes place upstream from the investment decision are equally important in terms of driving a better allocative efficiency out of the public infrastructure program in Victoria and other states. That means taking a very long-run view of future demand and requirements. It forces an up-front consideration of land use and planning policy, and it then allows government or the public sector to put in place, piece by piece, supporting infrastructure that is required, whether that be transport, utility or social infrastructure, such as hospitals, justice facilities and education facilities.

That degree of up-front planning allows you to accrue substantial benefits because it allows you to make decisions about the protection of long-term land corridors and strategic land. It allows you to make decisions that will drive rational behaviours in terms of the location of housing close to employment land and so forthwith. That really does give the public sector the opportunity to deliver and drives substantial benefits and value because of clarity about future requirements and the opportunity to protect corridors against non-compliant development, and because it allows them to plan for economic and social requirements in those areas. I think that is also an important outcome and one where Victoria has traditionally done very well, most recently through the east-west link needs assessment study in the Victorian transport plan, and it is undertaking a similar process through the metropolitan strategy at the moment. That kind of long-run vision about what the requirements are going to be also allows you to prioritise capital investment so that you are delivering your most important projects first. It means that governments will be well scoped and that when political decisions are made about investments they will be selected from a basket of well-thought-through projects that add to both the capacity and quality of the services that those infrastructure assets will underpin.

Mr O'BRIEN — You have picked up a supplementary question that I have been asking, which is: in relation to these various types of decisions and various types of projects, what is the importance of long-term planning? I think you have answered that in general terms. Accepting that answer, if I could take you to another submission, from Engineers Australia, which specifically talks about the Victorian scenario in relation to infrastructure planning. In a sense I suppose it qualifies some of the comments in relation to where Victoria has got to and where it has got to head, and it makes recommendations in three dot points on page 2, where it says:

The 2010 IRC acknowledged that there have been some improvements in infrastructure planning in Victoria but many issues are still to be adequately addressed, including:

integration of infrastructure planning and urban planning as well as integration of infrastructure plans across infrastructure types;

more adequate recognition of the implications of population and economic growth and the adaptation of planning to inevitable errors in planning assumptions;

inclusion of all options in infrastructure planning and not just options that are politically acceptable. The acceptability or otherwise of specific options should be thoroughly debated with the consequences of their exclusion included.

What do you say in relation to those specific comments in relation to the importance of and issues dealt with in long-term infrastructure planning?

Mr LYON — I think the principles that have been laid out by Engineers Australia in their submission are correct in terms of the outcomes. The greater the level of integration that you can get across the different infrastructure subsectors, the greater the transparency governments will have about the relative priority of different investments and a much clearer picture will exist about what the likely demands are going to be for particular investments in transport and utility infrastructure and social infrastructure. I would say that long-term planning that at least considers other sectors, if not integrating them fully, is critically important. It is an issue that New South Wales is grappling with at the moment, as is Queensland, in terms of accommodating the growth pressures that those states are facing.

Victoria has had a happier history of sound planning of infrastructure and sustained delivery over the last 25 years or so. Nonetheless, when the committee is looking at ways to improve practice I think the greater the level of integration you can get between your land-use decisions and your infrastructure or capital program across all sectors — across health, education, community, local and transport infrastructure and so on — the better the outcomes you are going to get, because you will be able to see on a rational basis what the demand pressure is going to be next year, what it is going to be in 20 years and what it is going to be in 50 years, and it allows you to keep options open, such as preserving linear land corridors that might be used for metro rail, heavy rail, light rail, roads, scooter paths or whatever else might be needed. It means that governments have got the opportunity to keep those options open and to plan for growth in a way that can be sustained both by the budget and by the community.

Mr O'BRIEN — In those time horizons, you mentioned 20 and 30 years; if you have engaged in that planning, does it also help with your shorter term decisions, in 2 to 5 years and so on?

Mr LYON — That is exactly right. I mean the idea of a long-term plan is that it gives you a menu of well-thought-through project options that are going to be needed over different time horizons, and that will naturally cascade down into a much clearer and more transparent pipeline of likely projects that are coming to market. On top of that, the experience in Australia has shown that real and long-term infrastructure and strategic land-use plans also have a very positive impact on driving political and community consensus and acceptance about future projects. The underpinning strategies that mapped out the development of Sydney, Melbourne and Brisbane are a case in point, in terms of having a common view about where development is going to occur and what supporting infrastructure would go into place. It really drove a degree of consensus across all of the stakeholders about the direction.

The CHAIR — Thank you very much, Brendan. On behalf of the committee may I thank you and your colleagues, who have no doubt been sitting beside you and cheering you for your contribution today. Formally I thank Infrastructure Partnerships Australia, and Mr Lyon, Mr Powell and Mr Dwyer, for their participation. It has been a very useful session, and I am grateful. I have no doubt that we will come back to IPA in terms of further matters. We will be undertaking further public hearings later in the process in relation to what I describe as case studies, and I would be interested if you are able to make any contribution, either to this set of hearings as a result of anything you glean from the public hearings over the next three days and/or if you can participate in the future. But thank you very much for your time. This concludes today's public hearing.

Mr LYON — I would like to thank you very much, and we would obviously welcome the opportunity to continue to engage with you through this inquiry and others.

Committee adjourned.