PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO THE MANAGEMENT AND OVERSIGHT OF THE PERTH CHILDREN'S HOSPITAL PROJECT

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 18 OCTOBER 2017

SESSION ONE

Members

Dr A.D. Buti (Chair)
Mr D.C. Nalder (Deputy Chair)
Mr V.A. Catania
Mr S.A. Millman
Mr B. Urban

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Hearing commenced at 8.53 am

Mr JOHN DONALD HAMILTON
Ex–Principal Project Director, Perth Children's Hospital, examined:

The CHAIR: On behalf of the Public Accounts Committee, I would like to thank you for appearing today to provide evidence relating to the committee's inquiry into the management and oversight of the Perth Children's Hospital project. My name is Tony Buti. I am the committee chair and member for Armadale. With me today on my left is Hon Dean Nalder, the committee's deputy chair and member for Bateman. To his left is fellow committee member Mr Vince Catania, member for North West Central. To my right is Mr Simon Millman, member for Mount Lawley, and to his right is Mr Barry Urban, member for Darling Range. It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege. However, this privilege does not apply to anything that you might say outside of today's proceedings. Would you please introduce yourself for the record.

Mr HAMILTON: My name is John Donald Hamilton. I am a resident here in Perth. I am appearing as a private individual but primarily because of my prior employment as the principal project director for the Perth Children's Hospital.

The CHAIR: Do you have any questions about your attendance here today?

Mr HAMILTON: No.

The CHAIR: Before we commence asking you some questions, do you have a brief opening statement you would like to make?

Mr HAMILTON: I think the only thing that I would like to reinforce is that I think it is important that the focus be on getting the hospital open. We set out to, and I believe we have achieved, a desire to build what is probably one of the best children's hospitals in the world, which, compared with the antique that is Princess Margaret, where a lot of very dedicated people work very hard in very poor conditions, it is critical that the new facility be opened as soon as possible. The issues that I am aware of—I have to caveat this that I have been out of this project for some time now—can all be resolved in a way that would enable that opening to occur.

The CHAIR: Can you just elaborate on that?

Mr HAMILTON: As I say, just to put some background, I took time off earlier this year to get some new knees and, subsequently, my contract finished and I have recently been overseas on leave. Prior to that, it was my understanding that the only issue believed to be stopping the opening of the hospital was the issue of water quality and the issue of lead in the water. That issue has been resolved. There are remedial measures in place that will guarantee the quality of the water. My only hope is that that will now enable the hospital to open.

The CHAIR: When you say that it has been resolved, because there is a remedial process in place does not necessarily mean that it has been resolved, does it?

Mr HAMILTON: My understanding, and I am not a technical person, is that the continuing application of the current treatment will passivate any outstanding lead over a period of time so that that issue goes away. I also understand again from informal discussions that a replacement process for some brass fittings has been considered and may be going ahead.

Mr D.C. NALDER: You say that the water issue has been resolved. I would like to focus on that a bit. When was it resolved and on what basis has it been resolved?

Mr HAMILTON: My understanding, and I have not been involved myself, is that the treatment program has been successful. The tests that have been taken are coming up in accordance with the Australian Drinking Water Guidelines. My further understanding is that the continued treatment will passivate the brass fittings. Meanwhile, I also understand that consideration has been given and a decision may have been made to replace the brass fittings with stainless steel.

Mr B. URBAN: What is the source of your understanding?

Mr HAMILTON: Just casual conversations with people who are still engaged on the project whom I meet socially.

Mr D.C. NALDER: Can I just focus on the when. When was it ruled that this water is satisfactory—meeting Australian standards? When was that?

Mr HAMILTON: The original tests that were provided by John Holland demonstrated that the issue has arisen and it is my understanding that the Department of Health has set higher standards than the Australian Drinking Water Guidelines.

The CHAIR: Last week we had evidence in open session from John Holland, who made the statement, basically repeating what you have just said, that they believe that the potable water was at a level that meets the Australian standards. Is it your view that the potable standard has never been at a level that would have prevented the hospital opening while you were employed?

Mr HAMILTON: There were exceedances during the commissioning period. The expectation was that they were primarily about debris and construction activities and that ongoing flushing would resolve that problem. A flushing program was implemented. I cannot recall the sequence of events with respect to test results. I expect you probably have that information anyway.

Mr D.C. NALDER: By the time we took practical completion, which was April–May, John Holland was stating that it was below the standard, so is that consistent with what you are saying?

Mr HAMILTON: We registered water quality as a defect. We did not accept that we were satisfied that the problem had been fully resolved. We believe it was being resolved, remembering that one of the reasons for taking on practical completion was to enable the state to actively carry out a dosing program.

The CHAIR: This is where I am confused, and I was confused a bit last week. In one respect, you seem to be corroborating with respect to John Holland last week that the view by John Holland was that the water complied with Australian Drinking Water Guidelines. If that is the case, why does it need to be rectified? If it is meeting the requirements, what remedial action is needed?

Mr HAMILTON: I think there was a concern —

The CHAIR: By whom?

Mr HAMILTON: By the state—that the information provided by John Holland was not sufficient. It did not have the quantity and duration of testing behind it to give us absolute satisfaction that the problem had been totally resolved. John Holland had meanwhile taken a position, which said they believe they had achieved this and we are not going to take any further action. The state view was that we had to be 100 per cent sure and that one of the ways of achieving this was to progress the dosing of the phosphate going forward. John Holland was not prepared to do that. They did not believe that that was necessary. Whether or not they disagreed technically or whether or not there were commercial drivers, I have never been quite sure. The decision was made that we wanted to

be 110 per cent sure that there was not an issue and the way to do that was for the state to basically take over and carry out the ongoing treatment.

Mr D .C. NALDER: In your opening statement, you talked about how you now believe that the water is fine and therefore we could be proceeding to opening the hospital. So it was not at commissioning, and, obviously, you wanted to do more to be 110 per cent. When was it that we became 110 per cent secure that it was fit for purpose?

Mr HAMILTON: I am trying to think back now of the exact sequence.

Mr V.A. CATANIA: Have you got a month in mind?

Mr HAMILTON: No. I am also trying to think of how I arrived at that conclusion. One, it was based on the fact that it stayed there and the continued orthophosphate treatment was that we could be confident, because one of the things that was very apparent was that the orthophosphate, the continued treatment with that, did guarantee the water quality that we need. The intention was that we would continue with that.

Mr D.C. NALDER: Can I just get a sense—I am not worried about a date, but this confidence that it is okay, is it days, weeks or months ago that you became confident that the water meets the Australian standards, and therefore we could proceed to opening?

Mr HAMILTON: Months.

Mr D.C. NALDER: Months ago.

Mr S.A. MILLMAN: So you finished up on 15 August with Strategic Projects?

Mr HAMILTON: Correct.

Mr S.A. MILLMAN: And it was whilst you were still employed?

Mr HAMILTON: It was towards the tail end of my employment. Please understand, I did have quite a lot of time off this year.

The CHAIR: Mr Hamilton, you know how you mentioned that the state was not confident or was not prepared to accept the John Holland viewpoint, is there any particular agency or individual in the state that was determining this or was the main driver behind this?

Mr HAMILTON: No, I think—well, I think it was our own team.

The CHAIR: When you say your own team, what do you mean?

Mr HAMILTON: The Strategic Projects team and their advisers, with Jacobs giving it, and ChemCentre giving us advice on these issues. The issue, as you are probably very now aware, is quite technical and there is not a lot of background available on these types of things. We were, to some extent, reliant upon our advisers. There seemed to be a continued concern at that time.

Mr D.C. NALDER: I am just trying to sum up your opening statement still. My understanding of what you are telling us is that you feel the water standard is fine and fit for purpose and, therefore, the hospital can proceed to opening. You feel that it has been in that position for at least a couple of months, and that —

Mr V.A. CATANIA: Months.

Mr D.C. NALDER: It was August to September and October, so we are two months. It is at least a couple of months, and that the primary issue is around the Chief Health Officer setting a higher standard than what the Australian standards are, which is perhaps precluding us from proceeding to that point.

Mr HAMILTON: No. First of all, I have not seen test results over that recent period. It is only anecdotal in discussion that people thought of telling me that they are —

Mr D.C. NALDER: Still okay.

Mr HAMILTON: That the dosing has achieved what they set out to achieve and that it continues to do so. I have not topped that information as —

Mr B. URBAN: Mr Hamilton, I am going to go back to your statement as well. You said John Holland said that the water was fine. What are the Australian standards that they were using or you were using at the time? Was it the 0.01 per cent of lead in the water and 95 per cent of testing to be found to be okay, which is the Australian standard?

Mr HAMILTON: The standard changed in 2014 or 2015. Again, this is recollection only that John Holland—their contract basically incorporated standards that were in existence at the time of the execution of that contract that predated the revised drinking water guidelines.

Mr B. URBAN: Which has always been 0.01 and has always been 95 per cent, because the 1 400 pages of the water guidelines has always remained that: it has been 95 per cent of the tests have to be found to be under that 0.01, and John Holland, in hearings here, has said that they have never actually got to that.

Mr HAMILTON: When you say "they never actually got to that" —

Mr B. URBAN: To be 95 per cent of the testing regime to be less than 0.01.

Mr D.C. NALDER: That is our understanding.

Mr B. URBAN: That is our understanding; that is my understanding, and you are saying that the Chief Health Officer has used a different standard—that is your words—and it is a higher level, but it has actually been the same level.

Mr HAMILTON: Sorry. The Chief Health Officer has used a sampling methodology—sorry, I probably did not phrase that very well. The standard covers not only the results to be achieved, but also the methodology for testing.

Mr B. URBAN: Under the guidelines.

Mr HAMILTON: Correct, and it is our understanding that the testing requirement of the Chief Health Officer is different to that in the standard.

The CHAIR: It is different; okay. Are you saying that his standard is a more stringent standard?

Mr HAMILTON: Correct.

Mr B. URBAN: But with the testing results that came through and the Australian standards for the drinking water, my understanding of what I have been reading and what I have been informed of in this committee, is that the water still has not met, under the John Holland testing, which is done at NATA as well, and still has not conformed to the 0.01 of the 95 per cent.

Mr D.C. NALDER: Yes, but the methodology could change to get it—that is what they are saying: that the methodology is actually altering —

Mr B. URBAN: No, what he is saying is that the sampling methods, so the way of turning the tap on for a minute, turning it off for 10 seconds, and turning it back on half strength to take 75 millilitres of water away and then they have to shake the 75 millilitres up and then put it into another beaker—that is the testing regime of what John Holland was doing. That is the NATA accreditation testing regime of what has to be done for the sampling to be sent off. I understand that. The testing regime which John Holland has done, the outcome of that is the 0.01 of lead in the water, and 95 per cent

of the testing results has got to found to be under the 0.01 of lead—and that is not what we have got to.

Mr D.C. NALDER: John Holland are claiming it is. We will come back to that.

Mr B. URBAN: But under their results, they have not produced that.

Mr D.C. NALDER: In your opinion, because we have heard varying arguments as to the source of the lead, do you have a perspective on the source of the lead?

Mr HAMILTON: It is my personal view that there was some lead that came into the system from the outside, being the QE II reticulation.

Mr D.C. NALDER: The ring main and the dead leg?

Mr HAMILTON: The ring main and the dead leg. I cannot prove that, but it would seem to me that the way in which the system was originally connected, it could very easily have done so with the direct connection to the mains in Hospital Avenue.

Mr S.A. MILLMAN: It could very easily—so that is an assumption?

Mr HAMILTON: Yes, it is an assumption. I cannot prove this. We have not been able, even with testing by ChemCentre, to determine exactly the source of the lead, as you are possibly aware. I believe that while the state has basically taken the view that there is no absolute evidence to adduce that, it is a possibility. However, the one thing that is a certainty is the fact that lead is being leached out of the brass fittings. I believe that is the cause of the issue, because testing within QEII had shown that the water there is compliant, and that is the water we are drawing on. So while there is a possibility that some lead may have come in from the mains, that lead is not the cause of this problem because it would be within compliant levels. The non-compliance issue is the issue of the leaching of the brass fittings, and I believe that issue was made worse by the water treatment carried out by John Holland subcontractors.

Mr S.A. MILLMAN: When you say the water treatment, do you mean the flushing regime?

Mr HAMILTON: No; the chlorination.

Mr S.A. MILLMAN: Chlorination, right.

The CHAIR: We do need to move on shortly. We have got a lot of other things, and I have another question, but go ahead, Vince.

Mr V.A. CATANIA: Mr Hamilton, you stated that you finished up working for Strategic Projects, but you still mix in a social sense with some people who work in the environment department.

Mr HAMILTON: Yes, probably on a couple of occasions, yes.

Mr V.A. CATANIA: What is your opinion of why the Chief Health Officer has, in your words, raised the standard higher than the Australian standard for water? What is the discussion among your circles of why he has elevated it higher than the Australian standard, so the hospital cannot open? Is there any talk, in your opinion, about why that is the case?

Mr HAMILTON: I think people are very frustrated that the hospital has not opened and they do not believe this is an issue that should prevent opening. They are obviously clearly aware that the recent results have all been compliant and they are confident, I think, that that compliance can be maintained. International experience suggests that ongoing dosing with the orthophosphate will over a period of time—time seems to range from 12 to 18 months—passivate all the brass fittings to the extent that it will no longer be an issue and dosing may not need to continue. But certainly the dosing, as you are aware, is a relatively low cost, low ,impact and I think they are pretty upset, especially given the current state of PMH, that the hospital has not been allowed to open.

Mr V.A. CATANIA: Is there any talk about why the Chief Health Officer is not signing off on the opening of the hospital based on increasing the level of standard from the Australian standard to a higher standard? What is your opinion, or what is the opinion of others, as to why he is preventing the hospital from opening or giving advice that these standards should be higher than the Australian standard, thereby preventing the hospital from opening?

Mr HAMILTON: I think that almost without exception the people who have been working on the project believe that he has taken the wrong approach and that on a risk basis, especially for at-risk patients, any issue with the water is capable of being managed and that the lowest risk option is to open the hospital at the earliest possible time in order to give patients access to the facilities and equipment, which is capable of delivering a far better level of care than the current hospital. There is a universal view that the water does not pose a risk to patient health, and I do not think that in fact that has ever been suggested. I was looking, and I do not see that there has been any evidence presented that the water does provide a risk to patient health.

Mr V.A. CATANIA: When you say it is widely known that the Chief Health Officer has taken the wrong approach, what do you mean by "wrong approach"?

Mr HAMILTON: The method of measurement by going outside the standards. I think the comment has been made that if we were to apply the same method of measurement to a lot of other facilities, we would have a similar result that would then be deemed unacceptable. They believe that the method of measurement makes it very, very difficult to achieve a compliant result and that that is unnecessary and that the current system is capable of delivering the quality of water that is needed to open the hospital.

The CHAIR: We do need to move on to other issues. I have one final question on the lead. You were the principal project officer and the state rep on the project. When did you first find out about the lead issue?

Mr HAMILTON: I cannot recall an exact date.

The CHAIR: Roughly. It was 13 May 2016 when the problem with lead was first detected, so when do you roughly think you found out, and how?

Mr HAMILTON: I cannot recall when I first became aware of it.

The CHAIR: Okay. I may be wrong here, but I think Strategic Projects found out around 2 August, and the task force was around 2 August. So presumably you knew before that?

Mr HAMILTON: Yes.

The CHAIR: We are led to believe that on 13 May, John Holland advised on the issue with compliance of the ADWG with lead, and that is from the Jacob's report. So do you think you were notified around that time?

Mr HAMILTON: I would have thought about mid-May, but I could not get any closer.

The CHAIR: So why was it not until August that the task force was advised?

Mr HAMILTON: Because at that point when you are commissioning, it is not unusual to end up with problems with the commissioning of water supplies, and in the normal course of events, proper flushing will do that. I am trying to think of the timing, but some camera work done that demonstrated that there was still some debris inside the pipes. I cannot recall the date when that was done. The issue then, of course, was that while you have that, obviously you do not have an acceptable solution, and that debris was a possible—I cannot recall the sequence of those events.

The CHAIR: We do need to move on but I have to say that I find it an interesting way of thinking about this. Something is found out in May, but, "We think it's not unusual and we can rectify it et cetera, et cetera, so we don't need to tell anyone." I must say I find that an incredibly unacceptable way to operate. I would have thought that lead in a hospital system —

Mr S.A. MILLMAN: A children's hospital.

The CHAIR: — a children's hospital even more so—is not usual, from my understanding; and, even if it was usual, that you would not notify other people.

Mr V.A. CATANIA: But it is not a hospital yet.

The CHAIR: Yes, true, it is a building site. But the point is I still find it difficult that you were the state rep and that the other people involved in this project were not notified. I just find it very strange. It was August, and from our understanding the Acting State Solicitor asked a question about it and that is how it actually came to light through the task force. I just find that really unacceptable, personally

Mr S.A. MILLMAN: Do you have a comment on that?

Mr HAMILTON: There were quite a significant number of issues with this project, which you are possibly aware of, some of which were resolved relatively easily and some were not. This was one of them. Whether with the benefit of hindsight I should have given it more importance, that is a judgement call. It was not an area where we had a great deal of expertise—I will be honest about that. We had to buy that expertise in, and we had to take advice. I think there was possibly a reluctance to cry wolf until such time as we actually had a lot better information than the fact that we simply had a noncompliant result.

Mr S.A. MILLMAN: Sure. I can accept, for example, that you do not want to cry wolf; I can accept that as an operating philosophy. You see lead in the water in May, and you go, "All right, this might be because of the detritus, or it might be because of the debris, or it might be something that we do not have much experience with. So we are going to try a flushing program between May, June, July to try to see whether or not we can alleviate, ameliorate or resolve the problem." When it was finally elevated in August, why was it not elevated as a red flag—as a significant issue? The methods that had been adopted by you and the managing contractor to remediate the problem obviously had not succeeded. I will give you the benefit of the context of the material that we have seen. It is only mentioned as—I am paraphrasing here—"There's lead in the water, but leave it with us. If we do the flushing, it will resolve itself." But you had the benefit of having done that process for the previous three months.

Mr V.A. CATANIA: In saying "you", are you talking about John Holland?

Mr S.A. MILLMAN: Mr Hamilton is the state's representative. He was the one who was working most closely with John Holland. He is the one who was aware of it in May —

Mr V.A. CATANIA: But John Holland commenced the flushing from May to —

Mr S.A. MILLMAN: August.

Mr V.A. CATANIA: August. So it is not the state. I just wanted to clarify are you asking—it is the builder that —

The CHAIR: Yes, but we are talking about the notification.

Mr HAMILTON: At the end of the day, I have overarching responsibility for the delivery of the project, and I accept that responsibility. Whether with hindsight I should have made it a big red flag item—possibly.

The CHAIR: Did John Holland advise you not to make it a red flag issue?

Mr HAMILTON: No. John Holland did not advise me of anything. The relationship with John Holland was very much about a client-contractor relationship, and it was maintained. While we had an amicable and reasonable relationship, it was a very structured and formal thing in order to ensure that the state's position was not compromised.

Mr V.A. CATANIA: During that period, did the state offer any advice? You said you got some expertise coming in about this and you had to buy it in because you did not have it, which is understandable because it is not common. Did the state provide any advice to John Holland on how to rectify the situation or was there any conjecture on how John Holland was taking the approach of trying to fix the lead problem in the water? Was there any conflict between how one would resolve the issue during that time, or perhaps even after August—after it was noted that whatever was happening was not resolving the issue?

Mr HAMILTON: There was not conflict over it; certainly there was not conflict. I am just trying to again think of the timing. The fact that we eventually took over, I think, was as a result of a period where we were disappointed that John Holland had not achieved the results that we needed to achieve.

Mr V.A. CATANIA: Was that to do with the types of remediation or work that they were utilising? Was there a difference of opinion between using—I cannot remember. What did John Holland use to flush?

Mr S.A. MILLMAN: Chlorination.

Mr HAMILTON: Chlorination.

Mr V.A. CATANIA: And the government was using —

Mr HAMILTON: No, the chlorination is a separate issue. It is not to do with flushing. John Holland, through their subcontractor, carried out flushing, but we were not satisfied that the way in which they were doing the flushing was generating the pipe velocities that we needed to move the material. They were certainly putting water through the system, because we were constantly monitoring the water meters. I think we were looking to get around 297 kilolitres through as a flush, or something of the order of three times the normal usage. We were monitoring that, but we were concerned that the idea of flushing is to not just dump water but to actually generate the cleansing velocity within the inside of the pipe. We were concerned that the subcontractor was not necessarily achieving that and hence our eventual move in doing it ourselves.

Mr V.A. CATANIA: With that, did you advise John Holland on one, two or several occasions that, "You're not achieving our belief in what you should be doing", and is there correspondence to that effect?

Mr HAMILTON: I do not have access to any of the correspondence now.

Mr V.A. CATANIA: But if you can recall —

Mr HAMILTON: I do not recall whether we formally wrote notices to that effect—I would not be surprised if we had, but I cannot recall. But certainly in discussion—John Holland had a difficult relationship with their subcontractor, as they do with many of their subcontractors, and had arrived at a somewhat adversarial situation whereby they did not get the high levels of cooperation that we would normally expect. Their subcontractor took a very formal approach by notice being given, obviously in order for any future commercial claims et cetera. We did have to be quite structured in how we —

Mr S.A. MILLMAN: When you say, "The high levels of cooperation that we would normally expect", is that on other —

Mr HAMILTON: On other projects, the subcontractors and the managing contractor tend to work as a team, and that, unfortunately, was not the case with all of the subcontractors on John Holland —

The CHAIR: Why is that?

Mr HAMILTON: There appeared to be a high level of commercial tension between John Holland and their subcontractors.

Mr D.C. NALDER: Have you project-managed any other hospital builds in WA?

Mr HAMILTON: No.

Mr V.A. CATANIA: Or projects of this magnitude?

Mr HAMILTON: Yes.

Mr S.A. MILLMAN: Which projects?

The CHAIR: Yes, which projects.

Mr HAMILTON: Basically, the prisons project in New Zealand—I know it might sound odd to be equating prisons and hospitals, but both are interesting inasmuch as they are 24/7operations with a duty of care, and of course incorporate health facilities and other things. So, yes, I have undertaken previous projects of this magnitude and projects with specialist accommodation and where the operator had a duty of care.

Mr D.C. NALDER: You talked about the adversarial issue with subcontractors. Are you aware of whether John Holland had issues on other hospital projects it has undertaken in Western Australia; that is, Joondalup Health Campus, Albany Hospital, et cetera?

Mr HAMILTON: We were not aware of issues on those projects. Those projects, of course, are of a quantum smaller; they were $200 million or $300 million projects. We were not aware of issues between John Holland and subcontractors on those projects.

Mr D.C. NALDER: Okay, can we just move onto the question of the timing. There was the original plan for completion of the hospital, and then we had continual slippage. Can you talk about what caused that and what was actually occurring during those periods, because there seems to be a bit of a conflict around whose responsibility it was and what happened?

Mr HAMILTON: There were a number of changes made to the scope of the facility during the duration of the contract.

Mr V.A. CATANIA: By who?

Mr HAMILTON: By the state, and that included the introduction of the surgical short-stay unit, and a number of others that I know there is a record of, and they created what was believed to be a legitimate entitlement for John Holland for a time extension and additional costs.

Mr D.C. NALDER: Scope creep.

Mr HAMILTON: Scope creep. As I say, these were government decisions to increase the scope. Cabinet decisions were made to increase the scope, and they were taken through the process. Currently there is a commercial disagreement between John Holland and the state as to the impact of those changes, where John Holland, as you are probably aware, has lodged what I believe to be an ambit claim for several hundred million dollars for delays.

The CHAIR: In regard to any possible legal issues, this may be the place to go into closed session on that.

Mr D.C. NALDER: Just on the short stay, the state only allowed scope creep of two months for that, and John Holland claimed that was not reasonable, yet it was the state that set that new completion date, which was not then reached?

Mr HAMILTON: Correct.

Mr D.C. NALDER: Was it too unreasonable or not?

Mr HAMILTON: It was intended as an interim to enable—I do want to clarify. Trying to estimate the impact of future scope changes without having done proper research work and to a level of design ends up potentially disadvantaging one or both parties. What I did on that occasion is I gave an interim conservative indication—I think from memory it was two months and some million dollars—on the basis that that was an interim and that when John Holland had proceeded with sufficient design and proper programming, we would review that and, if necessary, amend it. That was literally some years ago, and the contract was amended to reflect that interim arrangement. They were invited and entitled to submit a detailed claim, which they had not done, based on proper programming and proper costs. I understand that there was a claim submitted. It was, from memory, for some outrageous amount of time and about $300 million, which was rejected by the state, and I understand that there is still work being done to try and assess the real impact of that additional scope.

Mr B. URBAN: One of the things that I have more or less asked everybody is: at what point did John Holland start failing to meet their construction deadlines? It seems to me that everything was all right, and then all of a sudden it fell off, and it fell off quite heavily. You normally get the indicators before. I will put that question to you first.

Mr HAMILTON: The project was initially mobilised on the basis of moving ahead with earthworks and foundation work while the design was carried on, on the basis that this would enable an earlier start to the project and also that—from memory, I think we were just trying to work through the ceilings as well. John Holland did not manage the design process well, and the delay in construction was actually driven by, I believe, two things—one, their failure to deliver the design in accordance with the program; and, two, their struggles to get subcontractors to sign up to subcontracts both on John Holland's terms and conditions, but also for sums of money that would fit within the John Holland budget, because John Holland were extremely competitive on this project—very competitive—to the point where we actually had an assessment done by the state's quantity surveyors to ensure that it could in fact be built. It was deemed that it could be built, but that there would be minimal margin in it for John Holland. There was in fact a discussion with them, and they made it clear that they acknowledged that, but that for a company that had traditionally been a civil engineering contractor this was a project that they had targeted several years beforehand and they had built up a capability and this was intended to launch them into becoming a building contractor, as opposed to a civil engineering contractor, and that they had the support and encouragement from their owners and head office to take this aggressive commercial approach on this project.

[9.40 am]

Mr S.A. MILLMAN: Their owners at that time.

Mr HAMILTON: Yes, the owners at that time. Certainly it was known that they had bid aggressively, but it was felt that, with good management, they could come out of this and achieve what they set out to achieve.

Mr B. URBAN: With all the other issues, which are quite serious, and I guess put down as minor defects and anything else—the fire doors, the asbestos, the firewalls, the water and everything else; lots of things—how did we actually get to the stage at which it is? How did we, as a state, get to

where it is now, where it is 16 or 17 months down the track and we still have not got the hospital open?

Mr HAMILTON: By not removing John Holland earlier in the contract. I am sure the task force and others have talked about this, but there was discussion to that effect, and a decision was made that we would continue with John Holland.

Mr V.A. CATANIA: When was that discussion had?

Mr HAMILTON: I cannot tell you, but there were at least two occasions when the issue was raised that we were sufficiently concerned that there was a risk in respect of their performance, and the decision was made that —

Mr V.A. CATANIA: Who made that decision?

Mr HAMILTON: Put it this way, no action was taken, so we continued as it was.

Mr V.A. CATANIA: Was it elevated to the minister?

Mr HAMILTON: I do not know.

Mr V.A. CATANIA: So was it discussion at the task force level?

Mr HAMILTON: I do not know. I do not go to task force. Richard Mann represents the project at task force, so I do not know what further discussions. I know that I raised it and Richard, I believe, raised it also.

Mr V.A. CATANIA: Who did you raise it with?

Mr HAMILTON: With Richard.

Mr V.A. CATANIA: The reports of backpackers putting fire doors in and contractors not being paid or having variations which meant that they had to wait for their money—these are the claims certain people have been making. Were you aware of how John Holland was operating or their subcontractors operating in a way that may have contributed to a lot of the issues that existed? Was it brought to your attention?

Mr HAMILTON: Yes, and the first thing is that we require—this might sound naive, but I will plod along with what I am doing—a statutory declaration from the contracted representative at each progress claim, their monthly claim, that all debts due and owing to subcontractors have been paid, and we received that statutory declaration. We, however, did not simply do that. We also on at least one occasion—I think possibly two occasions—actually audited and on those occasions, we were able to satisfy ourselves that John Holland had in fact made the payments due to their subcontractors in accordance with those subcontracts. Those subcontracts were rigorous, but they were subcontracts entered into freely by those subcontractors.

Mr V.A. CATANIA: So, yes, subcontractors. So you have got builder John Holland, your subcontractor. What about that third contractor? Was there involvement by third parties or, if not, fourth party involvement? So, yes, there is an agreement between John Holland and the subcontractor, but there is no agreement between the subcontractor and another contractor actually doing the work. Did that occur on the site?

Mr HAMILTON: Lessons learned from this project are that there are almost called the managing subcontractors appearing in the market who in turn subcontract. The contract at that time did not give us visibility of that next tier. Now, going forward—I know Richard Mann has picked up on this going forward—I think state contracts need to look at this because it is, I believe, becoming more common that the sub-subcontractors are, in fact, doing a lot of the labour hire and the actual work,

but we do not have the same ability to reach in and deal with issues there under the standard form of contract that we do with the subcontractor.

Mr V.A. CATANIA: So when the tenders came in and you said it was quite marginal for John Holland, but you could understand that transition that they were going through, that this was a big project for them and one to hang their hat on, given that often builders will need to try to make sure that they keep things tight because it is marginal, surely it was well known that that was the order of events that occur—builder, subcontractor and then you have all these other subcontractors hanging off the subcontractor. Was that known before the project commenced? Surely it was.

Mr HAMILTON: We were obviously aware of that structure, but, as I said, we also had the independent quantity surveyor satisfy us that, based on current market pricing within the thing, in fact John Holland would be able to procure the services they needed to procure for the sums of money that they had, so that we did not go into this on the basis that—whether John Holland made a $100 million margin out of that, we believe that they had in fact reduced their margin and they actually confirmed that to us, that they were operating on a low margin. But certainly the amounts available for actual construction subcontracts, we believe, were adequate.

Mr V.A. CATANIA: I just have two more questions. In terms of union access to the site and how there were issues on the union not gaining access to the site, were you aware of the frustrations that the union had or claims that they were not allowed to enter the site? Was any of that brought to your attention?

Mr HAMILTON: Yes, and when I quizzed John Holland about this, they were able to demonstrate that they were absolutely compliant to the letter of the law in allowing access. There was, as you are aware, one occasion when I did intervene, and this was around the safety issues, where I actually arranged for the—which was a little unusual, but that was actually done almost to assist John Holland, whose site management wanted to solve this problem, but whose corporate HR have another view. By the state, somewhat unusually, intervening and inviting people onto the site, we were able to solve that problem and, I think, got a good outcome for everybody.

Mr V.A. CATANIA: I just have one more question.

Mr S.A. MILLMAN: I will let you jump back in, but I just want to try to understand the distinction. You talk about a dichotomy between the site management's attitude to union access and corporate head office's attitude. What were those two different attitudes? Can you just outline that for us in a bit more detail?

Mr HAMILTON: The John Holland corporate office was very rigid in strict compliance with whatever agreements or statutory requirements were in place, and the instructions to the site manager were to ensure that that was enforced on this project—that any site visits or anything else were to be done strictly in accordance with the various agreements.

[9.50 am]

Mr S.A. MILLMAN: So it had the effect of constraining access; whereas the site management wanted to take a more flexible approach. Is that fair?

Mr HAMILTON: On one occasion, the site management felt that it would be beneficial to take a more flexible approach. Generally, the site management had to be seen and were seen to comply with the corporate requirements. It is not appropriate to have a discussion with the client suggesting that in fact you want to undermine your own corporate, but there was one occasion when I felt it would be useful for a discussion to take place, and I did get involved and John Holland supported me in that involvement. But, on the whole, John Holland's management complied with their corporate requirements.

Mr S.A. MILLMAN: And that was negotiating access for the CFMEU consequent upon the asbestos problem? Yes.

Mr V.A. CATANIA: Going back to your belief and discussions with others that the hospital was not, by now, meeting Australian standards—I am pretty sure this is open evidence—the health department say that gaining practical completion allows them to do a lot more in terms of getting the hospital ready to be opened. Given the fact that the Chief Health Officer is raising those standards above the Australian drinking water standard, which, in your belief, currently meets requirement —

Mr HAMILTON: Sorry; I need to be very careful here.

The CHAIR: Yes.

Mr HAMILTON: I do not believe that they are in respect of the standards of the Chief Health Officer; I believe where there has been concern is the testing methodology.

The CHAIR: It is the methodology.

Mr HAMILTON: It is the methodology of testing, not the standards. I do not think there is any disagreement in respect of the standards; they are what they are. The issue is whether or not the methodology being used is that envisaged by the standards.

Mr V.A. CATANIA: So the delays that are occurring now, from practical completion to this point—and who knows when the hospital is going to be opened—given the fact that the health department keeps saying that there is a lot to do to be able to get in there, it has given them the opportunity to get the hospital ready. Do you think that this is a forced delay to be able to allow the health department to get it all set up, rather than coming in and fixing bits and pieces as you would when you move into a house or a new office? Do you think there is a purpose for this delay occurring, in your opinion, by the health department or the Chief Health Officer so they can make their transition or commissioning a lot easier?

Mr HAMILTON: I do not think that is something that I would appropriately comment on. Nice try! I think any personal view I might have might remain personal.

The CHAIR: We want to ask some closed session questions. Are you all right? I have just got to ask one opening question and then we are going to move into closed session. I should forewarn you that we will be sending you a letter with a number of questions that we have not been able to get through in this session. I am sure you would probably be expecting that. This project was delivered under a management contract model. Can you describe how the management contract model differs from other procurement models used for construction projects?

Mr HAMILTON: The difference is primarily the point at which the managing contractor is engaged and the methodology of engagement, and their involvement in not only the design, but also the procurement activity. So rather than going for a client-designed, fixed-price, lump-sum contract, this model has the ability to significantly reduce the contract duration by the fact that the sequence of activities can be such that you can do what we did here, where we actually commenced earthworks prior to having completed the design of the hospital. It is a faster way of delivering the hospital and it enables an earlier start. It also is a more collaborative way of working in that the risks associated with the delivery should be minimised by the collaborative approach where the risks are allocated to the people best able to manage those risks. In a conventional hard-money contract, all the risk lies with the contractor. The contractor, in pricing the job, makes an assessment of the risk and adds whatever risk margin they believe is appropriate. That margin is, in my experience, generally assessed very conservatively by the contractor, and then they make commercial decisions about the total value of the project. This way, the intention is that a lot of that risk is removed by

the fact that you do not actually go into a hard-money contract until such time as you have the design completed, but while that design is being done, you are continuing with the works, thereby saving time.

The CHAIR: With you being involved, as you said, in other projects, maybe not to this scale, what is your view? What is your assessment? Is this the right way to go?

Mr HAMILTON: Yes.

The CHAIR: Okay.

Mr HAMILTON: First of all, some form of collaborative contracting is far better than the traditional, adversarial hard money-type contract, if you can achieve that. Secondly, the time cost is one of the elements that you can control, but you will generally, in respect of materials and labour, pay the cost for the project to deliver the quality you set out. The variant there is the efficiency of your management. The earlier you can start the project with the fixed costs and everything associated with things, generally, in my experience, the better it is. This is a reasonably good way of doing it. I am currently working on another project with defence, who are taking a very similar approach. So it is not restricted just to this; it is a relatively well-known way of doing things.

Mr S.A. MILLMAN: Mr Hamilton, just to grasp at our position, other evidence that we have had from witnesses before this committee is that the state lacked the contractual levers in order to force compliance from John Holland. We have seen the consequences in the delays in the hospital getting built. Is it the case that this innovative contractual arrangement, this managing contractor arrangement, was appropriate for a builder that had not built a project of this size and scale before? I mean, did the state lose anything as a result of using a management contracting arrangement with a builder that has been previously a civil engineering builder instead of a building and construction builder?

Mr HAMILTON: I do not believe so. I think the managing contract gives as much leverage as any other form of contract. I mean, the issue is not the form of contract but rather the point in any contract of whatever form where you have poor performance and have to make choices. The choices are, at that point: Do you dispose of the builder, no matter what the form of contract is? What will be the cost of that? What is your chance of recovering those costs? And what would it do to the delay in the project? Whether you have done that under a fixed price lump sum or anything else, I do not think that the form of contract has a great deal of impact on a situation that has arisen.

The CHAIR: Was it harder to manage a builder under the management contract model?

Mr HAMILTON: I do not believe so. The point of difference was not the form of contract or the managing contract; I think the point of difference was the extent of the state's involvement in ensuring that the design met the needs of WA for a children's hospital that it is going to have for the next 50 years.

The CHAIR: Thank you. We are running out of time, but we would like you to stay a bit longer in a closed session very briefly.

Mr HAMILTON: Yes, that is perfectly all right.

The CHAIR: The committee has resolved to conduct the rest of the hearing in closed session. Could I please ask the gentleman at the back to please leave the room and you may come back in when we have the next witness. Thank you.

[The committee took evidence in closed session]