PUBLIC ACCOUNTS COMMITTEE

PUBLIC ACCOUNTS COMMITTEES AND PUBLIC-PRIVATE PARTNERSHIPS

2009

PACs and PPPs

Irrespective of any ideological preferences that various governments may have, providing value for public money should always be of central concern. This premise underpins the establishment and ongoing operation of public accounts committees (PACs) within the Westminster system of government. Increased involvement in the provision of public services by private enterprise has made executive government services financially more complex; as such, the ability of PACs to subject public expenditure to appropriate levels of scrutiny is paramount in promoting and maintaining transparency and accountability.[1]

Public-Private Partnerships

In accord with developments internationally, public-private partnerships (PPPs) have recently become an increasingly popular method by which Australian Governments have sought to procure and provide public infrastructure and associated services.[2] This trend is reflective of the potential benefits that can be derived as a result of engaging the private sector in the provision of public goods and services. In the right circumstances, PPPs have the capacity to provide significant value for money to taxpayers as a result of cost savings and other efficiencies offered by private sector expertise.[3]

For this very reason, the private sector in Australia has, on a contractual basis, long provided services to the public sector; similarly, a significant portion of the public infrastructure in Australia was built and is owned and operated privately. PPPs, however, are distinct in that while public infrastructure is built and owned privately, government continues to deliver the 'core services' associated with the infrastructure, while the private sector delivers ancillary services.[4] Infrastructure Australia defines the principal features of PPPs as follows:

- *provision of a service involving the creation of an asset involving private sector design, construction, financing, maintenance and delivery of ancillary services for a specific period;*
- *a continuation by government through land, capital works, risk sharing, revenue diversion, purchase of the agreed services or other supporting mechanisms; and*

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1 Watson, D., 'The challenge for public accounts committees in evaluating public-private partnerships', *Australian Accounting Review*, vol. 14, no.2, July 2004, p78.

2 Wettenhall, R., 'The rhetoric and reality of public-private partnerships', *Public Organization Review*, vol. 3, no.1, 2003, p77.

3 Webb, R., and Pulle, E., 'Public Private Partnerships: An Introduction', *Research Paper no. 1 2002-03*, 24 September 2002. Available at: http://www.aph.gov.au/library/pubs/rp/2002-03/03RP01.pdf Accessed 31 March 2009.

4 Department of Treasury and Finance, *Partnerships for Growth. Policies and Guidelines for Public Private Partnerships in Western Australia*, Government of Western Australia, Perth, December 2002, p3.

- *the private sector receiving payments from government (or users in economic infrastructure) once operation of the infrastructure has commenced and contingent on the private sector's performance in supplying the services.*[5]

Despite their popularity, PPP arrangements are still a relatively new phenomenon, and as such their merits and shortcomings remain a topic of considerable research and debate. Consequently some Australian Governments - in particular, the Government of Western Australia - have taken a conservative approach toward them. While the Government has a successful history of engaging the private sector in the procurement of public infrastructure, these arrangements have generally not met the Infrastructure Australia PPP criteria. In December 2002, the Western Australian Department of Treasury and Finance issued *Partnerships for Growth,* a policy and guidelines document for Government agencies and private organisations engaged in the development of PPPs in the state. Notably, the District Court building, completed in mid-2008 in the Perth Central Business District, stands as the sole example of public infrastructure procured and maintained via the PPP method described in *Partnerships for Growth* in Western Australia.

The Positives

When successful, PPPs deliver increased financial efficiency in the provision of public infrastructure and generate significant positive externalities. The Western Australian Chamber of Commerce and Industry asserts that in allowing Government to apportion some of the risk inherent in the provision of public services to the private sector, PPPs further limit taxpayers' exposure to risk in commercial activities; significantly, they also offer an opportunity for Governments to deliver necessary infrastructure or services without compromising the fiscal integrity of Government budgets.[6] Being privately financed, the argument is also often advanced that PPPs can help to alleviate, to some extent, the problem of Governments crowding out private investment.

The Negatives

PPPs, however, are not without their detractors, particularly as PPPs have implications for the Westminster tenet of accountability. Proprietary information is a fundamental component of private sector competition.[7] The existence of proprietary information within government business, of course, creates an 'accountability dilemma.'[8] If, as the Westminster system would have it, political leaders and Governments are to be held accountable for their actions, information must be publicly available. As such, those opposed to PPPs often assert that proprietary information is irreconcilable with the taxpayers' right to public scrutiny.

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5 Infrastructure Australia, *National PPP Guidelines Overview*, October 2008, p3. Available at: http://www.infrastructureaustralia.gov.au/files/Overview_3_10_1008.pdf Accessed on 28 March 2009.

6 Submission No. 2 from Chamber of Commerce and Industry Western Australia, 13 March 2009, p1.

7 Stigilitz, J., & Wallsten, S., 'Public-private technological partnerships: promises and pitfalls', *American Behavioral Scientist*, vol. 41, no.1, 1999, pp10-33.

8 Watson, D., 'The challenge for public accounts committees in evaluating public-private partnerships', *Australian Accounting Review*, vol. 14, no.2, July 2004, p78.

PPPs are also criticised on the basis that private enterprise and public administration are motivated by conflicting interests. Where the private sector may be motivated by a desire to achieve returns on investment by taking on risk, the public sector is generally more risk-averse.[9]

Fundamentally then, PPPs are about risk, offering benefits by apportioning risk to those with the financial capacity and administrative expertise to obviate it. Crucially, however, they carry a set of inherent risks - financial, political, social and otherwise. These risks are often significant and, as demonstrated by several Australian case studies, failure to give adequate consideration to them can have wide-reaching negative consequences.

Risky Government Business

Broadly, the risks associated with PPPs can be classified into two main groups: *project risks* and *general risks.*[10] *Project risks* are those associated directly with the specific project at hand, generally in relation to the manner in which the project is managed. *General risks*, on the other hand, are the natural, political, regulatory, legal and economic events that affect the general macro environment in which the project is carried out.

Adequately and accurately modelling risk is crucial to the success of any PPP. As such, a great deal of research exists in relation to establishing comprehensive and accurate risk matrices by which project risks can be quantified, and general risks can be considered, prior to the establishment of any PPP. In the seminal *Public Private Partnerships,* Grimsey and Lewis classify PPP project risk into distinct categories, and it is within these categories that specific project risks can be classified and then quantified.[11] These risk categories are outlined and exemplified in the attached table:

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9 Reijniers, J., 'Organization of Public-Private Partnership Projects', *International Journal of Project Management*, vol. 12, 1994, p138.

10 Ng, A., & Loosemore, M., 'Risk allocation in the private provision of public infrastructure', *International Journal of Project Management*, vol. 25, 2007, p69.

11 Grimsey, D., & Lewis K., *Public Private Partnerships*, Edward Elgar, Cheltman, UK, , 2004.

Type of risk	Source of risk	Risk taken by
Site risks		
Site conditions	Ground conditions, supporting structures	Construction contractor
Site preparation	Site redemption, tenure, pollution/discharge, obtaining permits, community liaison	Operating company/project company
	Pre-existing liability	Government
Land use	Native title, cultural heritage	Government
Technical risks		
	Fault in tender specifications	Government
	Contractor design fault	Design contractor
Construction risks		
Cost overrun	Inefficient work practices and wastage of materials	Construction contractor
	Changes in law, delays in approval, etc.	Project company/investors
Delay in completion	Lack of coordination of contractors, failure to obtain standard planning approvals	Construction contractor
	Insured *force majeure* events	Insurer
Failure to meet performance criteria	Quality shortfall/defects in construction/commissioning tests failure	Construction contractor/project company
Operating risks		
Operating cost overrun	Project company request or change in practice	Project company/investors
	Industrial relations, repairs occupational health and safety, maintenance, other costs	Operator
	Government change to output specifications	Government
Delays or interruption in operation	Operator fault	Operator
	Government delays in granting or renewing approvals providing contracted inputs	Government
Shortfall in service quality	Operator fault	Operator
	Project company fault	Project company/investors
Revenue risks		
Increase in input prices	Contractual violations by government-owned support network	Government
	Contractual violations by private supplier	Private supplier
	Other	Project company/investors
Changes in taxes, tariffs	Fall in revenue	Project company/investors
Demand for output	Decreased demand	Project company/investors
Financial risks		
Interest rates	Fluctuations with insufficient hedging	Project company/government
Inflation	Payments eroded by inflation	Project company/government
Force majeure risk		
	Floods, earthquakes, riots, strikes	Shared
Regulatory/political risks		
Changes in law	Construction period	Construction contractor
	Operating period	Project company, with government compensation as per contract
Political interference	Breach/cancellation of licence	Government
	Expropriation	Insurer, project company/investor
	Failure to renew approvals discriminatory taxes, import restrictions	Government
Project default risks		
	Combination of risks	Equity investors followed by banks, bondholders and institutional lenders
	Sponsor suitability risk	Government
Asset risks		
	Technical obsolescence	Project company
	Termination	Project company/operator
	Residual transfer value	Government, with compensation

(Source: Grimsey and Lewis)

Inadequate risk modelling has significant negative implications for PPPs. If risks are allocated to parties who lack the knowledge, resources or capabilities to effectively manage them, the capacity for a PPP to deliver a value for money outcome is reduced significantly. Projects such as the New

Southern Railway project in Sydney, which has to date required almost $1 billion in additional State Government funding to keep it viable, provide an example of the negative effects of underestimating or misrepresenting construction, revenue and operating risks.[12] More recently, the furore surrounding the financial underpinnings of the proposed Brisbane Airport Link have demonstrated the dangers inherent in making use of private finance to fund public works.[13]

Notwithstanding the associated risks, however, the benefits of PPPs cannot be ignored. A recent case study co-authored by the Allen Consulting Group and the University of Melbourne comparing 21 recent PPP projects and 33 infrastructure projects procured via 'traditional' means in Australia made a compelling case for the use of PPPs in the procurement and maintenance of public infrastructure. The report found that PPPs 'provide superior performance in both cost and time dimensions, and that the PPP advantage increases (in absolute terms) with the size and complexity of the projects.' The PPP projects examined were also found to be 'far more transparent than Traditional projects'.[14]

Clearly, PPPs may have wide-ranging potential benefits; in recognising this, however, it is also clear that any potential PPP should clearly be subjected to a set of stringent criteria prior to either party entering into an agreement. With this in mind, the PPP between the Government of Western Australia and Western Liberty Group for the procurement and ongoing maintenance of the District Court building in Perth's Central Business District serves as a useful case study on why risk should be the central focus of any Government wishing to enter into a PPP.

The District Court Building

Planning for the District Court building (DCB) began in 2002, just prior to the publication of the *Partnerships for Growth* policy and guidelines document.[15] This planning began without a pre-determined funding model; the notion of using a PPP to procure the new justice facility arose subsequent to the decision that such a facility would be built. That said, the *Partnerships for Growth* guidelines were applied to the planning process, which saw the Government engage the services of external consultants to determine whether a PPP would provide clear and demonstrable benefits as a procurement option.[16] PricewaterhouseCoopers were asked to undertake a review of the project; at the completion of this analysis, it was determined that a value for money outcome

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12 Ng, A., & Loosemore, M., 'Risk allocation in the private provision of public infrastructure', *International Journal of Project Management*, vol. 25, 2007, p73.

13 Hawthorne, M., 'Why BrisConnections has courted battle with unit holders', *The Age*, 28 March 2009. Available at http://business.theage.com.au/business/why-brisconnections-has-courted-battle-with-unit-holders-20090327-9eca.html Accessed on 30 Match 2009

14 The Allen Consultancy Group & The University of Melbourne, *Performance of PPPs and Traditional Procurement in Australia*, The Allen Consultancy Group, Melbourne, 30 November 2007, p1..

15 Appian Group, 'CBD courts project - District Court building', 2009. Available at: http://www.appiangroup.com.au/district-court-building Accessed on 30 March 2009..

16 Submission No. 4 from Government of Western Australia Department of Treasury and Finance, 2 April 2009, p1.

could be best achieved via a PPP procurement process that included a significant services scope.[17] PricewaterhouseCoopers were then asked to provide commercial and financial advice to the key agency stakeholders, the Department of Housing and Works and the Department of Justice. These Departments, in collaboration with the Department of Treasury and Finance, were then able to devise and put before Cabinet a public sector comparator.[18]

The Public Sector Comparator

A crucial component of any PPP, the public sector comparator (PSC) is an official estimate of the costs associated with the delivery and operation of a project via 'traditional' means (that is, using public sector debt). According to University of Sydney Senior Lecturer Linda English, a PSC is comprised of four elements:

- *the raw PSC that determines the cost of the public procurement option, including the estimated net capital and operating costs over project life;*
- *the cost of transferable risks that are often a key determinant of value for money and are frequently updated to allow for variations in risk allocations as negotiations proceed prior to contract signing;*
- *the financial and non-financial cost of risk retained by the Government, including that of performance failure; and*
- *a competitive neutrality adjustment, to remove any net competitive advantage of the public option (such as non-tax status) relative to the private option.*[19]

As the benchmark figure against which PPP proposals can be compared on a value for money basis, it is the preferred tool used in analysing the costs and benefits of risk transfer.[20] It is worth bearing in mind, however, that the task of accurately estimating the cost of procurement and whole-of-life maintenance for any item of public infrastructure is extremely difficult and subject to considerable margin of error; accordingly, entering into a PPP solely on the basis of PSC data cannot be considered best practise.[21] In addition, assembling a PSC is a costly exercise - and this cost adds to the overall cost of the PPP process.

It was in recognition of the caveats associated with the formulation of a PSC that the Government of Western Australia sought to ensure that the PSC, for what would be the state's first PPP run in accordance with the PPP guidelines, was carefully and conservatively put together. To this end, input into the PSC was sought from multiple stakeholders and private consultants. Parallel to the formulation of the PSC, the Government issued a call for expressions of interest from industry groups who might be interested in entering into a PPP, in August 2003.[22] Two consortiums

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17 Submission No. 1 from the Government of Western Australia Department of the Attorney General , 9 March 2009, p2.

18 Submission No. 3 from PricewaterhouseCoopers, 19 March 2009, p1.

19 English, Linda M., 'Public private partnerships in Australia: an overview of their nature, purpose, incidence and oversight', *UNSW Law Journal*, vol. 29, no.3, 2006, p255.

20 Chew, A,. 'Relationship based contracting in public private partnerships: Better value for money for government', *Bilfinger Berger Magazine*, vol. 2, 2007, p4. Available at: http://www.award.bilfingerberger.de/C1257130005050D5/vwContentByKey/W26RZJUX916MARSDE/$FILE/Alliancing.pdf Accessed on 28 March 2009.

21 Watson, D., 'The challenge for public accounts committees in evaluating public-private partnerships', *Australian Accounting Review*, vol. 14, no.2, July 2004, p82.

22 Call for Expressions of Interest published in *The Australian Financial Review*, 14 August 2003, p51.

emerged and were both given approval to make bids on the project; again the Government enlisted the aid of PricewaterhouseCoopers in assessing the bids relative to the PSC, which by this stage had been formulated and presented to Cabinet. Both bids offered a savings estimate of between $30 and $40 million over the lifetime of the project to the State, relative to the PSC.[23] Additionally, both proposals represented an opportunity to transfer a significant portion of the risk associated with the project (construction risk) from the State across to the private sector. Though the estimated saving may seem significant, as this figured pertained to the entire duration of the contract it was deemed marginal. Instead, it was on the basis of the significant risk allocation benefits that it was decided that a PPP was the best option for Government. Ultimately Western Liberty Group (WLG), which consisted of Multiplex and John Holland with ABN Amro, was awarded the PPP contract, after their bid was assessed as being both financially and logistically superior to that of rival consortium Leighton Contractors and the Macquarie Bank.[24] Accordingly, the Government entered into a 27-year contract with WLG for the provision and maintenance of the DCB; this contract came into effect when the building was officially opened on 3 June 2008 and runs for a further 24 years, with a largely fixed annual fee of approximately $30 million.[25]

The Risk Assessment Matrix

Prudent identification of inherent risk is perhaps the single most critical component of a successful PPP. At the beginning of the DCB project, a formalised, structured risk identification and evaluation matrix was established.[26] All relevant agencies collaborated in the process of devising this matrix, again in close consultation with PricewaterhouseCoopers.[27]

From the outset it was clear that the risk assessment matrix for the DCB project would be somewhat unique, in that it would contain very little revenue risk. Instead of relying on public patronage for its revenue stream, WLG would rely solely upon the revenue of only one customer: the Government of Western Australia. Put simply, as long as the proposal from WLG correctly prescribed their business costs, there would be essentially zero revenue risk and, as such, the Government would guarantee WLG's status as a going concern over the life of the building.

As a result of their taxing powers, governments are able to borrow at the risk-free rate of interest. The fact that government is able to borrow at a much cheaper rate than the private sector gives rise to the idea that PPPs need to achieve massive cost savings to overcome the disadvantage of

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23 Submission No. 1 from the Government of Western Australia Department of the Attorney General , 9 March 2009, p3.

24 Submission No. 1 from the Government of Western Australia Department of the Attorney General , 9 March 2009, p2.

25 Submission No. 1 from the Government of Western Australia Department of the Attorney General , 9 March 2009, p1.

26 Submission No. 1 from the Government of Western Australia Department of the Attorney General , 9 March 2009, p3.

27 Submission No. 3 from PricewaterhouseCoopers, 19 March 2009, p1.

relying upon private finance.[28] When public infrastructure is procured via the 'Traditional' method, the cost of the required capital is indeed much cheaper; on the other hand, the 'Traditional' method of procurement means that the government (or indeed, the taxpayer, who has underwritten the debt) owns the building, and thus all of the inherent risk involved in the project.

In 2003, when WLG tendered their submission for the DCB project, the vast majority of risk associated with the project was construction risk and operational risk. Traditionally these are areas of risk in which the private sector has considerable expertise. Furthermore, construction and operational risk are two areas in which governments have a poor track record of obviating risk. These factors further supported the use of a PPP in the procurement process.[29] Construction began on 20 June 2005; the facility was officially opened on 3 June 2008.[30] During this period, Western Australia experienced a severe labour market shortage, with many construction projects - both for public and private infrastructure - suffering cost and/or timeline blowouts. This was particularly profound in 2007, a calendar year for which Master Builders Western Australia reported a Construction Inflation Index of 9%.[31] The DCB, however, was completed on time (within a month of the contractually-stipulated completion date) and, according to WLG, on budget.[32]

International financial services company Standard and Poor's makes a clear assertion with regards to the manner in which construction risks can impinge upon the creditworthiness of a PPP:

> *Although construction covers only 3-4 years of perhaps a 30 year total debt exposure, the successful completion of the construction period is paramount to the servicing of that debt. Delays can be disastrous and their potential is related to the design and technological complexity of construction; the contractor's management team and approach; existing workloads and problems on other projects; reputation; third party support via bonds and guarantees and; the contractor's experience, resources and capabilities.*[33]

In completing the construction of the DCB on time, WLG eliminated a significant portion of the project's inherent risk. The achievement of this objective must be attributed to the PPP arrangement that was employed.

Ancillary services have long been provided to the Department of the Attorney General in Western Australia by the private sector and, just prior to the commencement of planning for the DCB, construction giant Multiplex had completed and begun leasing to the Government a justice

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28 The Allen Consultancy Group & The University of Melbourne, *Performance of PPPs and Traditional Procurement in Australia*, The Allen Consultancy Group, Melbourne, 30 November 2007, p2.

29 Submission No. 3 from PricewaterhouseCoopers, 19 March 2009, p2.

30 Appian Group, 'CBD courts project - District Court building', 2009. Available at: http://www.appiangroup.com.au/district-court-building Accessed on 30 March 2009.

31 Forster, G., Housing and Economics Director, Master Builders Western Australia., pers. comm.., 2 April 2009.

32 McCombe, J., General Manager, Western Liberty Group, Presentation to Parliament of Western Australia Legislative Assembly Public Accounts Committee, 25 March 2009.

33 Ng, A., & Loosemore, M., 'Risk allocation in the private provision of public infrastructure', *International Journal of Project Management*, vol. 25, 2007, p69.

complex in Fremantle.[34] The natural extension was to combine the construction and ancillary services into a single entity: charging a private partner with the responsibility of not only constructing, but also maintaining the ancillary services within, would give the partner the financial incentive to build the most functional building possible in the interests of its own ancillary service partners, and thereby minimising the future operational risks. Being responsible for the building and its maintenance over the envisaged lifetime of the building also gave WLG an incentive to ensure a very high standard of construction. The Government would continue to provide the 'core' service of the judiciary, and as such would be the sole 'customer' of WLG. The consortium thus also had the financial incentive to build the building on time, so as to start earning a return on its investment.

In order to mitigate operational risk, in its consultations with WLG the Government devised a regime of 70 key performance indicators (KPIs) against which WLGs performance standards in providing ancillary services would be constantly monitored.[35] Additionally, the performance of the DCB project is to be benchmarked every five years for the life of the building. Reporting against the KPIs occurs on a daily basis. By way of example, the court transcription service provider guarantees the availability of transcripts within 90 minutes of the words being spoken in court. Feedback on the regime from WLG has been that though some of their subcontractors regard the regime as somewhat onerous, both WLG and the Government feel it is an integral component of the to-date successful partnership.

Often overlooked in the literature concerning PPPs is the importance of the third P - partnership. In the case of the DCB project, it is clear that the success thus far must be attributed to the positive relationship enjoyed by both the Government and WLG. In specifying requirements for the state's first PPP run according to the PPP guidelines, it is fair to say that the Government took a cautious approach, involving multiple agencies and a team of private consultants in the procurement process. WLG, as a subsidiary of Liberty Group (a significant entity in PPPs throughout Victoria), has considerable experience in PPPs and as such brought an understanding of the approach taken by the Government of Western Australia in entering into its first such arrangement.

WLG thus sought input from all stakeholders throughout the design process, in the drive to produce the most functional - and therefore the most cost-effective - building possible. Extensive consultations with District Court Chief Judge Antoinette Kennedy demonstrated this approach; the resultant output - the most technologically advanced justice facility in Australia - is testament both to the desire of the Government to find a *partner* (as opposed to a contractor) in the procurement process, and to the desire of WLG to be that partner. Key features of the building include multiple discrete entries to and circulation zones within the building to cater for all building users, the extensive use of natural light within the building, high-security holding cells and circulation areas for those in custody and state-of-the-art courtroom and building monitoring technology.

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34 Foss, P., (Attorney General), *Attorney General unveils Fremantle Justice complex Foundation Stone*, Media Statement, Department of the Attorney General, 3 August 2000. Available at: http://www.mediastatements.wa.gov.au/ArchivedStatements/Pages/CourtCoalitionGovernmentSearch.aspx?ItemId=109464&minister=Foss&admin=Court Accessed 31 March 2009.

35 McCombe, J., General Manager, Western Liberty Group, Presentation to Parliament of Western Australia Legislative Assembly Public Accounts Committee, 25 March 2009.

Furthermore, in meeting the Government policy of devoting 1% of construction costs to artworks, WLG commissioned a large number of works from local Indigenous and non-Indigenous artists as core building features. These features represent the end result of consultations between WLG and all relevant stakeholders, and they serve to delineate and instil a sense of both professionalism and composure into what might otherwise be a space of significant stress. Again, while these features may ostensibly appear simply aesthetic, they were based on consultations with expert groups in the drive toward constructing a building that incurs minimal maintenance cost.

Public-Private Partnerships

Often lost in the convenience of using the acronym is that a PPP consists of three significant components: a partnership between the public sector and the private sector. The corollary to this is, of course, that a *successful* PPP requires that both the public and private sectors make equal contributions, and that they work in partnership toward a common goal.

In informing this paper, the Public Accounts Committee of the Legislative Assembly of Western Australia sought and received submissions from many of the key stakeholders in and advisors to the DCB project, including the Department of Treasury and Finance, the Department of the Attorney General, PricewaterhouseCoopers and the Western Australian Chamber of Commerce and Industry. Though each submission offered a different perspective on both PPPs generally and the DCB project specifically, overwhelmingly the common sentiment was that successful PPPs are those for which a clear understanding of the nature of the project and its desired objectives are known from the outset, and as such follow a clearly defined process toward the realisation of those objectives.[36]

While these prerequisites are by no means applicable only to PPPs, it must be noted that the PPP model offers perhaps the greatest opportunity to engender a project with clear objectives and processes, as the PPP model forces both parties to have a clear understanding of all aspects of a project well in advance of embarking upon it. This is a very pertinent feature of PPPs, especially from the public sector perspective. A PPP that successfully meets its objectives is dependent upon the public sector agency stakeholders having thoroughly considered and objectified every aspect of the project via such mechanisms as the public sector comparator and the risk assessment matrix in advance of signing on with a private partner. Doing so both aids the Government to select an appropriate partner, and engenders the partner with confidence in its role. That is, while the private partner may outwardly appear to provide a greater contribution within the PPP framework than the public counterpart, the public sector's contribution of its specific area of expertise - governance - is of paramount importance within the PPP structure.

With this in mind, it is interesting to take something of an esoteric glance at recent developments in PPP processes in the Netherlands, where it has been noted that 'an ongoing theme in the reports and in the policy-related discussions and arguments in the Netherlands... is that public actors should simply define specifications.'[37] This trend represents an evolution of the thinking underpinning PPP arrangements in that country: while early PPPs were viewed as a vehicle for saving public money or for financing infrastructure projects, the emphasis in more recent projects has been squarely on engaging in a true partnership with private sector agents in an effort to raise

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36 Submission No. 3 from PricewaterhouseCoopers, 19 March 2009, p2.

37 Klijn, Erik-Hans, 'Public-Private Partnerships in the Netherlands: Policy, Projects and Lessons', *Institute of Economic Affairs*, vol. 29, no.1, 19 March 2009, p27.

the quality of policies and, accordingly, products. Thinking of this nature explicitly recognises the importance of public sector expertise in the overall PPP structure.

Having only recently been opened, the Western Australian DCB is still in its infancy as a PPP, and as such a proper assessment of its outcome cannot yet be made. It bears mention, however, that the construction phase of the PPP was certainly successful, and that all of the feedback thus far from both Western Liberty Group and the relevant agencies has been positive. Certainly, the new DCB appears to have impacted positively upon the productivity of the District Court: the final six months of 2008 saw median time to criminal trial reduced from 55 weeks to 31 weeks, while criminal cases on hand older than 12 months were reduced by 55%.[38]

PPPs and PACs

PPPs have wide-ranging implications for all aspects of liberal democratic governance. The capacity of successful PPPs to deliver value for money in the provision of public infrastructure is compelling, in that they represent a challenge to the established social contact, however, even successful PPPs can produce dysfunctional consequences.[39] Government, when entering into a PPP, contracts its private partner to provide all or part of the design, planning, finance, construction and operation of an item of public infrastructure. Public accountability, however, is always retained by Government.[40]

Accordingly, the role of scrutinising PPPs - even in cases of zero public spending - falls within the jurisdiction of PACs. By their very existence it is PACs - with their capacity to apply oversight to public spending - that seek to ensure the achievement of optimal outcomes when public monies are spent. Applying oversight to PPPs, however, represents a significant challenge for any PAC. This is evidenced by the fact that, to date, there has not been an inquiry by an Australian PAC into any specific PPP, despite the fact that some Australian PPPs have run into significant difficulties.[41] This may well be due - to some extent at least - to the fact that governing parties usually enjoy majority representation on PACs, and Governments are unlikely to direct their PACs to investigate unsatisfactory PPP arrangements that they themselves entered into. Furthermore, given that PPPs are by their very nature long-term arrangements, it may well be the case that insufficient time has elapsed for the merits of any Australian PPP to be properly investigated. Even if, however, it were possible to quash these political and temporal constraints, the reality is

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38 District Court of Western Australia, *Annual Review 2008*, January 2009. Available at: http://www.districtcourt.wa.gov.au/_files/DC%20Annual%20Review%202008.pdf Accessed on 23 March 2009.

39 Sands, Valerie, 'The right to know and obligation to provide: public private partnerships, public knowledge, public accountability, public disenfranchisement and prison cases', *UNSW Law Journal*, vol. 29, no.3, 2006, p334.

40 Sands, Valerie, 'The right to know and obligation to provide: public private partnerships, public knowledge, public accountability, public disenfranchisement and prison cases', *UNSW Law Journal*, vol. 29, no.3, 2006, p336.

41 Watson, D., 'The challenge for public accounts committees in evaluating public-private partnerships', *Australian Accounting Review*, vol. 14, no.2, July 2004, p81.

that the task of properly investigating and evaluating the outcomes of a PPP represents a difficult task.

It is the existence of proprietary information - and the prominence of such information within the private sector - that serves to make this the case. Though the report co-authored by the Allen Consulting Group and the University of Melbourne claims that 'rich data was obtained for the majority of completed PPP projects, but the availability of data for traditional projects was limited,'[42] the data in question is not specified, and it must be highlighted that the Allen report was funded by a number of Australian private infrastructure groups.[43] It cannot be denied that when a PPP is employed to procure public infrastructure, some documents will prove unattainable, even if a PAC seeks to inquire into the PPP in question. It may even prove impossible to obtain documents such as the public sector comparator, despite these ostensibly being public sector documents, as they are generally bound by cabinet confidentiality. Indeed, while reference was made to the PSC by all agencies contacted for the purposes of this study, actually obtaining this document - or even learning of any of its actual specifics - was not able to be achieved for the purposes of this study.

While this complicates the task of scrutinising a PPP, it also serves to reinforce the fact that PPPs cannot be scrutinised within the same assessment framework as traditionally procured items of public infrastructure.[44] Essentially, it is very difficult to scrutinise the manner in which money is spent on a PPP. Instead, what needs to be examined is the process followed over the entire duration of the project, and the outcomes achieved. This again reinforces the fact that Government has a major role to play if a PPP is to reach a successful outcome, for it is the Government who should lay down the required outcomes, and it is Government who should set in place and follow a clear process in entering into a PPP.

Certainly this was the case for the PPP employed in procuring the District Court Building in Perth. Following a detailed and specific process, which included seeking input from multiple agencies as well as private sector consultants, formed the backbone of the entire project. Indeed, it could be argued that formulating a thorough and detailed PSC and risk assessment matrix helped not only to quantify and objectify the risk and potential value for money inherent to the project - this process helped to ameliorate a significant component of the risk inherent to PPPs generally. Possessing detailed knowledge of both the desired project outcomes and the processes by which these outcomes would be achieved enabled the Government to assess Western Liberty Group as more than simply a private sector entity - having examined the situation thoroughly, the Government was able to adjudge WLG as a suitable *partner*. Furthermore, having considered, formulated, stated and detailed specific outcomes and requirements, the Government was able to engender WLG with significant confidence in their specific role in the project, which in turn enabled WLG to assemble the team of service providers it needed to achieve the Government's objectives.

Though the current global economic climate has cast something of a shadow over infrastructure projects of any nature, it is likely that PPPs are here to stay. Implemented successfully, PPPs have

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42 The Allen Consultancy Group & The University of Melbourne, *Performance of PPPs and Traditional Procurement in Australia*, The Allen Consultancy Group, Melbourne, 30 November 2007, p5.

43 Hodge, G., & Carsten, G., 'PPPs: The Passage of Time Permits a Sober Reflection', *Institute of Economic Affairs*, vol. 29, no.1, 19 March 2009, p36.

44 Watson, D., 'The challenge for public accounts committees in evaluating public-private partnerships', *Australian Accounting Review*, vol. 14, no.2, July 2004, p81.

the capacity to provide significant value for money benefit in the provision of public goods; conversely, the failure of a PPP can have significant financial, social and political ramifications for Government, industry and the public generally. PACs clearly have an important role in ensuring the efficacy of the spending of public monies. The challenge for PACs in governments pursuing PPPs is how to assess the costs and benefits of the PPP, ensure the integrity of the process and protect the public interest.