

# **PUBLIC ACCOUNTS COMMITTEE**

## **INQUIRY INTO PUBLIC SECTOR CONTRACT MANAGEMENT PRACTICES**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 10 APRIL 2019**

### **Members**

**Dr A.D. Buti (Chair)  
Mr D.C. Nalder (Deputy Chair)  
Mr V.A. Catania  
Mr S.A. Millman  
Mrs L.M. O'Malley**

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**Hearing commenced at 10.28 am**

**Mr RICHARD SELLERS**

**Director General, Department of Transport, examined:**

**Mr ROSS HAMILTON**

**Executive Director, Major Projects Unit, Public Transport Authority, examined:**

**Mr MARK BURGESS**

**Managing Director, Public Transport Authority, examined:**

**Mr PETER WORONZOW**

**Managing Director, Main Roads Western Australia, examined:**

**Mr JOHN CHUNG**

**Acting Chief Finance Officer, Public Transport Authority, examined:**

**Mr PHILIP D'SOUZA**

**Acting Executive Director, Finance and Commercial Services, Main Roads Western Australia, examined:**

**The CHAIRMAN:** Thank you very much for appearing today to provide evidence relating to the committee's inquiry into public sector contract management practices. My name is Tony Buti; I am the Chair of the committee and member for Armadale. To my right is Mrs Lisa O'Malley, member for Bicton; and to my left is Mr Simon Millman, member for Mount Lawley; Mr Dean Nalder, the committee's deputy chair and member for Bateman; and Mr Vince Catania, member for North West Central. Thank you for your respective submissions to the inquiry. We are likely to publish these after today's hearing, but we wanted to check with you whether you had any concerns about that before we do so.

**Mr Sellers:** No.

**The CHAIRMAN:** It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. While your evidence is protected by parliamentary privilege, this privilege does not apply to anything that you might say outside of today's proceedings. Do you have any questions about your attendance today?

**Mr Sellers:** No, no questions.

**The CHAIRMAN:** Before we ask you a series of questions, would you like to make a brief opening statement?

**Mr Sellers:** No thanks, Chair. Given that the panel gave us some notes from other meetings, Mr Burgess and Mr Woronzow can make some brief comments around those before we get started, if that suits.

**The CHAIRMAN:** Thank you.

**Mr Burgess:** Thank you. Stop me when you wish to, because I do have a few comments. I have watched the evidence of some others and I realise there are probably some questions that have

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arisen out of some of that. If I can work through this, I think it answers some of the questions and probably gives a useful entree to other questions.

The Public Transport Authority is a reasonably large government agency responsible for providing public transport services around the state. The breadth of that function and responsibility is significant, covering the integrated Transperth bus, train and ferry system in Perth, Transperth-like smaller bus systems in each of WA's larger regional towns, the Transwa interregional train and coach system covering the bottom half of the state, and the orange and green school bus system of almost 1 000 country school buses and education support school buses. That is the role that we perform. In order to deliver all those services, the PTA is also a major infrastructure provider and maintainer, with a major projects division managing major expansions in the network, particularly in urban rail expansion, and a significant network and infrastructure division that maintains the assets.

To undertake the procurement and contracting for these services and infrastructure, the PTA mainly operates under the PTA act 2003, but can also use other legislation, including the Public Works Act. Because the PTA is a relatively modern agency, established in 2003—that is a key point to remember—it benefits from this modern legislation, which was drafted in accordance with the modern parliamentary counsel advice. The PTA act empowers the PTA's CEO to enter into contracts of any value that are required to deliver on its role. By way of contrast, our colleagues in Main Roads work to a more dated piece of legislation drafted in the 1930s, which requires the minister to approve contracts over the value of \$500 000.

In terms of service contracts and, indeed, works contracts, the PTA act provides for the PTA to be an operator of public transport either directly itself or via contract arrangements. Whilst some of the PTA's operation is performed directly by our own staff—the bulk of the Perth urban train system is done in-house—a substantially larger proportion of the PTA's public transport functions are actually contracted out, such as the Transperth bus system, the Transperth ferries, the regional town bus services, the country school bus services and so on. We are very much a contract organisation. The PTA is therefore a very experienced and well-established procurer and contract manager of services; additionally, it is a significant procurer of infrastructure and contract manager of infrastructure projects. To give you a sense of this scale, there are just over 2 000 PTA staff. On any given day around the state, for each of those staff members there will be around three people who are either a contractor to the PTA or are working for a contractor to the PTA. Clearly, therefore, a large part of PTA's business is contract management of ongoing service and infrastructure contracts. Over the last five years, since 2015, the PTA has, on an annual basis, been administering and managing between 750 and 1 400 contracts—it does vary year to year—with the average being around 1 100 contracts under management. Many of these contracts will last over several years, some up to 10 years and even longer, so clearly a lesser number of contracts are actually put out to the market on an annual basis. That average of 1 100 contracts or so being administered each year represents a full-life value of the contracts of around \$7 billion at any point in time.

I will talk for a moment about higher-value contracts. On average over the last five years, the PTA has gone to tender for typically 50 to 100 higher-value contracts per year—so, public tender process, bearing in mind the tender threshold of \$250 000. Some of these will be particularly high value, such as the recent bus supply contract, which was for the supply of 900 buses over 10 years with a contract value of \$549 million. Similarly, when we go to tender for Transperth bus service contracts, noting that there are 11 contract areas in Perth with 10-year service contracts for each area, they have an annual value of a contract area somewhere between \$10 million and \$40 million, depending on the size of the contract area. The annual value of Transperth's bus service contract payments is \$335 million. That is substantial. The new railcar contract for Metronet railcars and the replacement of the A-series railcars is another high-value contract, with a value of around \$1.6 billion. My point

in mentioning those contract and procurement arrangements is that PTA is clearly very well versed in procuring and managing higher-value contracts and achieving very good value for money for taxpayers.

In order to fulfil its procurement and contract functions, the PTA recruits people with contract management experience and also provides training for staff as required. Over the last 15 years, we have trained around 90 staff in higher-level detail procurement and contract management. In the last five years, we have trained over 400 staff in simple procurement, and lesser subgroups of that cohort in various other procurement and contract modules. These staff hold us in good stead to fulfil the PTA's function. Over the 21 years that I have been involved in public transport in WA, I can think of very few instances where there have been any substantive problems with public transport contracts, yet you see the scale of what I have been talking about and the number of contracts we are involved in.

In my view, by and large, we undertake procurement in an equitable and efficient fashion and get good value for money. In terms of support for our procurement functions, for higher-value procurement—over \$10 million—it is mandatory for the PTA to engage the services of an independent probity adviser. Unless exempted, we also require an independent probity adviser for procurement over \$5 million. However, the real key—I think this is a key point—to getting a procurement process right and for managing a contract is actually being an informed purchaser; that is, having the right staff or paying to have the right support—preferably your own staff, so that you have continuity, but, if need be, paying for the right specialist support—to properly specify what it is you need and to have those staff available through the build process or the service-delivery process to ensure that you are getting the right product or service that you are paying for.

I know that the issue of legal support has been raised. I am aware that questions have been asked here in the inquiry about our approach to obtaining legal advice on contracts. Generally, we need legal support mostly at the time of tender and contract formulation, to make sure how we specify the need and how that is reflected in the contract provides the best protection and ensures that you get what you are asking for at the agreed price. It is rare that we have a need for ongoing legal support during the routine management of contracts. Having said that, we do have in-house legal staff. An exception to that is the delivery of large-scale infrastructure projects, when steering committees are established and the SSO may well be represented. Indeed, our own counsel may be on those steering groups as well. Most of the legal support PTA receives in its many commercial procurement and contract dealings is from the PTA's own expert in-house legal staff or from commercial legal firms. This approach is consistent with the State Solicitor's Office guidelines for seeking legal advice, which are available on the Department of Justice website. The SSO guidelines explain that government legal work undertaken by outside agencies are divided into two categories—core and non-core work. Core, being legal work for the government, is reserved to the SSO and is provided free of charge to agencies and departments. Non-core or contestable work is not reserved to the SSO, which competes against the private sector law firms to provide the services for a fee. The guideline says that core services can be summarised as work in relation to the operation of executive government, advice on matters significant to more than one government agency, and most litigation. It says that non-core services include contracts relating only to one agency. Eighty per cent of SSO's work relates to core work. That is from the guidelines.

The PTA has engaged with SSO on major procurement activities such as the southern suburbs railway; nowadays, the Metronet program, including the current FAL project; and the new railcar order. However, legal services for most PTA contracts are handled by or through in-house legal support or expert commercial legal support.

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**Mr V.A. CATANIA:** Can I ask a question while you are on that topic?

**The CHAIRMAN:** Are you nearly finished?

[10.40 am]

**Mr Burgess:** Almost finished.

I am aware that questions have been asked during the inquiry about the submission of project proposals and contracts to cabinet. Clearly, the key time that this occurs is the budget process, when PTA seeks funding for projects and services, so it is the proposal for the project and the request for funding. The PTA would always submit significant projects or spending proposals for more than \$100 million to cabinet's ERC for approval, and, through ERC, ultimately to cabinet. Usually, that would involve consideration of a business case during that process. Once the government determines that funding is approved, the PTA proceeds to engage the market in design and construction processes or for service delivery in the case of, say, bus services, using the appropriate contract model for delivery of the project. The PTA would not initiate a procurement process for a significant project without budget approval from cabinet to do so. However, once a procurement process is underway, the process of evaluating who should be awarded the contract is undertaken independently by the agency, sometimes with other state agencies providing assistance in the governance process, and also with independent probity advisers. If the procurement process identifies that significant additional funding is required, then that would be requested through our Treasury, ERC and cabinet approval process, typically through a normal budget or mid-year review process.

**The CHAIRMAN:** Thank you very much for that. Do you have a long statement?

**Mr Woronzow:** Mr Chairman, mine is very brief.

**The CHAIRMAN:** Very brief; otherwise, just put it in as a written submission.

**Mr Woronzow:** No, it is very brief. Thanks for the opportunity. Main Roads did submit a detailed written response in February. Within that response, we talked about CEIID, which was an initiative where the prime infrastructure agencies in Western Australia came together to form a centre of expertise. That included Water Corp, Main Roads, PTA, Strategic Projects, BMW and some of the power authorities. In my mind, that was a very successful initiative. In that body of contracting knowledge—the practitioners—are in the works agencies. CEIID—which stands for Centre for Excellence and Innovation in Infrastructure Delivery—looked at a whole range of issues. Out of that centre of excellence, we introduced the gateway review process; we introduced a common process for dealing with insurance bonds; we came up with a uniform process—a guideline—for selecting delivery methods that should be used at different times. Unfortunately, that initiative was discontinued about five or six years ago. The Department of Finance, who had provided administrative support, could no longer provide that administrative support. I mention this because it is something worthy of this committee's consideration. It was a good initiative. As I said, the body of contract management expertise rests with the doing agencies. It was a great initiative where we all came together and tried to drive some commonality. If the contracting industry wanted to ask questions about contract management across the public sector, they did that through the administrative support provided by the Department of Finance.

**The CHAIRMAN:** Thank you. I refer to page 1 of the Main Roads submission, where you state —

The State Solicitor's Office ... is engaged to provide important expertise and advice for all major projects and contracts.

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Has Main Roads found this measure sufficient in ensuring that the contracts are robust, and do exceptions exist whereby Main Roads opts to not engage SSO on major contracts?

**Mr Woronzow:** Unlike the PTA, Main Roads does not have in-house legal support. We entered into an arrangement nearly 18 or 19 years ago with the State Solicitor's Office where they would provide legal advice around putting in place contract procurement and contract management. Also as part of that service they set up a panel contract where, if required, they would engage a private sector legal firm to satisfy our contract procurement and management needs.

**The CHAIRMAN:** Mr Burgess, you gave quite a comprehensive opening statement, and you have talked about core and non-core and so forth. Under which conditions do you decide whether or not to engage SSO on major contracts?

**Mr Burgess:** We are obviously aware of the definition of "core" and "non-core". If you look at the 2018 guidelines published on the SSO website, what they say basically is that the bulk of their activity—80 per cent—is taken up with core business. There is not a clear black and white definition, but most of what we are doing with major projects is called "non-core". So it would be major projects, so those examples I gave: southern suburbs railway; New MetroRail, as it was called; they are generally involved in the FAL projects—so they are engaged with the big railway building projects. That is the scale of their engagement. Having said that, we will talk to them about other projects and seek advice on whether they can provide the support. There is obviously a relationship between our in-house lawyers and SSO staff, and we may seek their advice. Quite often we will go to them and they will refer us to a commercial law firm. The way that works, they may still be in the middle, so to speak, instructing the commercial lawyers, as well as our lawyers doing the same. So they are an intermediary, if you like, in instructing the commercial law firm. Sometimes they will do the work themselves, so it does vary.

**The CHAIRMAN:** When you contract for legal services outside the SSO, have those law firms been approved by the SSO?

**Mr Burgess:** No, and that is how it has always been. In other words, if we choose to go to a commercial law firm, if that is the judgement call. Our lawyers are very experienced, one with more than 30 years' experience and one approaching 20 years' experience. We actually have four at the moment. We have two FTEs, but because of the scale of the Metronet program, we have now introduced an additional legal officer into our major projects division. We also have one allocated out to support Metronet, so we have four. They are, as I say, very experienced lawyers. They would give some advice. It would be up to the division, either the major projects division or network and infrastructure, to say, "We need the following legal support." We would give some scope to what it is they are looking for, and then there is a judgement call as to who is best to provide that. Often there will be conversations with SSO on whether they are well versed on this matter and whether it is something that they should do, or is it something that a commercial law firm is better positioned to do.

**The CHAIRMAN:** You mentioned previous hearings before us. As you can see, there is a general media interest in the back there; obviously, that has come about because of the State Solicitor's comments in relation to Huawei. I want to address that issue. Did anyone from your office contact the State Solicitor's Office prior to going out and seeking private law firm advice?

**Mr Burgess:** The radio project has a long history. When the business case was being developed in 2014, our legal staff engaged the State Solicitor's Office. Clearly, there is a range of expertise required with the radio project: knowledge of the telecommunications act, the Public Works Act, various lands instruments, and so on. It is particularly related to IP and sort of a technology project. At the time, in 2014, they engaged the State Solicitor's Office in whether it was an area of expertise

for them to provide assistance in the business case, and they said, “No, it is not our area of expertise.” We went through the SSO to appoint a company in Canberra to assist with that part of the process. That happened. The radio project was alive at that point, but it was in business case formulation. Through 2015 and 2016, with the process of finalising the business case, going to PDPs—the project definition plan—at that point, when we needed further legal assistance, given the previous advice that this was not their area of expertise, we went out to the market through a tender process to engage a law firm who had particular expertise in these areas.

**Mr V.A. CATANIA:** Is that to develop the contract?

**Mr Burgess:** Including development of the contract.

**Mr V.A. CATANIA:** What year was that?

**Mr Hamilton:** That was 2015–16. It concluded through 2017 and 2018.

**The CHAIRMAN:** Just to make it clear, your office did contact SSO initially to seek their advice on whether they could provide legal services in this area?

**Mr Burgess:** This was at the start, at the business case stage, yes.

**Mr V.A. CATANIA:** Can you explain the business case side? There is a business case and there is a contract. Is that a business case to develop a contract or to develop the project itself, and then the contract is further down the track?

[10.50 am]

**Mr Burgess:** There is a continuity here. If you like, it is an evolution of a project; the idea of needing a project. If I could go to the radio project for a moment, which the deputy chair will remember well, the need to get a digital radio system was prompted by the fact that the ACMA—Australian Communications and Media Authority—which controls the allocation of the spectrum of radio waves in the country was reallocating spectrum, and we had to be moved from where we were, in the 400 megahertz range, to 1 800 megahertz. It was not just us, but also the rail industry across the country. That was the driver for the need. There were other drivers as well. Our current analogue radio system is insecure. People can listen in on it—that is not something I would seek to be advertised, but it is true—and people do, and occasionally interfere, so it will help us to be in the more secure digital spectrum. So there were drivers for the project; it was not just that we wanted to replace an ageing radio system, which, again, was another driver.

A project emerges because of a need. The process is that you then develop a business case justifying the need. You go through a project definition phase, where you identify all the issues. I am trying to summarise it very loosely. Changing the radio system means changing the radios in every train. There is a radio in both cabs, either end of the train, and we have about 46 base stations out there at the moment, masts and so on—we will need a bigger number, in the order of 80, with this project—and it also involves the radios that our transit officers use as well. That is a broadbrush of what the project entails. We go through a process of business case, PDP, and the PDP is defining what all the needs are. There are obviously land issues as well; you have to find land to put all these masts on, and so on, so you are after legal advice about those matters as well.

**Mr V.A. CATANIA:** Did you seek legal advice from the State Solicitor’s Office to develop the contract itself?

**Mr Burgess:** No. If you go back to the start of the process, when the question was asked at the business case stage—because the business case leads to the PDP that leads to the contract; they are all interrelated—so when the advice was given —

**Mr V.A. CATANIA:** I am aware that they will be interrelated.

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**The CHAIRMAN:** Vince, we made an agreement. Can we try and stick to it, please? I think Mr Burgess made it quite clear that because of the initial advice, they decided that they would not go back to the SSO. He made it quite clear: they did not go to the SSO for the contract formulation based on the previous position.

**Mr Burgess:** Correct.

**The CHAIRMAN:** If you want to follow that up after, you may.

I believe the SSO are now providing you with ongoing legal advice in relation to the Huawei contract; is that right?

**Mr Burgess:** Yes, that would be around the issue of—clearly, other issues have emerged in the media about Huawei more generally, in an international sphere, and based on considerations around that, they have provided us with support.

**The CHAIRMAN:** You mentioned that you have about 50 to 100 high-value contracts per year, or high-risk, high-value contracts. Without knowing the exact percentage, roughly what percentage of those do you seek external legal advice on, in the sense of private law firms rather than the SSO?

**Mr Burgess:** The bulk of it would be provided by our own lawyers. More than 90 per cent will be a combination of our own lawyers supported by commercial legal firms. Very rarely is it the SSO.

**The CHAIRMAN:** Just to make it clear, you initially did seek advice from the SSO in regards to the technical issues that finally have led to this contract with Huawei. You did not seek advice on whether they would give you legal advice on Huawei at the time of the formulation of the contract, but you did go to SSO initially?

**Mr Burgess:** That is at the business case formulation stage, when there would have been no knowledge of who was even going to contemplate supplying.

**Mr V.A. CATANIA:** A very good point.

**The CHAIRMAN:** They said to you that they did not have the expertise, or am I putting words in your mouth?

**Mr Burgess:** No, that was not an area of great expertise for them. There was also a follow-on email in 2017, which was a bit more veiled, which was around the area of IT or IP generally. It did not mention the radio project specifically, but asked for advice about relationships with contractors from China. Again, the response was that there was not an amount of policy on that issue.

**The CHAIRMAN:** All right. That was from the SSO?

**Mr Burgess:** Indeed.

**The CHAIRMAN:** On the basis of the initial discussion, when you then went to contract formulation, you decided that you would go to a private law firm?

**Mr Burgess:** Yes, correct. We have used a private law firm throughout, yes.

**The CHAIRMAN:** Okay. Can I just ask a question on a completely different matter. In the Main Roads submission page 3, you state that you have very experienced contract managers for your larger projects. How do your respective agencies determine who to assign to major high-risk, high-value contracts, and at what stage are these individuals brought into the process?

**Mr Woronzow:** Main Roads has a rolling asset investment program that has been consistently worth around \$1 billion a year over the last three or four years; that is the value through the forward estimates. At any point in time, we have in the order of 200 live contracts. Out of those 200 live contracts, in the order of between 70 and 80 are infrastructure contracts, and out of those



infrastructure contracts there are probably in the order of 10 to 20 at any point in time that I would class as high value. They might be over \$50 million; they might be over \$100 million. Because we have had that constant stream of infrastructure work over a long period of time, we have developed a pool of very senior and very capable project and contract managers. Some are termed “project directors”—they are people that are classified level 8 or 9 in general public sector terminology. Those experienced level 8s or 9s are assigned to high-value or high-risk projects, and they are the people in Main Roads that have typically been managing those types of contracts over 10, 15, 20 years, or even longer.

**The CHAIRMAN:** On page 6 of the PTA submission it is suggested that commercial risk can be better managed under alliance model contracts, which the PTA is typically using for many major work projects. Has the PTA enjoyed better project outcomes using alliance model contracts; and, if so, can you give us an example?

**Mr Burgess:** I will hand to Mr Hamilton in a moment, Chair. Yes, we have. The first alliance contract that we did was the Perth City Link rail project, which was the sinking of the Fremantle line through the city. Alliance contracts become quite useful when there is a degree of uncertainty in terms of risks—underground services, unknown where pipes or wires are, or unknown ground conditions—where, under typical design and construct type processes, you could end up in a substantial dispute with a contractor over variations and so on over a long period of time. We did not have any experience with alliances, so we went to our colleagues in Main Roads and got a lot of advice from them. I am glad you have raised that point, Chair, because there has been a lot of good work, particularly among the service delivery agencies—the Water Corp, Main Roads, PTA—in terms of knowledge sharing. I am not sure I have heard it mentioned a great deal in any of the evidence so far, but we went to Main Roads to get advice from them on their experience with alliances. They had gone down a particular alliance model route at that time but had not done a competitive alliance. We also got advice from Water Corp, who had done competitive alliances, and so we went into a process of competitive alliance. I think we have since done another three, but I will hand over to Mr Hamilton.

**Mr Hamilton:** In terms of best commercial outcome, it really depends on the procurement assessment process you need to run through, and it makes a fairly significant distinction about the level of risk that sits around a project, not just its value. There is limited value in going into an alliance contract for something that is less than probably about \$100 million, because those contracts are fairly intense and require a lot of effort on the contractor’s part and on the principal’s part. It is an evaluation of risk on an individual case-by-case basis to look at whether you get the best value. As Mr Burgess said, it is largely around the risk. It might be around unknowns that you have in a contract, or in the ground conditions, or about a whole range of things that are unquantified, and whether there are significant interface issues, for example, that might occur around the management of the contract.

As an example on the Perth City Link, because we had to work with a range of other government agencies, including the Metropolitan Redevelopment Authority and the City of Perth, we went into an alliance contract because there was the potential for interfaces to change what we were required to deliver through the process. An alliance contract gives you a better outcome if you need to change things part way through.

[11.00 am]

**Mr Burgess:** We also had an advantage in terms of being an empowered and an informed purchaser. In a typical alliance model you see a lot of our staff planted into the delivery team. It is a shared delivery team but with the contractor and your own organisation.

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**Mr D.C. NALDER:** My questions are going to focus more around the Huawei contract, particularly because of the comments that were made by the State Solicitor last week where he said that he was very concerned that the State Solicitor's Office was not involved in the contract formation for the Huawei contract. As a bit of background, can you provide the date the contract was finalised for Huawei?

**Mr Hamilton:** When we actually signed the contract?

**Mr D.C. NALDER:** Yes.

**Mr Hamilton:** We signed the contract in July last year.

**Mr D.C. NALDER:** Was that July 2018?

**Mr Hamilton:** Yes, July 2018. The contract had been under development since probably late 2016 to early 2017—through that period. We ran a competitive, early-contractor involvement when we short-listed down to two, and there were still elements of the contract being finalised through that period from 17 October through to July 2018.

**Mr D.C. NALDER:** At what point did the SSO become involved, given you mentioned just a little while ago that, because of media and some of the noise and concerns about Huawei around the world, the SSO then became involved in managing that contract? At what point were they engaged—what month?

**Mr Hamilton:** Perhaps if I can explain Chair, there were two —

**Mr D.C. NALDER:** I just want to keep the answer simple. I have limited time.

**Mr Hamilton:** There were two elements where we sought SSO advice. When we understood that there might be external providers—that is, not Australian, but overseas from China or elsewhere. That was in January 2017 when we asked those questions of SSO. Subsequently, in probably—at that stage we also talked to the Department of the Premier and Cabinet because we were involving other security agencies et cetera. We also then, late last year, but also mainly around January this year, when the media reports came out about the USA unveiling the indictments against the Huawei company that could potentially have an impact on our ability to have them provide the requirements of contract.

**Mr D.C. NALDER:** I have in front of me, through freedom of information, a briefing note that was supplied by PTA in May 2018 that highlights the concerns with what is going on with the US and how the US particularly has national security concerns that equipment from Chinese manufacturers could serve as a backdoor for surveillance. This is in a briefing note that was provided to the minister in May 2018. On that basis, why was SSO only engaged in 2019?

**Mr Burgess:** I suspect that it more relates to what has been reported in the media than what we believe to be the case. On the issues of cybersecurity, which is clearly what gets talked about in the media mostly, we engaged a specialist cybersecurity provider and also the appropriate commonwealth agencies to review the scoping and specification for cybersecurity. I do not know exactly the briefing note you are referring to, member, but it would have been a case of, as you do, keeping our government aware of the issues that are being raised in the general media and addressing—because it would not matter which company or which contractor you picked, those same issues would need to be dealt with.

**Mr D.C. NALDER:** It is just that you made these comments in May, and I am happy to provide you with a copy of it. It was signed off and provided to the minister in May 2018 where you raised these concerns. You went and sought the views of a cybersecurity expert and obviously you went to the

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marketplace to receive legal advice to support you in the formation of the contract. Who was the company that you chose and what was the basis on which you chose that company?

**Mr Burgess:** In fairness to that company, Chair, I am not sure that—I am happy to take that off line and talk —

**The CHAIRMAN:** You may need to take some advice on that, but maybe you can at least answer the second part as to why you chose that company.

**Mr Burgess:** They were considered to have specialist expertise in IT digital technology and so on.

**Mr D.C. NALDER:** And cybersecurity?

**Mr Burgess:** An element of that, yes, but I am not sure that many legal firms are experts in cybersecurity. That is really the purpose of the other company which we have who are our expert advisers and who have provided advice to other governments.

**Mr D.C. NALDER:** Where I want to go with this is that you did a business case and a PDP and this has gone to ERC for approval. ERC will have to see the business case. But cabinet is the one that ultimately signs off on budget and ERC's submissions go into cabinet for a final approval. Was a business case prepared for cabinet by the PTA?

**Mr Burgess:** There was a business case prepared. I am not privy to ERC and cabinet processes, but a business case went through the same process that every proposal of any significance does—so it went up that Treasury–ERC–cabinet chain. But I have never been in the ERC or cabinet, so I do not know who sees what or who reads what.

**Mr D.C. NALDER:** The Premier has advised that they did not receive any cabinet submission on Huawei. I am trying to understand why that would be the case.

**Mr Burgess:** It went through a budget process.

**Mr D.C. NALDER:** But budget processes are ultimately signed off by cabinet, and for cabinet to make a fully informed decision, they need to be able to see the business case. Normally, that goes through the cabinet process but it looks like this did not happen with the Huawei contract. I am wondering if you can shed any light on that.

**Mr Burgess:** In my time, I am not aware that any contract from our organisation has ever gone to ERC or cabinet—the contract. The things that go to ERC and cabinet are the funding proposals and the business cases: “Here is the need. Here is the PDP and the budget we need.” That is what goes up. The details about how we go to the market and the contract are not what go up.

**Mr D.C. NALDER:** One of the comments you made in your brief statement at the start was that the difference between Main Roads and PTA is that PTA does not need to seek the support or approval of the minister for contracts; it has the ability to establish those. Did you at any stage seek the approval of the minister for the Huawei contract?

**Mr Burgess:** The normal business of dealing with a minister, as I have with you, member, in the past, is to keep you informed of projects and how they are evolving. The normal communications would have occurred.

**Mr D.C. NALDER:** I am trying to understand what documentation was provided to the minister. Given that it went to ERC, I assume that the PDP and the business case were provided to the minister for signing?

**Mr Burgess:** They went through the normal budget process.

**Mr D.C. NALDER:** So, yes, they were. So they went to the minister.

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**Mr Burgess:** I do not know what gets seen at ERC and cabinet. They go through a process where we supply them to Treasury, so I assume they were seen by those who wanted to see them.

**Mr D.C. NALDER:** On procurements, you said that any procurement, you do not need to actually get the minister to sign off. Can you actually identify any other contracts that you have that are above \$100 million that have not gone to cabinet for a sign off?

**Mr Burgess:** I think I said a moment ago, our contracts do not go to ERC and cabinet. Our contract documents do not go —

**Mr D.C. NALDER:** I am not asking about the contract. I am talking about the business case that goes with that.

**Mr Burgess:** If it is a new investment proposal such as—they will go up as the business case. For example, our bus service contracts that I talked about a moment ago are incredibly high value and they do not go to ERC or cabinet.

**Mr D.C. NALDER:** Is there any business case for any other project over \$100 million or even over \$10 million that PTA has signed that has not had the approval of cabinet?

**Mr Burgess:** Most of them do not go to cabinet.

**Mr D.C. NALDER:** I am not talking about the contract. I am talking about the investment decision with a provider. Have you got examples where approval has been given to providers that has not been presented to cabinet for approval?

**Mr Burgess:** Most of this stuff goes through a budget process. It does not necessarily go directly to cabinet. It goes through a budget process and therefore is grouped up with anything else in the budget and goes through an ERC cabinet process. I am not privy to what gets seen at ERC. Whether every business case is tabled, I am not sure.

[11.10 am]

**Mr D.C. NALDER:** I want to try to understand some of the procurement processes. At what stage of procurement do you assess a contract for implications? Given that with the analogue situation you have people who can listen in, at what stage in the procurement process do you make those security considerations?

**Mr Burgess:** From the outset. That would be part of the consideration from the outset. On a technology project of this type, that would be some of the consideration from the outset.

**Mr D.C. NALDER:** So, if it was done at the outset, and you are saying that SSO were involved at the outset, why is the SSO very concerned that they were not involved?

**Mr Burgess:** I did not say that SSO was involved. They were given a guide as to what the project was and we said, “Here is the particular expertise needed against these pieces of legislation and, broadly, this is the need”—actually, it was not that broad, it was fairly specific as to what the project entailed—“We are in the early stages of developing a business case. Is this something you would do or something where we should go and get expertise elsewhere?” They helped us to go and get expertise elsewhere.

**Mr D.C. NALDER:** So advice was sought right at the outset, and that is where you engaged that cybersecurity consultant on that—right at the outset?

**Mr Burgess:** No, it was a bit later. I have not got the exact date with me.

**Mr D.C. NALDER:** How much later? Are we talking weeks or years?

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**Mr Burgess:** No, bearing in mind, this was in 2014. We are now in 2019. It was a long-evolution project. It was probably midway through that stream.

**Mr Hamilton:** I think it would have been probably late 2017. They were providing advice to us about the radio project, but they were also providing advice to us on all of our operational technologies for the organisation.

**Mr D.C. NALDER:** Who is they?

**Mr Hamilton:** That is the company that gave us specialist cybersecurity advice.

**Mr D.C. NALDER:** The Premier has made a comment that there are 80 security measures. I am not going to get into what they are because you probably cannot reveal those, but is there any requirement to update federal security agencies regarding any aspects of those?

**Mr Burgess:** The federal security agencies have been involved throughout this process.

**Mr Hamilton:** Part of our process is having discussions with those. For the number of security initiatives that we have put into the contract, we have to have a requirement for a cybersecurity plan to be developed. That will be developed and it will then go through a review with various parties from the Premier and cabinet and also the Australian Signals Directorate.

**Mr D.C. NALDER:** Just coming back to the tender process quickly, is it true that this was a closed tender rather than an open tender?

**Mr Burgess:** It went out to the market. The process had several stages. There was an EOI. Nine were involved at the EOI stage, down to a short-listing and an RFT stage involving five, and then out of the five, what is called a CECI—competitive early contractor involvement—so a competitive process for the last two to get to one.

**Mr D.C. NALDER:** At that point, is it you inviting people to the next stage as opposed to them automatically going through? Do you knock them out on the way through?

**Mr Burgess:** There is a short-listing process, a qualification process, to find out whether people really have the credentials to do the job.

**Mr D.C. NALDER:** Can I just ask whether Motorola, Vodafone or Nokia were involved in the early stages of that?

**Mr Burgess:** Again, I am not sure it is appropriate to comment, but it is fair to say that a number of parties were involved. Some of those withdrew or took themselves out.

**Mr S.A. MILLMAN:** I might start with the PTA. Further to the questions the member for Bateman was asking, these questions will just be for clarification. Was the business case developed in 2014?

**Mr Burgess:** Over the course of 2014.

**Mr S.A. MILLMAN:** Thank you. You were saying that it is the business case that goes into the ERC process rather than the final contract that goes into the ERC and cabinet process. Is that right?

**Mr Burgess:** Correct.

**Mr S.A. MILLMAN:** Do you know when the business case would have gone to ERC?

**Mr Burgess:** It would have gone through a budget process. I am not sure whether Mr Chung can remember.

**Mr Hamilton:** The initial funding was provided in 2015.

**Mr S.A. MILLMAN:** Is the specialist cybersecurity company in Canberra?

**Mr Burgess:** No, that was the first legal advice.

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**Mr S.A. MILLMAN:** Great, that was the answer to my question. So the company in Canberra were lawyers who provided the legal advice after the SSO had provided you with —

**Mr Burgess:** It was the Canberra office of a law firm that is in many places, yes.

**Mr S.A. MILLMAN:** I understand. Did you seek their advice after you had spoken to the SSO?

**Mr Burgess:** Correct.

**Mr S.A. MILLMAN:** Is the specialist cybersecurity firm a WA firm or a Canberra firm as well or —

**Mr Hamilton:** An eastern states firm.

**Mr S.A. MILLMAN:** I am now moving away from this topic. In terms of the project definition phase that I think Mr Hamilton was talking about, we have had evidence before in this inquiry that good contract management might be facilitated if the contract manager is involved in the project definition phase. Is that a practice that the PTA has where your contract manager is involved in the project definition phase?

**Mr Burgess:** Yes. That is why I did go through—I was trying to portray the fact that we actually have staff who are the guys who do it. I know a point was made by an earlier person who said that someone goes and engages and procures it, then they walk away and some else manages it. That is typically not what we do.

**Mr S.A. MILLMAN:** Brilliant.

**Mr Burgess:** He who runs that service or provides that piece of infrastructure is intimately involved from the get-go and all the way through.

**Mr S.A. MILLMAN:** That is excellent. I am happy to hear that because that was a problem that, as you say, has been identified in earlier evidence. If your agency is already doing that, that is fantastic. I was just looking at the Public Transport Authority Act and want a clarification, Mr Burgess. The act provides that there be a CEO. Is that you?

**Mr Sellers:** It is me.

**Mr S.A. MILLMAN:** So you are the CEO. Under the act, you have that authority?

**Mr Sellers:** That is right, and the Commissioner of Main Roads as well.

**Mr S.A. MILLMAN:** Great; thanks for that. That is helpful. You mentioned that you need a procurement adviser who is mandated for anything over \$10 million. Where is that mandated?

**Mr Burgess:** In PTA policy.

**Mr S.A. MILLMAN:** I want to ask a couple of quick questions about the types of contracts that you enter into. The contract that Salini is working on, the Forrestfield–Airport Link, is a design and construct—D&C—contract. That is different to the alliance contract that you used previously for the Perth City Link, and it is different to the alliance contract—a number of assumptions are built into this question—you are using the alliance contracts for the Yanchep and Thornlie program —

**Mr Burgess:** Yes.

**Mr S.A. MILLMAN:** — and you used one for the Perth City Link. Can you tell me why you went away from an alliance contract, which seems to have worked, on your evidence, for the Perth City Link, to something that is probably equally, or if not more, complicated for the Forrestfield airport contract?

**Mr Burgess:** It is an interesting question. I will defer to Mr Hamilton in a moment. But just to give you a sense of that, given that we had no alliance experience, we went and talked to our friends and others and developed the concept. The Water Corp had had competitive alliances, so we went down

the path of wanting a competitive alliance. We did that for the PCL rail project, the PCL bus project—the underground bus station—and, again, for the stadium transport works on the rail side. So you are right, what Mr Hamilton referred to was that procurement options analysis—POA—that has been referred to by a few other people here. That is a process that the agency will engage in—virtually always with Treasury in the room, and often with Strategic Projects representation in the room from the Department of Finance—to go through all the procurement options, whether design and construct is best or a pure alliance or a competitive alliance, perhaps a CECI phase or whatever it might be. All of those, and there are obviously a range of considerations, are compared against each. With the FAL, you are right, there would have been consideration of whether an alliance was better. I will hand over to Mr Hamilton to —

**Mr S.A. MILLMAN:** Justify the decision to go with the D&C.

**Mr Burgess:** Well, not justify it, but he was more intimately involved in that process.

**Mr Hamilton:** In terms of the Forrestfield–Airport Link project, one of the issues is whether you can adequately define a project and the scope of the project to give certainty to proposed tenderers to make sure that they can adequately price the job. In the Forrestfield–Airport Link project, we did a significant amount of work in that definition phase to define what the project was, including a significant amount of geotechnical testing that we ran through and did testing along the alignment of that to define what the ground conditions were. The procurement analysis that we did, which Mr Burgess indicated, did include people from Strategic Projects, and I think the SSO were also involved directly—I just have to check that—in that procurement options analysis and came up with the fact that it was better to go with D&C on this contract.

[11.20 am]

**Mr S.A. MILLMAN:** Who makes the ultimate decision whether it is a D&C? I think either Mr Burgess or Mr Hamilton was saying that what goes up to ERC and cabinet is the business case and perhaps the PDP, but the actual contract itself—the question about whether or not it is a D&C or an alliance, is that a cabinet-made decision or is that a PTA —

**Mr Burgess:** It is an agency-made decision but not an agency in isolation. As Mr Hamilton indicated, typically there are a number of government agencies with expertise in there as well coming up with—based on experience and based on this particular circumstance—what the best model is.

**Mr Hamilton:** Just by way of clarification, the PDP—project definition plan—by itself does have a section included in it about project procurement. It just depends on when the final options analysis is actually done as to whether the final thing is included in the PDP for information or not.

**Mr S.A. MILLMAN:** Thanks for that. You mentioned the counsel on the steering committees. You have lawyers on the steering committees for some of the projects that are underway at the moment. Is there a steering committee for the FAL?

**Mr Hamilton:** Yes.

**Mr S.A. MILLMAN:** Are there lawyers on that?

**Mr Hamilton:** Yes.

**Mr S.A. MILLMAN:** A steering committee for Thornlie–Cockburn?

**Mr Hamilton:** Yes.

**Mr S.A. MILLMAN:** And you have lawyers on that?

**Mr Hamilton:** Yes.

**Mr S.A. MILLMAN:** Yanchep rail line?

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**Mr Hamilton:** Yes.

**Mr S.A. MILLMAN:** And lawyers on that as well?

**Mr Hamilton:** Yes.

**Mr S.A. MILLMAN:** In terms of the Forrestfield–Airport Link, what were the other agencies that were involved?

**Mr Hamilton:** I would have to go back and check, but certainly we had Strategic Projects, as I said. I think we also had —

**Mr Burgess:** Treasury would never not be in the room.

**Mr Hamilton:** I think we also had SSO involved in that one as well.

**The CHAIRMAN:** Would you be able to clarify that —

**Mr S.A. MILLMAN:** Could we put that in a supplementary question?

**Mr Hamilton:** Yes.

**Mr S.A. MILLMAN:** Fantastic. That is all my questions for the PTA. I have a couple of questions for Main Roads—we have two minutes.

**The CHAIRMAN:** You can keep doing it, but can you take on notice a question about the lawyers who sit on the steering committees. Are they your lawyers or SSO's?

**Mr Burgess:** Predominantly SSO's. There are a couple of other smaller ones that our lawyers are on.

**Mr S.A. MILLMAN:** My next question is for Mr Woronzow. In light of answer that Mr Burgess has just given us about the SSO lawyers sitting on the steering committee, we had evidence earlier in the committee's hearings from the SSO which suggested that it might be useful for the state government to develop a centre of expertise with respect to procuring contracts. This is something that flows from the Langoulant inquiry and it is something that you referenced when you talked about the Centre for Excellence in Infrastructure Delivery. Given how, for want of a better word, "fond" you were of CEIID, would you endorse the suggestion made by the SSO and supported by the Department of Finance that we reinstitute a centre like that?

**Mr Woronzow:** You probably gathered from my introductory comments, I found great value in that CEIID initiative. The only thing I would comment is that in the Western Australian public sector in the infrastructure space, the body of knowledge around contract management and putting lot of these contracts together, resides in infrastructure agencies. I would support a recommendation or an initiative around bringing together all the infrastructure agencies again to share knowledge and leverage off the skills. Mr Burgess gave an example where Main Roads and PTA have shared information around delivery methods, particularly alliancing. But with administrative support from the Department of Finance, I do not particularly think that a centre of excellence should sit as a public sector function in the Department of Finance and Treasury. I think should be a collaborative model with administrative support provided by —

**Mr S.A. MILLMAN:** I think we will probably flesh that out as we go further into our inquiry. There is, not just in the course of this inquiry but more generally, a concern about the ossification of the capacity of the public sector to manage contractors, hence this inquiry.

**Mr Sellers:** Member, I might just add to give a bit of clarity that I think that there would be broad support for having expertise in finance or a group like that that could help smaller agencies in broad procurement around IT. A lot of the matters, if you are in a small agency, you may not have that procurement ability. You could go and get some advice and they may be able to second someone over for a period of time if you are doing a contract around your building or around those sorts of



things, so you get continuity and acceptance of standards across the sector. It would be very welcome. Peter's comments are more around the expertise in very large projects and how you might treat that as a slightly different model, and that is what we are after.

**Mr S.A. MILLMAN:** Just on the way that you deal with contracts once they are entered into, Main Roads has a panel arrangement, as I understand it. Do you have a panel contract arrangement?

**Mr Woronzow:** Sorry, for our legal advice?

**Mr S.A. MILLMAN:** Yes, for legal advice from the State solicitor.

**Mr Woronzow:** Just to maybe put some clarity around that, we have had a longstanding arrangement with the SSO where a number of people provide contractual advice for Main Roads contracts and that has been in place for nearly 20 years. Where we have specialist needs similar to what PTA has talked about, the SSO would engage external legal providers from a panel that they would manage.

**Mr S.A. MILLMAN:** In terms of the infrastructure work that you do—this will be my last question—you have obviously got construction companies and engineering companies. Do they operate on a panel arrangement as well? How do you test the market each time for those? For example, you might use Leighton for some civil construction works and you might use GHD for your engineering works. How does that work?

**Mr Woronzow:** In terms of the civil construction work, there is a national prequalification scheme that is right across Australia where contractors are prequalified subject to their financial capability, their work capability and their track record for doing work at certain levels. It might be over \$20 million or it might be under a million. When we go to the market—sometimes it might be a two-stage process; an EOI and an RFP—but in terms of the civil construction work, we would ask those prequalified contractors.

**Mr S.A. MILLMAN:** So you have a short-list.

**Mr Woronzow:** Yes, which is prequalified and it is a national prequalification.

**Mr V.A. CATANIA:** Mr Burgess, do you have a criteria for what are high-value or low-value–high-risk contracts? Do you have a formula to determine which is high-risk, low-value or high-risk–high-value when it comes to projects?

**Mr Burgess:** Not a specific formula, no.

**Mr V.A. CATANIA:** In terms of a \$136 million contract or a \$200 million contract, do you consider that core business or non-core business for what a State Solicitor's Office needs to be involved in?

**Mr Burgess:** We do not define it. They have a definition of core. It is certainly not core, and they confirmed to us that it was not core, so it is clearly non-core. Then it becomes a question of who is best positioned to support it.

**Mr V.A. CATANIA:** Are you saying that the State Solicitor's Office was originally engaged back in the development of the business case back in 2014, but when it came to —

**Mr Burgess:** No, I will make that clear. We engage with them and they pointed us to a commercial law firm.

**Mr V.A. CATANIA:** But in terms of actually developing a contract, were they asked to participate in developing a contract to go out to market?

**Mr Burgess:** Not that I am aware of. Based on the advice that was given, there was a continuity list—business case, PDP contract. We had engaged a commercial law firm based on the position previously advised.

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**Mr V.A. CATANIA:** You would have a list of companies that would potentially tender for this contract, I would imagine. Would that be the case?

**Mr Burgess:** I would need to check.

**Mr Hamilton:** The legal contract or the design and construction —

**Mr V.A. CATANIA:** The list of companies that you would say are potential tenderers for the contract. You would have a list that you would say that these are the five or 10 main companies that would actually tender for this contract. Would that be the case?

**Mr Burgess:** I was not aware of any particular list. Our project staff may have had an idea of who might tender.

**Mr V.A. CATANIA:** Once the contract was put out for tender and you got a list of applicants, when did you engage with Australian authorities and what authorities did you engage with?

**Mr Burgess:** I am not sure I have those times.

**Mr Hamilton:** The expression of interest was advertised in February 2017. We then ended up with nine submissions that were then short-listed down to five. Once we closed the RFP, it would have probably been in the second half of 2017 when we started talking with various parties—DPC, the government information office at the time and, subsequently, to other federal agencies.

**Mr V.A. CATANIA:** What were those federal agencies that you spoke to? Was ASIO one?

**Mr Hamilton:** Yes.

**Mr V.A. CATANIA:** Was there a discussion over the phone or was it a meeting?

**Mr Hamilton:** There were various meetings and discussions with that through DPC and ourselves.

[11.30 am]

**Mr V.A. CATANIA:** With those meetings with the federal agencies, ASIO being one, I have a briefing note from May 2018. There are quite a few points here. I will read a couple out —

There is a long history of U.S national security concerns that equipment from Chinese manufacturers could serve as a backdoor for surveillance.

That is one dot point. Dot point two, or three on this document —

There has been various moves made by the U.S Government to intervene through policy and trading sanctions limiting the ability of Chinese telecommunication equipment providers to penetrate the U.S telecommunications market.

Another dot point —

The Australian Commonwealth Government has its own history with Huawei in particular, barring them from bidding for National Broadband Network contracts in 2012 due to perceived security risks.

And it has here —

In April 2018 the U.S found—

It is blanked out —

guilty of violating trading sanctions as it was selling equipment to Iran and North Korea.

This briefing note went to the Minister for Transport. Is that based on the discussions that you had with the Australian agencies?

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**Mr Burgess:** No, that is just capturing things that have been in the media. Virtually everything you said there is in the media, and that is really just capturing it in condensed form.

**Mr V.A. CATANIA:** When was the contract awarded to Huawei?

**Mr Burgess:** In July.

**Mr Hamilton:** In 2018.

**Mr V.A. CATANIA:** So this was in May 2018, and in July 2018 it was awarded to the company; is that correct?

**Mr Hamilton:** Yes.

**Mr V.A. CATANIA:** You said that the State Solicitor's Office were not engaged in developing the contract. Were they engaged in any way once you received the information from the Australian authorities, where you have had a briefing note to the Minister for Transport outlining potential concerns? At any point, did you engage the State Solicitor's Office based on that knowledge?

**The CHAIRMAN:** Excuse me, Vince. I just want clarification. We have not seen the briefing note and we are committee members. Can we just clarify—and you have not got the briefing note. You have not seen it. Are you saying that that briefing note is encapsulating what was in the media or it is a briefing note of what was provided by security services?

**Mr Burgess:** I do not believe anything there would have been based on information from security services, because my recollection is that everything I have just heard was in the media.

**Mr Hamilton:** That is my recollection.

**The CHAIRMAN:** We want to make that clear: that that briefing note is a summation of what is in the media.

**Mr Hamilton:** I think there is a range of issues covered in it, but the points that were raised is stuff that was in the public media.

**Mr Burgess:** Chair, can I just make the point—I made it earlier—that the issues of cybersecurity would have been issues around any supplier. The issues around cybersecurity are there for anyone who supplies this kit—the issues of backdoors and so on and so on. I mean, there has been obviously things in the media about various other companies using backdoors and so on, or allegedly using backdoors, so this is an issue for anyone.

**Mr D.C. NALDER:** Supplementary to what Vince has been asking, earlier you made the comment that SSO was engaged at the beginning of this year, but you said once it became evident in the media as to all the noise. But now we are talking about this briefing note, which made it aware that it was in the media before May 2018. So why was SSO not engaged back then?

**Mr Hamilton:** The SSO was engaged earlier this year when the media reports about the US unveiling indictments against Huawei were probably preventing them from purchasing equipment out of the US. Part of what they have to do is actually purchase equipment out of the US to supply for our project. It is not all Huawei equipment. There are a number of elements that come out of the US.

**Mr V.A. CATANIA:** Why was the decision made to seek SSO advice when you have your own in-house lawyers and you have contracted out to external law firms? Why did you find it necessary to seek SSO advice after the media reports?

**Mr Hamilton:** This was a live contract and the potential implications of the contract not being able to be fulfilled and the broader issues involving US and China relationships.

**Mr V.A. CATANIA:** Why do you say that this contract may not have been able to be fulfilled?

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**Mr Hamilton:** If there were sanctions that were placed on Huawei at the time that prevented them from obtaining US equipment, they probably could not have fulfilled their terms of the contract.

**Mr Burgess:** And so various assurances were sought from them that that equipment could be supplied.

**Mr D.C. NALDER:** So that risk was not determined before you signed the contract, despite the briefing note that suggests that there were US concerns around Huawei at that point in time?

**Mr Hamilton:** The US concerns, as we understand, were largely around telecommunications systems. What is being provided is a closed radio system for PTA, not a telecommunications system. There is a distinction between those two elements.

**Mr Sellers:** To just answer the member's question a little bit more succinctly, Mr Hamilton said that it was in response to proposed sanctions that had a direct effect on the contract at that time that we went and talked to State Solicitor's about the detail of the contract and other broader issues.

**Mr D.C. NALDER:** What I cannot work out is the current situation. I am reading off a briefing note that was provided by the PTA to the minister that talked about equipment from Chinese manufacturers could serve as a backdoor for surveillance. That is the statement that you made to the minister at that point in time. What I cannot work out is why you are going to SSO once you are worried about sanctions and the ability to fulfil the contract—you have made those claims. I cannot work out why you did not go to the State Solicitor's Office before you finalised the contract, just to make sure, just to double-check. That is what I am trying to understand.

**Mr Burgess:** If I can just jump in, I am not sure we are saying that. I have not got the briefing note.

**Mr D.C. NALDER:** I can give you a copy. I will supply you with a copy.

**Mr Burgess:** But that is based on—does it say, member, that the US reports are indicating these sorts of things?

**Mr V.A. CATANIA:** We will get a copy of this for you. This briefing note was given to the minister in May. You are saying that the contract was awarded in July. This briefing note, which has been signed by the minister, approved by the minister, approved by the managing director, also says that one of the recommendations is, "The Minister to advise Cabinet that". It has obviously been blanked out, redacted, so we cannot see exactly what was advised. Did the contract go to cabinet? Did this Huawei contract go to cabinet?

**Mr Burgess:** No.

**Mr V.A. CATANIA:** So it did not go to cabinet?

**Mr Burgess:** In my 21 years, I am not aware of any PTA contract going to cabinet.

**Mr V.A. CATANIA:** I understand that. I just want to make it quite clear that when the agency provides—I suppose you provide all the paperwork necessary to go to cabinet—am I correct?—if something has to go to cabinet.

**Mr Sellers:** It might put some clarity on it in that when Mr Hamilton was going through the process we went through, our interaction with the federal agencies, the information officer, DPC was to go through issues of the time and report on those. I suspect that that is what that memo would have been referring to. The question you are asking is more around the issues of the State Solicitor and other issues that were raised when the proposed sanctions were brought up somewhat later. But I will pass this to Mr Burgess.

**Mr V.A. CATANIA:** Just going back to this briefing note that we received through FOI, obviously, I would imagine, because it has been approved by the managing director and approved by the

Minister for Transport, that the recommendation that “The Minister to advise Cabinet that:”. Like I said, it has been redacted. Were there any discussions with the minister, after this went to cabinet, over the concerns that had been raised through the media, in your briefing note as well, over the potential awarding of the contract to Huawei? Were there any discussions after —

**Mr Burgess:** Sorry, member, I must admit I was reading the briefing note. I only half heard you; my apologies.

**Mr D.C. NALDER:** This is a different briefing note. They are just doing a copy of this one now.

**Mr V.A. CATANIA:** We will wait until you get it. Surely, were there any discussions between yourself and the minister after this briefing note was obviously presented to cabinet, because that is what it says: “The Minister to advise Cabinet that:”? Were there any discussions to say that cabinet has agreed with the PTA moving forward and awarding the contract to Huawei?

**Mr Burgess:** Again, I have not got the briefing note yet, member. I am not trying to be problematic, but I do not really know.

**The CHAIRMAN:** You are not being problematic if you have not received something that has been referred to, nor the rest of the committee. I do not think you are being problematic at all, Mr Burgess.

**Mr D.C. NALDER:** You are making a statement.

**The CHAIRMAN:** Don’t you talk about being political mate, when you don’t give us the documents. Don’t you dare again say that we have been political!

**Mr D.C. NALDER:** Here you go again! You want to go again!

[11.40 am]

**Mr Burgess:** This particular briefing note relates to something quite different. I do not want to go into the detail, because clearly it may have been part of a cabinet discussion, but it relates to other agencies potentially using our fibre optic for wider communication purposes. It is about what the demands will be of our radio system and whether we will need all of our own capability or whether other agencies might be able to piggyback on any of our fibre optics. That is what this one relates to. It is nothing to do with the Huawei contract.

**Mrs L.M. O’MALLEY:** Just to round that out, in regards to improving contract management, my question is this: as part of any future whole-of-government contract management policy framework, would it be worthwhile including a requirement that all legal advice on major contracts be procured from, or at least through, the State Solicitor’s Office?

**Mr Burgess:** Can you run that by me one more time? Sorry, member.

**Mrs L.M. O’MALLEY:** It is just a general reflection on major contracts, future contracts and certainly high-risk, high-value contracts. In your opinion, in a future whole-of-government contract management policy framework, would it be worthwhile including a requirement that all legal advice on major contracts be procured from, or at least through, the State Solicitor’s Office?

**Mr Burgess:** Mine is just an opinion on that. Obviously, I have read that comment out of the special inquiry as to whether that is a future capability this state seeks to achieve, and clearly it was one of the recommendations I think, or talked about at least, in the special inquiry. Based on my long opening address—but, I genuinely wanted to put that out there, because it gave a sense of scale of how many contracts we are involved in. If you can picture that sense of scale, if that is all done by the SSO, and if that is where the state sees the best way of going, then, great. But there would need

to be a review of resourcing, how that is done and how quickly that could be achieved, because obviously it is a fairly significant workload.

**Mr Sellers:** Just to add to that, we would need to take into consideration the other point we talked to in one of the other answers about having people involved in the procuring, oversight and implementation, and engage with those same legal people at that same time all the way through, which is where, whether it is contractual or SSO linked with Main Roads or through the model the PTA has, that same legal adviser is generally linked along the way. Just to give an illustration from Main Roads, when we have had large contracts, the commercial legal advisers from SSO who are involved have sometimes spent the best part of a week sitting with Peter or I as we work through the detailed and problematic clauses or issues or anything that arises. That is a very important part of whatever we carry forward.

**Mrs L.M. O'MALLEY:** That all important continuity, yes. My final question is going in a completely different direction. Referring to paragraph e on page 5 of the PTA submission, in regard to consideration of risk and value—I refer particularly to performance risk—is social impact a consideration? If so, how and where is that reflected?

**Mr Burgess:** During the procurement evaluation process.

**Mrs L.M. O'MALLEY:** During the procurement and, I guess, a contract in your organisation as well.

**Mr Burgess:** Certainly it depends on what you mean by social impact, but certainly environmental impact is a significant consideration. We have to, obviously, abide by and work with environmental agencies in seeking approvals and so on. You do not do that late; you do that early to try to understand whether a project can happen and what might be required in an environmental sense. In the other social sense, I guess—I am not sure what your definition of social is, but certainly industrial relations, for example —

**Mrs L.M. O'MALLEY:** I guess it is much broader than environment, so talking about impact and value, these are large works that you are undertaking. Whether that is disruption, or, as you say, whether that is an industrial sense or a user sense.

**Mr Burgess:** Industrial relations is certainly a key consideration in our procurement activity. Often we will use existing regimes, whether that is industrial relations regimes, making sure that everything is done in accordance with approved awards, agreements and so on.

**Mrs L.M. O'MALLEY:** I guess in a sense—it is probably slightly esoteric—it is talking about community benefit. It is an interest certainly of some of us on this committee, in regard to how we actually measure that—if we can put some metrics around that.

**Mr Sellers:** I understand the question, thanks member. Perhaps Main Roads has some better illustrations of how we are moving to that and how the metrics are evolving. The project to seal Cape Leveque Road could have been a campaign project that we did in a dry season and just went ahead and did it with consultation with the local people and with community and businesses up there, but it was deemed that it was a better spend for the government money to do it as a programs approach over several years, so that there is a pipeline of projects for the small communities. The benefit is that there is consultation about what the possible benefits are and then, in realising those benefits, by doing that approach, through the right accreditation, there is opportunity to get more of the local community involved, whether it is as a contractor or other suppliers, and that pipeline of work skills that group of people up to then do further projects. Consideration of that then led to one of the metrics—you can start to report on that. I do not have them at the top of my head, but Peter might be able to talk about Indigenous employment percentages that we had on those projects, which are the other broader social outcomes that are consistent with government policy.

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By spending that money on that road, we are tying in not only environmental things that are planned for, like Mark was saying, but tying it into broader government outcomes around tourism, employment of Aboriginal people, local employment and growing regional businesses—those other aspects in that one spend. Then there are the metrics of it, which I think the Treasurer reported under his Indigenous affairs hat at one stage, around Indigenous employment and engagement in that project, and in various aspects. We are trying to include that in our procurement as we go forward. Peter might just talk to a couple of those stats in terms of the metrics.

**Mr Woronzow:** The metrics are just some high-level metrics. We have been very conscious of trying to drive the government's Aboriginal employment and Aboriginal business development policy. In the last 12 months, with just the high-level metrics, we have put in place 200 jobs for Aboriginal people in our projects throughout WA. All our contracts that go to the market now have a minimum requirement of Aboriginal people and a minimum requirement of spend by Aboriginal businesses. At a high level, we have just put in place our new replacement long-term maintenance contracts. They all had a requirement of a minimum of five per cent Aboriginal people on them and a minimum Aboriginal spend. They have all exceeded those required metrics. Up in the Pilbara, something like 15 per cent of the workforce on those maintenance contracts is Aboriginal people. The actual spend from Aboriginal businesses is probably in the order of five per cent. In the goldfields and the Kimberley, it is very similar. But just going back to your original question, and Richard talked about metrics, in all our most recent business cases, and business cases going forward that we put up to the commonwealth government and the state government, we are following the ISCA tool. ISCA is the Infrastructure Sustainability Council of Australia. They have a matrix which tries to tap—in just, I suppose, simplistic terms, it is a real balanced scorecard in terms of picking up those things you are talking about—sustainability community outcomes. It is a scorecard with about 12 metrics, and in our business cases we address each of those 12 metrics. As those business cases are funded, we will gauge performance of our contracts against those 12 metrics. That is the ISCA tool. The Infrastructure Sustainability Council of Australia has probably got a membership of around 100 very large businesses and environmental authorities. Each state environmental authority on the east coast is a member. That is the framework Richard is talking about.

**Mr Sellers:** Thank you. Just to round the answer out, the procurement process Ross and Mark are entering into for railcars have very specific targets on broader government initiatives that we are at market now for, and we will be reporting back on those as they come through. If you wanted some detail on that, I am sure Mark will probably be the best one to respond to that.

**Mrs L.M. O'MALLEY:** Yes, if we could have a copy of that, that would be great.

**Mr V.A. CATANIA:** Just one last question just to round off in regards to the RSR project: with your discussions with Australian authorities such as ASIO or defence, did they raise any potential minor concerns about a Chinese operator providing that replacement of the PTA RSR project?

**Mr Burgess:** I am not aware of specific issues they raised. We are obviously engaged in what are the cybersecurity measures that we have got in the contract, which, as I say, would be there for anyone, any provider, because that is clearly something you do to protect your business. But I do not remember any specific commentary about China.

**Mr V.A. CATANIA:** So, no concerns were raised?

**Mr Burgess:** No.

**The CHAIRMAN:** Thank you for your evidence before the committee today. We went over time, so thank you for staying on. We will forward a copy of this hearing to you for correction of transcription errors. Please make these corrections and return the transcript within 10 working days of receipt. If

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the transcript is not returned within this period, it will be deemed to be correct. New material cannot be introduced via these corrections, and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on any particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence. We also have a couple of questions on notice coming out of today and we will also have some other questions we did not have time to ask. Thank you very much.

**Hearing concluded at 11.52 am**

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