

VERIFIED VERSION

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

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

Melbourne — 22 March 2012

Members

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Witnesses

Ms P. Armytage, Secretary,

Ms G. Moody, Executive Director, Strategic Projects and Planning, and

Mr P. Delphine, Director, Built Environment and Business Sustainability, Department of Justice.

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

The CHAIR — I 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 the Department of Justice Ms Penny Armytage, secretary; Ms Gail Moody, executive director, strategic projects and planning; and Mr Paul Delphine, director, built environment and business sustainability. 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. Departmental officers, as requested by the secretary, can approach the table during the hearing to provide information to the secretary by leave of myself as Chairman. Written communication to witnesses can only be provided via officers of the PAEC secretariat. 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 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, 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 PowerPoint presentations will be placed on the committee's website within two weeks of this hearing.

Following a presentation by the secretary, committee members will ask questions relating to the inquiry. Generally the procedure followed will be that relating to questions in the Legislative Assembly. I ask that all mobile telephones be turned off. I now call on the secretary to give a brief presentation of no more than 4 minutes, if she desires.

Ms ARMYTAGE — I will make some brief comments. Obviously we have submitted our questionnaire response and that material is available to you. We have had a very significant infrastructure program over a period of time through the justice portfolio. Today I will mainly focus on corrections and the courts programs. We have undertaken significant programs that we have coordinated through Victoria Police and also with emergency management, but they do not fulfil the test, I guess, in terms of matters of interest to you.

In September 2010 VAGO produced the report *Management of Prison Accommodation Using Public Private Partnerships*. It documented some of the challenges that we had faced in terms of the management of the long-term PPPs and the lengths of those contracts. Given that they were some of the very early PPPs, we have some considerable experience in that, and I guess they related to those that we have built. Many of our lessons have come from our early experiences and the knowledge we have acquired over time. We have had a program of continuous improvement and we have worked very closely with the Department of Treasury and Finance in particular, with the Department of Premier and Cabinet and with VAGO itself in terms of the lessons learnt out of those contracts.

In regard to the terms of reference of your inquiry, the key issues that we want to cover include the fact that managing significant infrastructure projects requires a very high level of skill, knowledge and practical experience at the project governance, oversight, project management and project team levels. At all of those levels we think we need different skill sets, but overall it is very high level in terms of what is required, and that very much depends on the nature of the project. Even if we look at the projects we have got under way, either new or refurbished initiatives, whether they are delivered through PPPs or through design and construct procurement methods, we have got them on foot and under way at the moment. Therefore there are skills that we require that need to be nuanced in accordance with the nature of the project that we are undertaking.

However, in November of 2011 we launched the standardised project management excellence framework for our capital projects to improve the knowledge and all elements of the phasing of these projects, including the strategic assessment, the benefit and investment analysis stage, the benefits planning project and post-implementation tasks. Under this new framework that we have got, we have introduced internal project management training capability across the board for people who will be involved in that to make sure that we have the information available for people and that it is in accordance with the national recognised qualifications in project management. This builds on our broader general project management competencies that have been acquired over time across the portfolio on infrastructure projects. We think that is a good combination of skills and capabilities that we have got and that they develop not only through formal and credentialled training but also we place great emphasis on on-the-job training in terms of building up the experience that we have got. We also have complementary expertise that we will bring in from the private sector as we need to in a broader range of projects, and we can speak to how we have done that in the course of the discussion.

We have an asset investment framework, which describes the competencies and skills that we require and, as I said, we have got that broader program of training that is under way. We tailor the selection of the members of our governance committees to the nature of the project that is on foot, and they are selected on the basis of their strategic and operational advice, but we always have a senior person who is nominated to take the lead role at director level or above in terms of each of these projects.

We do use the investment lifecycle guidance material that has been produced by DTF. We rely on that a lot and we have been active in terms of the gateway review processes, both having our projects the subject of them, but also having staff participate in reviews.

We have drawn down from best practice we have seen nationally and internationally, particularly in the space of corrections. Most especially we have been able to look at overseas jurisdictions and how their frameworks have worked — New Zealand and also some other interstate experiences. As I was indicating earlier, other jurisdictions have typically come to us to look especially at our PPPs in relation to courts and corrections, and to look at the lessons learnt and how they might apply them in their own jurisdictions. We frequently have visits from Australian, New Zealand and international jurisdictions coming to look at that work.

In terms of the issue of centralisation and decentralisation that you are obviously interested in, clearly Justice has had responsibility for the delivery of this broad range of projects, and we clearly favour the current approach that has been operating because we think it gives a good balance — with a heavy involvement of DTF and DPC in particular in our projects, but balanced with our own content knowledge, I guess, in terms of what will ultimately be required with that infrastructure as it moves forward. We have been able to, I think, get a strong record of delivery of these projects now over time.

However, we clearly see that there are opportunities for us to continue to learn and develop in terms of our ways of delivery, and we are facing some challenges with a range of our projects that really require us to continue to look at how we make sure that we work very constructively with the consortium partners with whom we work and how we have early identification, for example, of any issues to make sure that we can deliver these projects on time and on budget — and hopefully avoid things like soil contamination and other things we have had on some of the projects that have challenged us.

We think there is competition in terms of the skilled resources that you need, in terms of a capacity to maintain both a pipeline of work but more importantly have the staff who can respond to that pipeline. That is why we have favoured this combination of upskilling our own people and providing that formal on-the-job training as well as bringing in external expertise, as we have needed to at critical stages of the projects. Sometimes that external expertise is not needed all the way through projects; it can be at particular points in time. We have placed great emphasis on probity and we select probity auditors to get involved in our project teams off the government panel, and we have, as I said, continued to build on our capacity overall and make sure that, in combination with our framework documents, our excellence documents and the guidance material, we have the training and the expertise from within government and externally. That has positioned us quite well, I think, in terms of the responses to date.

The CHAIR — Thank you very much for your presentation and opening remarks. I particularly thank you very much for your timely and fully informed response to the questionnaire. We are grateful to have all of that

consolidated information. We would like to drill into some particulars. In your presentation you particularly mentioned your initiative which you launched in November, the project management excellence framework.

Ms ARMYTAGE — Yes.

The CHAIR — I would like to draw a response in regard to the extent that the principles which are embodied in this initiative are reflected in the published central policies and guidelines which are applicable throughout the public sector. That is, in effect, does the need for the Department of Justice to develop this framework highlight an obvious gap in terms of policies and guidelines?

Ms ARMYTAGE — I guess from our point of view we felt it was important to have some tailored material that would help us in terms of taking our staff forward and to make sure we had consistent management of these projects. Because our infrastructure program varies so much in terms of the scale of the initiatives that we have under way at any one point — it might be a minor project of, for example, doing some in-prison development to put some extra cell blocks in an existing operating prison, all the way through to, for example, some refurbishment and an upgrade we are doing of the coronial services at the moment, and through to a new greenfields site — we had to have a framework that would apply to that dimension of projects. With each of them it was important to be delivered on time and within their budget. This framework built on the Treasury guidance material we have had, but we applied it to our local circumstances. Gail and Paul are very familiar with how our staff have responded to the guidelines since they were produced in November, so maybe I can ask Gail to answer, and then Paul.

Ms MOODY — I would like to say that this is now the standard for the Department of Justice project delivery. It is actually a standard that has been customised, as Penny rightly said, using the guidance material that has been available centrally, but it has also drawn off PRINCE2, PMBOK and generally the body of knowledge that is around. We have customised it to make sure it is relevant to Justice projects, but I have to be honest: it is actually broader than just infrastructure. We have made sure that it can be sized from strategic projects that might be required to help develop policy, through to large delivery; it has actually been customised to enable us to do that. We have had a very positive response from our staff. We now have about 130 staff who meet regularly as part of further enhancing feedback on and improvements to the framework.

We have had a lot of interest from other government departments — CFA is now picking it up, Victoria Police is now looking at it, as well as a range of other organisations within our portfolio, but also other government departments are now looking at it as well. It has actually been constructed to reflect gateway, the life cycle processes — best practice, if you like, within project management delivery. It has also produced simple guidance material that enables it to be applied readily and easily, be it for a simple project like the one that Penny mentioned, a cell block that could be \$7 million to \$10 million perhaps, through to a PPP; the principles that apply are the same. We have been very pleased with the work that was developed in conjunction with our project managers so that they actually own the material, which for us is very, very important.

Paul, did you want to add something, because you represents part of the user group?

Mr DELPHINE — Yes. The project directors and project managers have been very positive about this. When you look at cradle-to-the-grave methodologies like PRINCE2, they are somewhat overwhelming in terms of their complexity. They were built for procuring IT systems in the United Kingdom initially, so they are extremely complex. The benefit of this particular framework — I mean, you can have any framework, but this particular one — is that it has all the key elements, and the benefits I think for project delivery are that it has all the key decision points up front and you cannot skip a point. I think the pressures to deliver projects often mean that people compress the front end — the planning, the strategic assessment, the investment, the logic stuff; all of that is particularly critical in the success of any project, and the key decision points in this framework ensure that we do go through that. I think it gives us rigour; it gives us absolute compatibility of our skills so that we can move people from one project to another because their knowledge of the methodology is there. There has not been any resistance. Normally you get a bit of push back from people who are familiar with another way of operating, but because it is so structurally skeletal and it has all the key elements there, people have frankly embraced it. I think it has been very positive.

The CHAIR — That is a very comprehensive response to my question that probably I think I would interpret to mean that the central guidance materials could be improved, but you do not need to comment.

Mr PAKULA — I want to give you the opportunity to be a bit expansive. On a superficial level, one would say that the core function of justice is to provide a justice system — courts, police, correctional facilities — and not to build things. We have had varying pieces of evidence before this committee from a range of different directions and perspectives that talk about the notion of whether or not the state, particular elements of the state or particular departments have sufficient internal skills to be an informed purchaser of services, particularly in the realm of construction and particularly when building major projects.

Would you like to give the committee a bit of an insight into whether the Department of Justice believes it has all the relevant requisite skills to be an informed purchaser when dealing with the private sector, focusing specifically on engineering capability? I note that your submission says you do not require accreditation, but the Australian Institute of Project Management has suggested that project managers should have competency-based training and that should be at both the government end and a requirement from government at the private end. There are a number of issues there, and I invite you to comment.

Ms ARMYTAGE — There are a number, so I will take them. In terms of the first one about whether line departments really have the capacity to be involved in major infrastructure development, I will comment particularly on corrections and courts because whilst it is broader and we know we have had the experience in delivering, say, all of the SIPS SACS projects for the emergency services and major telecommunications projects and we have done other coordination of activities across the police, the two examples I would use are in relation to prisons and corrections.

In relation to prisons, the reason I believe that departments like ours can deliver those projects well — provided we get all the requisite expertise that we need to have, to be complementary to our content knowledge — is because no longer is the building of a prison just the building of a piece of physical infrastructure. What we have learnt over many years now is that you can have a very significant bearing on the operation of a facility through how it is designed. In fact because of security considerations being the most dominant in relation to that, that goes to an understanding of how you build on both dynamic and static security, using the physical resources of staff then complementing that with the physical design to make sure you have the best facilities in place for the security and management of the ongoing security dynamics that will happen.

Using technology smartly and just basic things like the design of a prison pod — the unit — and how you place the officer's station and the form that it takes all have such a bearing on not just the interactions with prisoners but ultimately the outcomes that we get. I think it is very hard for people who do not have the operational knowledge to translate that into the specification, particularly if you want to allow innovation in terms of what will be put back from the market and how that can be done and if you want to have the knowledge to interrogate the proposals to ensure that they get maximum benefit from what ultimately we have accrued.

When we look back and see that we no longer have officers sitting in really enclosed physical structures in a unit, the reason for that is not because of the complexity of building it; it is actually to because we have learnt that you minimise disruption and angst among prisoners if you effectively have an open-plan type of environment — it is not an open plan but I am trying to describe the officer's station — at a level that prisoners can come up to, that provides some inbuilt security for the staff and that does not take the form of barriers to engagement.

Likewise, for the courts and engaging the judiciary in terms of the design and having an input into the specifications of what might be required, it is considered to be very important because, as the ultimate users, they will have a particular view about how the dock has to be and where it needs to be to allow for the juries and the exchanges. We have learnt, again over time, that the construction of a court building is very much predicated on making sure that it is going to be useful in the longer term. The County Court, the Latrobe Valley court and other courts are good examples of how that has been able to be brought together with technical expertise. It does mean, though, that we need to have the technical expertise to be able to understand both what we put to market and also how we make sure that we can assess whether or not what we are getting put back to us is going to acquit what is considered to be appropriate.

We have had to build on that skill set, and that is why we created the major procurement and projects office in Gail's division and why we have BEBS, our built environment initiative, also reporting to Gail — and, ironically, Gail is an engineer with an infrastructure background. We have tried — and to be fair we have deliberately recruited like that — in our most senior executive arrangements going through our organisation to

build a complementary skill set of people to make sure that we still have all the content knowledge of our core business able to input but that we also have technical expertise. We can never do that without going out to market and getting complementary input.

From the very beginning, as we do our business case planning and development we go out to the private sector to build in other expertise that we think we need. Over the lifetime of these projects we still get external advice as we need to, but we have seen that we need to have both of those skill sets and we need some commercial people. That has also been the area where historically we have had, perhaps in a department like ours, less developed commercial skills. We have recognised that with major contracts of all natures, not just infrastructure projects but our operating contracts with major corporates, we need to have a high level of commercial understanding. We have refined that now over a number of years.

Mr MORRIS — I also acknowledge the quality of the submission and the opportunity to work through the issues. I want to focus on a couple of aspects relating to PPPs, particularly some comments on page 18 of the submission and also on pages 19 to 21. On page 18 — and really I will just raise the issues; I am looking to see whether there is any further comment you would like to make, over and above what is here — you talk about the potential for extension of training from DTF to areas such as the:

... management of payment and performance, dealing with requests for approval of refinancings and changes in control, and preparation for the end of the contract ...

that sort of thing. There are also the issues that you raise in terms of public interest accountability and transparency particularly. I guess, having had the earlier experience with prisons, the comments that are made probably in some way come out of that learning experience: the importance of a direct relationship with senior management and also, on the transparency side, the issue of value for money and how that might be improved. This is just an invitation to expand on any of those comments.

Ms ARMYTAGE — I think we have learnt from good and bitter experience on some of those things. That is what we do think — it is a continuous improvement process of understanding that. We have had obviously, from very early days, ways of looking at how we work with these projects over their lifetime and making sure that we manage them with that view. One of the really big issues here is that in these major infrastructure investments we are looking at taking on something from one point of time, with a 25-year commitment for example, that we will need to work with those suppliers on and making sure that we have very good relationships from the very beginning.

I think we have learnt some early ideas in terms of those very first PPPs we did with the now named Dame Phyllis Frost Centre and the others that we had, and they have applied to us into the future. While some would think that was a very difficult experience, when I look back at that, and people will remember that was one of the first PPPs — the women's prison — there were some arguments about the rigour that was put into the original costing. Then clearly over the lifetime of that contract it was seen that there were some compromises in terms of service delivery. Now, looking at the actual construction, it was not a piece of infrastructure that would be very robust for the full lifetime of that contract. But ultimately it was also a case study of how you can take action effectively within the terms of the contract with good contract management, and when the state stepped in on that it did so in a very effective way when it needed to.

So we took a lot not only about what we need to specify into the future in making sure that those contracts — And we have now got two new prisons that have been built on a very similar concept but with more robust processes in-built that we have learnt from in terms of the physical infrastructure — but we also now do the ongoing contract management in a very proactive way with all of our providers to make sure that early issues about contractual breaches, for example, are dealt with appropriately and firmly and that we acquit our responsibilities for timely review in terms of those opportunities.

VAGO recently did a review of how well we are using our annual facilities reviews and made a point about what we need to do to improve those facilities reviews to document more accurately what we were doing in terms of those facility upgrades, and we have taken that on board. So we really do think that it is that process of continuing to reflect and refine our approach to not only that initial business case, the value for money considerations and the comparatives that we use, then throughout the lifetime of the construction and then the ongoing maintenance of the contract, if it is just a straight physical infrastructure or it is an operating contract. I

think we have learnt a lot of lessons out of that and, from our point of view, probably will continue to. Do you want to add anything, Gail?

Ms MOODY — I would agree, Penny. Certainly one of the values we have had with PPPs is we also get the maintenance dollars locked in. Penny and I both strongly believe one of the challenges we have had with our normal D and C projects has been the fact that we then have to budget within very limited funds to do the maintenance on it, whereas we are assured of the facility quality through the processes that the PPP gives, be it a facilities PPP or be it a full-service PPP with facilities embedded. Certainly, from where we sit, that has been one of the largest benefits because there is quite a differential in, I think we would say, our ability to maintain the state's stock versus the PPP stock as a result of that. That is inherently built in, of course, to the value-for-money test at the front of the project.

Ms HENNESSY — Thank you very much for your submission. I note in the department's response, at the top of page 10, it states that the department has submitted projects to DTF's high-value, high-risk unit as part of an assurance framework. Can you tell us what projects have been involved in this process, the nature of the scrutiny that has been applied through the process and what was the resulting enhancement?

Ms ARMYTAGE — I will just give you a general example, because the most contemporary one at the moment is the Ararat Prison expansion. That is a project that is three-quarters of the way through development, and it was placed on that process to go through as part of that high-value, high-risk project. It is a complicated project because basically we have gone out to the market to get an extension of an existing prison and an upgrade of some of the infrastructure within the old prison as one project. Part of it is effectively a greenfield site and the other part of it is going into a relatively older prison and operating in that environment. So because of that complexity in terms of the specification of what was required from the market and in terms of building that facility and then being able to integrate it seamlessly into the new arrangement — it is for that reason that it has been put in terms of that process and review. Gail has clearly been very heavily involved, as has Paul, in terms of how those processes have worked for us, because it is active work in progress, but we think it has been a valuable exercise. They can talk to about where we have focused and what we got out of it to date.

Ms HENNESSY — Gail, just as you do that, my understanding was that the contract for that had already been executed.

Ms ARMYTAGE — It was part-way through.

Ms HENNESSY — Okay. It just seems a bit curious.

Ms MOODY — The project had been through gates 1 and 2 of the gateway process, and the Ararat project is actually going to go through the high-value, high-risk readiness for service process, which links with the gateway process and the high-value, high-risk test. Effectively they come together in different places through the process, and it is just that we have a greater rigour and involvement with DTF.

In terms of the business case for the new prison project, that has actually gone through the first stage of the high-value, high-risk process. It has been through the normal gateway review 1 and 2 for the business case, but it also has then been placed into the high-value, high-risk process, where it is still under consideration by government. The value we saw from that process was it had further intense review, which meant that we would get early alerts. The gateway review, you understand, is done by a range of independent people, and we get the satisfaction, as you know, of the external expertise looking at it. When it came to high-value, high-risk we had the added benefit of the Treasury review, which meant that they were themselves advising the Treasurer, so there would be a higher level of comfort. We felt that those two tests would leave us in a much stronger position to hopefully get the support of government for that project in the future.

Ms ARMYTAGE — Paul, obviously you have been involved in the day-to-day management of it.

Mr DELPHINE — From my point of view with these pieces of infrastructure you are making an investment for 25 years and probably 40 to 50 years in a lot of cases, so the level of due diligence that you are able to apply at the front end really benefits through to the end. I see the high-value, high-risk as an adjunct to our own governance processes. Pieces of social infrastructure are necessarily complex. A prison is at the complex end of that continuum, and a brownfields prison development around an existing 350-bed sex offender prison is at the right-hand end of complexity. From my point of view the more people, the more independent

review, the more robustness and rigour you get at the front end, the better the community can be assured that we will get a better commercial outcome and a better operational outcome. So it has been very helpful for us.

Ms HENNESSY — As a supplementary, we are very interested in how you have written about the importance of the public interest and accountability and transparency. Can you talk us through how the general public can be assured that the department is in fact meeting the public interest, and what improvements do you think may be available around increased transparency? I myself know that it has been nigh impossible to get information around things like the business case, the justification for the prison and the work done by the department. We are sincerely interested in transparency and accountability issues, so when none of this information is in the public domain I would like the department to talk about how the public can be assured that such projects are in the public interest.

Mr O'BRIEN — As it was available for the pipeline?

Ms ARMYTAGE — The issue in relation to that is obviously the financial commitment to it is in the budget papers. That is going to be the principal articulation of the commitment that has been given to it. For me I guess one of the issues is about how we are also convinced that we have got the internal processes in place. It is a matter to be determined as to how much of that is then released into the public domain. For many of these matters, it is a matter for government to make a determination on. In our case I think the investment we have put into having good quality assurance and probity auditing there is part of the key to that transparency and then having a very open arrangement with the Auditor-General in terms of them being able to come and have a look at our processes and assure the public, effectively, through their reporting framework that they are solid.

We have taken seriously the need to engage the probity auditors from the very beginning; to make sure that we have external people on our asset committee as advisers — to have external independent people on our justice asset committee; to have our risk and audit committee externally chaired with independent chairpersons and members on the risk and audit committee; and to try to make sure that we have those other avenues of quality assurance that are there and due diligence to make sure that we have got others who can hold us to account in terms of the way we are doing that. Then ultimately how they report on our activities is the means by which that would be made transparent.

How much we go beyond that in terms of internal development of each of the specific cases and management over them during their life cycle is a broader policy question. The way I have interpreted it is that our obligation is to make sure that the process we put in place is robust — there are independent people who assure us about that and certainly for me as secretary give me the assurance about that — and then we are open to the Auditor-General and other examinations to make sure that they can examine, as they do very regularly, and their audit program always includes an examination of a range of our projects. We have a very constructive relationship with them in relation to these matters.

Ms HENNESSY — A point that the Auditor-General often makes is about the transparency around the issue of the public interest.

Mr ANGUS — At the outset can I also make a comment in relation to the quality of your presentation and how good that is, so thank you for the work that has obviously gone into that by you and your team. My question again is in relation to that PPP aspect, and particularly a comment made on page 18 in relation to the training side of things that has been done by DTF-led activities in that area, and you have mentioned the areas of commercial and legal dimensions. Could you elaborate on that in terms of what other areas you would see as being important to cover and how you might see that moving forward, not only for your own benefit, but for the greater benefit?

Ms ARMYTAGE — From the very beginning we have had a strong relationship with Treasury in relation to our use of PPPs, because we were an early adopter as a portfolio in relation to that, and from the beginning we saw that the commercial expertise of Treasury needs to partner with us to make sure that the benefit that we ultimately get for the state is there in terms of value for money. We have accepted that they have had technical expertise to share with us and guide us as we have refined our commercial understandings and the work that we have done with our private sector contractors in relation to that. We have spent a lot of time being able to work on building our commercial expertise in both the major procurement office and also in terms of Paul's branch.

We also understand, though, that these contracts by their nature are legally complex, and the devil is in the detail of many of these contracts about what is open to the state to do, as well as what is the provider obligated to provide for us. We work very closely with the VGSO in terms of the whole-of-government approaches and these pieces of infrastructure and the legal interpreting of the contractual obligations, but we also go to private firms who may provide particular expertise and input as we need it on those legal questions.

As a result of the partnership that we have had, we have been able to refine our work practices and understanding in terms of those two areas, and they have been very important, because those two tests have been probably the most important elements once we have gone through the broad specification of design in terms of making sure we receive value for money on behalf of the state out of the operation of those contracts. That has been the focus, but Gail may want to add something else in terms of what we might add going forward.

Ms MOODY — In terms of the training, we naturally use the Partnerships Victoria contract management training as the basis for any staff member who would be involved in the PPP. We also encourage our staff to go to the contract administrators forums. We of course normally will have staff, who might be junior, learn on design and construct-type projects, and then they step up and shadow and learn before they would be involved in a PPP, because the complex nature of the contracts, as Penny said, is quite different to a standard D and C where you can give instruction and understand what your ramifications will be.

There is a great risk transfer shift within a PPP contract, and it is very important that your contract or project people do not step across and change that dynamic through the procurement stage and of course through the construction stage and then into the longer operational stage. So we are using the existing training courses available, but I would also like to mention that the PME framework has developed training modules within it which will lead to accreditation, I think to answer an earlier question, that is recognised as a project management qualification across Australia.

So we are stepping up our training. We already have people who are quite experienced, and we are putting our brighter young people with them as part of building up a cohort of people with expertise in this area.

Mr SCOTT — As has been highlighted, the issues around skill sets for PPPs are different from, particularly, D and Cs and other sorts of traditional procurement processes, and the discussion you have had in your submission regarding issues around PPPs — it would be interesting, considering your experience, to know what are the characteristics of proposed projects which would be suitable for PPPs.

Ms ARMYTAGE — If I look at our existing program of works that we have under way and their variation at the moment, we talk about Ararat, which is a PPP; we have additional beds that we are putting into Marngoneet prison, which is a privately constructed and owned facility, but publicly operated — so it is a mix; we have a variation to our contract at Port Phillip; and also a design and construct at Dame Phyllis Frost, Langi Kal Kal, and Dhurringile; we are doing the state coronial services redevelopment, which is a design and construct; and we have the contract management ongoing for the County Court, which is a PPP.

So when you look at that spread and say, ‘What is it that differentiates those that we have done in terms of a PPP procurement method?’, it has been largely on the scale of the investment that has been required. As Gail talked about earlier, we have now seen the innovation that has come to us in terms of the design and construction of those major pieces of infrastructure, the ongoing maintenance of them during the life of that contract and the benefits that accrue to us make them very attractive, because all of our infrastructure has heavy wear and tear because of its very nature. So, as Gail has said, when we do the business case, in terms of some of the comparative analysis, that has a significant bearing for our type of infrastructure.

If you look at something like the County Court, even the technology has been upgraded constantly during the life of it, so it is not just the actual, straight, physical works that we get the benefit from; it is where we have sophisticated technology. And that applies in courts and in prisons, where your need to maintain them for security and other purposes. It has made it attractive that that commercial benefit is built into those contracts.

So when we have looked at them, it is largely scale. The PPPs, as I have described there, are the large-scale projects that we have done, and it is not often attractive to market to do smaller projects. So even something like the past police station construction program, whilst it has been very large in its total capacity, because it is all small facilities, relatively speaking, it has not attracted that commercial interest to the extent that you have been able to do in that methodology to date.

Mr O'BRIEN — Thank you for your evidence, including your detailed submission. Obviously it reflects the work the department has done in continuing to further its expertise, and also that seems to have had flow-on effects for other departments as well, which is a positive sign. One issue I wanted to take up with you is this question of accountability and dealing with contractors. We have just had some evidence from the Secretary of the Department of Business and Innovation in relation to major projects in particular, to the effect that all major projects either fail or have a risk of failing, and then following on in evidence, that government is basically non-litigious, the stated reason being given that it is an essential service role.

I did not get a chance to put any questions in relation to that, but it seems to be slightly at odds with some of the evidence you have given in relation to accountability when you said you deal firmly and appropriately with contractors, and I was wondering whether you could elaborate on that and on your view of the range of accountability, from political accountability, departmental accountability, court or litigious accountability and how you work through that myriad of complexities.

Ms ARMYTAGE — I guess we start with the presumption that we would rather not end up in court, but that does not mean we do not drive hard in terms of the commercial solutions and accountability that is required. At the very beginning I gave the example of stepping in at the women's prison at the time. The reason I said that whilst some might interpret that as a bad thing, I felt that it was a contract that was failing at that point in time that was appropriately managed because of good contract management along the way that said where there was default and provisions for the provider to rectify that default and they failed to do so, that action could ultimately be taken — which was a very big step — without the state being sued. That is always what you want to be able to do to make sure that the way the contract has been managed in terms of the contract provisions has been robust, that there has been timely documentation of concerns on behalf of the state, the opportunity for the provider to rectify that and then an understanding of what the consequences will be if that does not happen.

I hope we never have to go through that process again, because I do not think it was comfortable for anyone in terms of having to do it. I use it as an example to say that when the contract is failing to a point, you can still get a resolution that does not go to court but resolves itself appropriately and responsibly.

In terms of what we now have to do, we do fine our providers when they fail to deliver on obligations they have. If there is an issue about them failing to meet their service delivery obligations, we monitor their service delivery standards that have an impact on their performance-linked fee. If there is also an adverse event where they fail to acquit their obligations, particularly in service contracts, we will take contractual action against those providers. We draw on that experience not only in terms of infrastructure projects but other major commercial contracts that we negotiate. A good example recently was Serco, the provider of our traffic camera operations service. There was an operational error, and they paid a penalty for it.

These contracts are set up on commercial terms. It is about getting that right balance between the state's interest and the provider's interest. Understanding we have caused a variation or contributed to a problem, for example, has to be acknowledged at the same time as holding them to account very robustly if their performance has not been up to standard. The experience we have had with these major commercial contracts is that we have to be prepared to take that action — call them in and have the conversations with the CEOs and others that are never very pleasant. Obviously there are times when there are shifting sands — where they say we have contributed to cost escalation, for example, and we argue we have not — and we have some pretty robust negotiations.

When it comes to the crunch we also need to make sure we have documented it. If we think there is a need to take action, we need to have the evidence on our side. If they think to the contrary, they have to have it documented. We have many a negotiation in terms of those arrangements. To date I think it has worked in our interest to be able to, when we need to, call the chairperson or the financiers or others and say, 'We are worried about this performance'. Sometimes you have to escalate it above the person who has day-to-day responsibility. If the financiers know, they will feel some pain, for example, if there is a problem. Gail is very often involved in those conversations with me and others, so she might want to add something.

Ms MOODY — I would like to support what Penny has said. Effectively we do administer the contracts that we enter into in accordance with the contracts. However, as Penny is rightly saying, our job is to make sure that we administer them correctly. We document what we do, and we have a range of areas where there can be differences of opinion, but we will call them in and go through the documents. Usually we find that parties can change their minds once they see that we have actually done the evidentiary check. We are also introducing, as

part of the PME, health checks on the projects. We will test ourselves through a project's administration to make sure that we are executing and doing our tasks correctly and that the documentation is not only right but the behaviour within the contract is correct. We are finding that is very helpful because it is giving us an evidentiary base, if we have problems, to be able to say to them, 'Here: this is where we believe we are. This is the evidence we have and' — as Penny said — 'you need to now put some substance to your claim'. We frequently find those claims evaporate, and we have not had to actually get into court under any circumstance, although it did get to step in on the earlier prison project.

Ms ARMYTAGE — I will just add one other thing that I think has been important to that. Sometimes when we and the provider go back to the contract and have a look, they may say, 'Technically, legally this does not fall into that definition of an incident that has occurred'. Sometimes they can be reasonably high-profile issues that might have occurred, and you would say, for example, 'How could that possibly not constitute an escape?' or something like that in terms of the nuancing of the definition. It is fair to say that sometimes with those negotiations they might say we have pushed the bounds of what is covered in that definition — often reputational risk influences how they respond to that — but that is a fine negotiation to be had. Also sometimes it is those technical issues about what is covered in the contract and what is meant by specific elements that we then have to revisit at contract renewal stage along the way and alter. Sometimes we do need to refine those matters out of our experience along the way in trying to take contractual action. Then there have been times when we have not been able to take it because it has not been provided for in the contract, so then we have amended the contracts later when we have had the opportunity to make sure it is covered.

The CHAIR — We are seriously over time, but I will allow a very quick question.

Mr O'BRIEN — Just on that, in terms of accountability at the back end, if a government is reluctant to take legal action or exercise all its options, can that then have problems for the front end? In other words, if you are not prepared to go to court or do what you need to do in relation to your rights, is there a danger that government can be seen as a soft touch or it actually weakens your commercial position in future deals?

Ms ARMYTAGE — I can only comment on our experience. I have not found government reluctant to pursue the remedies available to them contractually. I do think, though, as I said at the beginning, we would like not to get to litigation that takes us through a protracted court process, because that just adds to the cost. If we can be commercially savvy and be firm in terms of how we do that, we can avoid that. I have not seen there to be a reluctance to take action against contractors that are failing or not meeting their obligations, but we have to avoid the risk of overspecifying the inputs. Reacting in a risk-averse way is not constructive either, because you make it non-commercial. Once you do that, you have other problems.

Mr O'BRIEN — To be fair to the secretary, that was part of what he was saying. In these large government essential service contracts, if you create an environment of fear and over-litigation, you will end up having no contractors. That was his point.

Ms ARMYTAGE — We are certainly really mindful that we want to keep a market that is interested in delivering these things and not loading up the cost so much that it becomes not viable for anybody. I do not disagree with that statement; it is more I say then it is incumbent on us as to how we do the contract management.

Mr O'BRIEN — It also depends upon the facts of each case.

The CHAIR — Thank you very much for a very useful session and lots of information. I have no doubt that there will be some follow-up in relation to some unasked questions, and we would appreciate a response within 21 days. I think you are aware that we will be undertaking, in effect, some case study examination to flesh out some of the learnings that we can make from projects that have gone well and less well in relation to our terms of reference (d) specifying particular projects. Thank you very much for your contribution. If you have anything further to add at a later date based on what you hear particularly from this set of hearings, then we would welcome a supplementary submission. That concludes the hearing.

Witnesses withdrew.