

PUBLIC ACCOUNTS COMMITTEE

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



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 30 OCTOBER 2017**

Members

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

Hearing commenced at 10.38 am

Ms LYNETTE GENONI

Former Executive Director, Policy, Department of the Premier and Cabinet; Member of PCH Taskforce, 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 the member for Armadale. With me today is Dean Nalder to my left, who is the committee Deputy Chair and the member for Bateman, and to my right is fellow committee member Mr Simon Millman, the member for Mount Lawley. We have at the moment absences from Mr Barry Urban, member for Darling Range, and we are not quite sure whether Mr Vince Catania, member for North West Central, will be joining us. 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 you might say outside of today's proceedings. Do you have any questions about your attendance here today?

Ms GENONI: No.

The CHAIR: Would you like to make a brief opening statement before we proceed to questions?

Ms GENONI: No, go straight to questions, thank you.

The CHAIR: Can you just let us know what was your role in DPC—your title, your position?

Ms GENONI: I was executive director in the policy division, and I was acting deputy director general when the director general left and my immediate superior, David Smith, became the acting director general. So I moved into David's role, but my role on the task force continued unchanged.

The CHAIR: Could you just outline your actual role on the Perth Children's Hospital task force?

Ms GENONI: Yes. I was also on the Fiona Stanley Hospital task force. Probably other people have talked about this, but DPC's role on these sorts of committees is one of ensuring that the Premier is provided with appropriate advice. This is a cabinet-appointed task force, so it reports quarterly to cabinet. So my role is making sure that the Premier gets appropriate advice in relation to that reporting process and any issues that come up that he needs to be made aware of.

The CHAIR: Is it correct that you were a member of the task force between February 2014 and March 2017?

Ms GENONI: That is correct.

The CHAIR: When you say that your role was to ensure that the Premier was kept up to date, I assume, with the project, were you the conduit between what was happening and the Premier?

Ms GENONI: Sort of. The formal conduit is actually the director general, but the director general is not able to go to every single meeting. I get made a member in my own right, in order to provide the continuity and the depth of understanding. The way it kind of works is that I work closely with the DG, the DG provides the direct weekly meeting with the Premier or any sort of—the secretary of cabinet has access to the Premier all the time, so provides that link. I provided more a direct link with Steve Home, who was the deputy chief of staff. So I would come out of a meeting, if there was an issue—if the DG was there, that was fine—and if the DG was not there, then I would talk to the

DG as soon as I could, and also probably call Steve Home and just give him a heads-up. There were regular meetings with the Treasurer and the health minister, so that was just to alert Steve that he needed to sit in on those meetings or that there was an issue that he needed to be across, and I would provide him with any background information that he would need in order to attend those meetings.

The CHAIR: Did you directly correspond or communicate with the Premier yourself?

Ms GENONI: No. But I did provide briefing notes and things from time to time.

The CHAIR: So you would basically have correspondence or communications with the deputy chief of staff, is that what you are saying, of the Premier's office?

Ms GENONI: Yes. I mean, there were two kind of avenues. There is the formal advice process, so that is the written advice on cabinet submissions and that sort of thing. The task force reported quarterly, so in my time there would have been 12 formal cabinet submissions, so I would have provided advice to the Premier on those through the normal process. But at other times there were issues percolating up that needed cabinet advice or a cabinet briefing, and in those instances I would make sure that the Premier had his own advice on those.

The CHAIR: You mentioned briefing notes. You were making those so that the Premier would be informed; is that correct?

Ms GENONI: Yes.

The CHAIR: Are you able to provide us copies of those briefing notes?

Ms GENONI: I no longer work for government or work for the Premier, so all those documents were left. I assume the cabinet-in-confidence ones you probably would not be able to get, but other briefings will all be on file.

[10.45 am]

The CHAIR: You mentioned that the Treasurer and the health minister had regular meetings also. So the briefing notes you were preparing went to the Premier's office and the deputy chief of staff. Do you know if they also went to the Treasurer and the Minister for Health?

Ms GENONI: No.

The CHAIR: They did not, or you do not know?

Ms GENONI: No, they would not have. The nature of these briefings are just a perspective from the Department of the Premier and Cabinet, so they would have been indicating that there was an issue that agencies needed to work together on, or the Treasurer and the health minister needed to resolve an issue or that sort of thing. So it is kind of heads-up type stuff to the Premier.

The CHAIR: In regard to Perth Children's Hospital, in your view it was basically the Treasurer and the health minister who were the main players, and the Premier just was keeping an oversight of the project?

Ms GENONI: Yes. The Premier had a very close interest and was very keen to stay across the issues and be informed as things came up, but the day-to-day operations and key decisions were the Treasurer and the health minister.

The CHAIR: You mentioned you were also on the task force for Fiona Stanley. Was there any difference that you noticed between the operation of the task force for Fiona Stanley compared with the Perth Children's Hospital?

Ms GENONI: Not so much in the operation of the task force, but in the construction of the task force and the fact that you had parallel streams of work going on, there was a significant difference. As you probably are aware, for Fiona Stanley the building stream was largely completed, the clinical commissioning then came on board, and I was involved in the task force overseeing, essentially, the clinical commissioning, and there is some intersection with the building, of course, as they test parts of it and it all sort of starts to operate. But the children's hospital, of course, is a very different scenario when you have the construction occurring at the same time you are trying to do the clinical commissioning. The governance changes accordingly. From that perspective, it was very different.

Mr D.C. NALDER: With the lead issue in the water, can you recall when you first became aware of it?

Ms GENONI: Task force first became aware in early August.

Mr D.C. NALDER: I imagine that would have been sent as a briefing note at that point to the Premier?

Ms GENONI: Yes.

Mr D.C. NALDER: Okay. There has been a lot of discussion about where the lead has come from and a lot of activity since, and this committee has heard that there was lead from outside, we have heard it is from the brass fittings. From your perspective and what you witnessed in the time that you were there, what understanding did you have as to the source of the lead?

Ms GENONI: That was not resolved by the time I left the committee. We were waiting on a final report from the health regulator, who was trying to bring together all the different parts. Early on there was a fairly clear understanding from Strategic Projects that it was just one issue amongst many. The testing seemed to indicate one exceedance amongst a whole lot of non-exceedances, so they did further testing. By the time it came to task force, we were aware that this was emerging as a risk. This was becoming an issue. But, of course, in hindsight, we had no idea that it was going to be as serious an issue as we thought. At that stage, we thought all the advice seemed to be that flushing would solve the problem, that we would not have an ongoing problem. But then as time went on, many different causes were mooted and discussed, and I think the task force at one stage had to put all the possible causes on the table and try and kind of narrow down to what all the information was telling us about what the actual causes were. I think we got it down to about three.

Mr D.C. NALDER: Obviously, there was disquiet or concern around the builder that was starting to come through, from what we have been able to ascertain at this point. Did you have any perspectives about them making it difficult to supply information with regard to what was occurring in the hospital at the time?

Ms GENONI: I think the task force was losing all confidence in the builder. As you know, they gave us dates that we—the whole commissioning project was based on dates that we could work on, and time after time after time, they missed deadlines, they did not produce the milestones that they should have and, as a consequence, the clinical commissioning had to be recalibrated. So, it was a very frustrating process.

Mr D.C. NALDER: Were those deadlines, in your understanding, deadlines that John Holland set or deadlines that the government set John Holland?

Ms GENONI: I understood they were milestones that John Holland had agreed to and said they would meet, but I am not sure who set them.

Mr D.C. NALDER: In your time there, was there ever any discussion around practical completion and taking practical completion of the hospital in advance of getting these matters resolved?

Ms GENONI: That was beginning to be discussed by the time I left and it sort of came to a head over the water issue. But I understand that became much more so after I left. By the time I left, they were looking at the advantages and disadvantages. I mean, all the way through the process, task force would look at the legal avenues, look at all the things that we had under the contract that we could—all the levers that we could possibly use to try and get the builder to be more responsive and to actually get on and finish the job. But practical completion was a frustration because it kept getting pushed out and pushed out and pushed out. There had started to be discussion about at what state should the state take over practical completion, but I think in my time it was probably early discussions, and really it was about taking control of the site versus sort of the risks and the disadvantages of having the builder not meet their obligations, but they were so tardy about meeting their obligations anyway.

Mr D.C. NALDER: Some of the advice that has been given to this committee is around what was outstanding and the need to take over from practical completion, and I acknowledge that some of that occurred after your time and the decisions after your time, but there is a number of other issues that are outstanding on the hospital; it was not just the lead in the water.

Ms GENONI: Absolutely.

Mr D.C. NALDER: We are hearing now that there is something like 23, of which one and a half, or nearly two, have been completed. Of those other issues, were they, from your understanding, major issues that would prevent the hospital from opening or are they issues that can be fixed through the commission process?

Ms GENONI: That was the nature of the discussion. I do not think we reached a conclusion in my time. But that was what we were starting to talk about. So, what would be the impact of opening without whatever it was? Was there a clinical risk? Was there a risk to the state contractually? Was there a financial risk?

Mr D.C. NALDER: And were there any findings on that—any advice on that provided to the task force at that point?

Ms GENONI: Yes. I think the State Solicitor provided ongoing advice. Of course, it is shifting—at any moment in time, what is outstanding and what the impacts are is shifting. It is different.

Mr D.C. NALDER: Just one more on that: do you feel that the task force applied the right amount of rigour or took the lead in the water seriously enough at the outset, when it became informed in August?

Ms GENONI: It was emerging as a serious issue. I think we started to take it seriously, and pretty quickly it became a serious issue, but I do not think the task force could have acted earlier or —

Mr D.C. NALDER: With the task force being notified in early August, at what point, from your understanding, was advice provided either to the Premier or to the health minister or the Treasurer that this was a serious issue?

Ms GENONI: I cannot actually remember, but I would imagine that is the sort of issue that would have been raised in the weekly meeting which happens just after the task force meeting.

Mr D.C. NALDER: But initially the task force thought that flushing would sort it out.

Ms GENONI: But, nevertheless, any major issue that gets escalated to task force—so, I mean, I —

Mr D.C. NALDER: Do you believe you would have advised the Premier straightaway on your —

Ms GENONI: Well, I seem to recall providing some advice saying this was an emerging issue; it looked like it was going to be resolved; this is what was proposed, but, you know, kind of the jury is out. Testing is still going on.

Mr D.C. NALDER: At what point would the language have changed, if you have a rough idea, from, “We think this will be sorted out” to, “We don’t really know”?

Ms GENONI: I am not sure of the dates, but I think at the meeting in August we were waiting on a reasonable run of test results, and I think probably September we would have started to see those, and I think then the kind of initial thought that this was just a single exceedence, it started to show that it was much more serious than that, and I think that is when all minds would have been concentrated on, “We’ve got a problem here.”

The CHAIR: How did the task force initially find out about the water issue?

Ms GENONI: My recollection is that it was raised at that task force meeting.

The CHAIR: By who?

Ms GENONI: Probably by State Sols. I think it came up at the state control meeting earlier in the week or, you know, the one that precedes the task force, so it would have got raised at task force.

The CHAIR: Just before I hand over to Mr Millman, you mentioned that you would have provided advice to the Premier in regard to the water issue, and then by probably around September it had been elevated. Were you providing him with information in regards to what you saw as the various sources, what you were being told—whether anyone actually knew at that time—was the source of the lead problem?

Ms GENONI: Probably only in passing. I think that would have been more relevant coming from the technical experts, so Health were all over it. Treasury were all over it from a Strategic Projects point of view. So, my role would have been just to alert the Premier that there was an issue, that it had the potential to become serious and that we needed to get on top of it. I would not have provided any sort of technical —

[11.00 am]

The CHAIR: You would not have provided that, even though there had been various arguments or various statements made that it came from outside the hospital or that it was a dead leg issue et cetera?

Ms GENONI: Not at that stage. That was all later.

The CHAIR: When would that have been? When would you have notified the Premier on that, do you think?

Ms GENONI: I could not tell you exactly when—sometime post-September.

The CHAIR: So September 2016?

Ms GENONI: Yes.

The CHAIR: But before December 2016?

Ms GENONI: Probably. I cannot remember the sequence of events, but I think it had become serious by then.

The CHAIR: Your view is that you were communicating with the Treasurer or the health minister and they would have been provided with more detail on the possible sources.

Ms GENONI: Yes. At that stage, they would have been having special meetings and they would have had the Strategic Projects and the Health people. I cannot actually recall, but there would have been

something to cabinet as well—either an informal cabinet briefing. Cabinet would have been informed, because by then it would have been in the press and it was becoming a significant issue.

The CHAIR: You mentioned the lack of confidence or the diminishing confidence in the builder or the main contractor and they were not meeting the deadlines. I think the question that Mr Nalder asked was that these were deadlines that I think were initially set by government that were agreed to by John Holland. When did you start becoming concerned about the deadlines not being met? When was there the switch that “we are losing confidence in John Holland”, and what advice were you providing the Premier with regard to those deadlines?

Ms GENONI: That is a much earlier issue. I cannot exactly remember. I do not know that we were ever, as a task force, particularly confident about John Holland and their ability to meet deadlines. The deadlines were successively negotiated and successively not met. Strategic Projects would spend a lot of time making sure they had all the contractors on-site and monitoring to make sure that they were putting in the right amount of effort. There was a period when they really went off. That was the period when takeover negotiations were occurring and their focus was absolutely elsewhere.

Mr S.A. MILLMAN: Just to clarify, in terms of takeover negotiations, you are talking about the takeover of the John Holland part of the business by the Chinese construction company.

Ms GENONI: Yes. During that period, there was a significant loss of focus on the part of the company. They were very unresponsive.

The CHAIR: Were you relaying that to the Premier?

Ms GENONI: Absolutely. He was very much aware. I think they even tried—certainly, once the changeover had occurred, there were meetings with the new principals. They had brought people over and had high-level meetings between the Premier and the health minister and the Treasurer.

Mr S.A. MILLMAN: Did those meetings have the effect of improving or diminishing the performance of John Holland or was there no change?

Ms GENONI: We went through periods of initial responsiveness. They would meet with the principals and there would be a flurry and there would be a commitment and we would think, “Right; we’re on track” and things would go okay for a short period of time and then they would all—time lines would slip, you would renegotiate and then you would finally have to go higher and try to get to the principals again. I cannot remember how many times we went through that “Yes, it is picking up. Yes, they seem to be responsive. Yes, we are back on track. No, we are not.”

The CHAIR: Were the doubts you had or lack of confidence you had—the task force—in John Holland also mirrored in communications from Strategic Projects to the task force?

Ms GENONI: Yes, and there were lots of discussions in task force about—at that stage, there were many, many sanctions that were placed on John Holland for not meeting deadlines. We tried. The task force discussed at various times—there was even discussion about whether or not to pull out of the contract, that sort of discussion. But I think you will see in the minutes, when you look at the pros and cons, it was considered that it would not help getting a hospital open; if you had to have a new contractor and bring them up to speed, you would lose even more time. It was considered better to work with the contractor that we had.

Mr D.C. NALDER: With the task force meetings, was there ever any concern discussed or raised around the project management by Strategic Projects itself on the children’s hospital?

Ms GENONI: There were robust discussions within task force between Strategic Projects and the clinical commissioning and a level of frustration expressed. But in the end, I think it was always

constructive. I think it was understood that the problems were not so much with Strategic Projects and their management, but what they were working with and the poor information that they were —

Mr D.C. NALDER: So there were never discussions around how they were managing the contract with John Holland and whether or not they were dealing with it appropriately?

Ms GENONI: There was questioning to try to ascertain whether that was the case, but, no, I do not think there was any conclusion reached that that was the problem.

Mr S.A. MILLMAN: Ms Genoni, I am just going to come back to a couple of questions that Mr Nalder and the chair have asked. I think I understand your answer but just for the purposes of clarification, on the issue of practical completion, was the tenor of the briefings that you were providing to the Premier as practical completion was being discussed changing over time? Was practical completion becoming something that was becoming more and more likely in the view of the task force?

Ms GENONI: Yes, it was, but you will remember we had to negotiate that whole period of state access, the workaround to try to get commissioning happening whilst the building was still—so it was providing —

Mr S.A. MILLMAN: What I am trying to get at is that, in respect of practical completion insofar as the task force was concerned, it was an ongoing discussion which was moving further and further towards taking practical completion.

Ms GENONI: Yes. The IPMO were doing weekly graphs and things about the number of defects and working on getting those down and the areas that could be ticked off as having met completion and there was a list of practical completion requirements that were having to be worked off.

Mr S.A. MILLMAN: In terms of the lead, I think I understand the tenor of your first briefing note to the Premier was that the issue of lead was emerging as a risk but that all of the advice that was initially provided to task force was that the flushing would solve the problem. Again, the tenor of your first briefing to the Premier would have been that it was emerging as a risk but that potential solutions had been put in place by the builder.

Ms GENONI: Yes. It was being mitigated.

Mr S.A. MILLMAN: Then, over time, your briefings to the Premier changed as a result of the failure of those mitigating factors to ameliorate the problem?

Ms GENONI: More the fact that more potential causes and sources started to be discussed and so, obviously, if that is the case, those mitigations are not necessarily going to solve the problem. Really, the issue is becoming more complicated than first thought; much more needs to be done to get to the bottom of what the problem is before you can work out what the potential solutions are.

Mr S.A. MILLMAN: In terms of briefing notes provided to the Premier more generally, we have had the lead issue, practical completion and the problems with the sale by Leighton Holdings of the John Holland business to the Chinese construction company. Any other particular recurrent issues that were briefed to the Premier?

Ms GENONI: Over time, there were a number. There was a period when ICT was an issue. There was a period when asbestos, of course, was the issue. Water was just the latest. There were times when there were areas that we took away from the builder for the state to take responsibility for. Over time, there were whatever the issues of the day were.

Mr S.A. MILLMAN: I want to come back to one of the answers that you provided earlier. You said something along the lines that task force was losing all confidence in the builder. In light of that, some of the evidence that we have had before the committee is that public servants are generally

happy with the way in which the task force arrangement operates, and a lot of emphasis has been put on the builder and how disappointing the performance of the builder was. Was there anything else the task force could have done in terms of—I think the words you used were “contractual levers”—the contractual levers that were available to it to encourage greater cooperation from the builder? Did task force have sufficient contractual levers to ensure compliance from the builder?

Ms GENONI: No.

Mr S.A. MILLMAN: Could I have your comments also in respect of the other evidence that has been provided about the way in which the task force operates and the evidence of the public servants that it seems to be operating quite well? Can I have your answer taking into account your experience? You said you were on the Fiona Stanley Hospital. Can I have your answer taking into account your experience at the Fiona Stanley Hospital project as well?

Ms GENONI: About how the task force —

Mr S.A. MILLMAN: About how the task force operated, particularly vis-a-vis the builder at Fiona Stanley and then at PCH.

Ms GENONI: We did not have much to do with the builder at Fiona Stanley. Task force was essentially overseeing a commissioning program, so construction was just one strand of many strands of the commissioning process. At Perth Children’s Hospital, there were kind of two major parallel programs.

Mr S.A. MILLMAN: There is a construction program and a commissioning program; is that right?

Ms GENONI: Yes, that is right.

Mr S.A. MILLMAN: Was that markedly different from Fiona Stanley?

Ms GENONI: Yes, because you are trying to work two things in parallel.

The CHAIR: We were always under the impression—I was—that the governance structure being used for Fiona Stanley was very similar to what was being used at Perth Children’s Hospital.

Ms GENONI: The governance structure was, but you have got essentially an underlying timing issue that is dramatically different. On one, you have got one program that is, by and large, complete and your focus is primarily on the commissioning program, albeit it was probably started too late and really should have started earlier and it was compressed, so that was the drama there. On this one you have a parallel process. Not only that, one process is consistently slipping behind and impacting all the time on that. You have to rework and redo things and recalibrate because this one is not doing what it needs to do.

[11.15 am]

The CHAIR: I understand that. In Fiona Stanley, though, the dual governance structure—I may be completely wrong here—did not really kick in until the commissioning stage. Under the construction phase, the task force was not that involved.

Ms GENONI: I am not sure what there was. There would have been a steering committee of some kind to oversee the infrastructure project. It would have flipped into the one that I was involved in once the commissioning began. One of the learnings from Fiona Stanley was to start the commissioning sooner but what we did not appreciate or predict was that even though you are starting—the construction was not a smooth process. Although you started the commissioning earlier, it was frustrating because —

Mr S.A. MILLMAN: The learning that you are talking about is based on an assumption that the construction is going to be equivalent to the construction of Fiona Stanley.

Ms GENONI: A smooth process, yes.

Mr S.A. MILLMAN: In hindsight, you might say—I will leave it for you to put your evidence—that a dual governance structure of commissioning and construction going on at the same time may work if the construction is going smoothly. But a dual process of construction and commissioning at the same time is going to have myriad problems if there are problems with the construction because the foundation on which you are hoping to build commissioning is facing all sorts of problems.

Ms GENONI: I think probably the construction needed to be further advanced than it was. But also, it needed to be less problematic than it was.

The CHAIR: With regards to the problem with construction at Perth Children's Hospital, was there any governance model that could have overcome that?

Ms GENONI: It is something that the task force—we thought about this regularly—can we be doing this any differently? But we did not come up with any —

The CHAIR: Any solution.

Ms GENONI: Even in retrospect now. I think you have to have both sides at the table. You have to have a governance arrangement that tries to integrate. I do not know how else —

Mr S.A. MILLMAN: What about greater contractual levers retained for the state to require compliance from the builder? What if the contractor —

Ms GENONI: It is a bit of crystal ball gazing, is it not? That contract was developed many years earlier. We probably, as a government, understood less about—I think we have probably learnt a lot more about writing contracts than we did then. Also, the timing meant that the levers that were there kind of ran out.

Mr S.A. MILLMAN: Obviously, one of the motivations behind this committee's inquiry is to see what we can do to improve the way government does these things into the future. Over time, I think I am coming towards a view myself. I would like your view, if I may, on whether there were sufficient contractual levers contained in the contract and whether, if we were doing this process again, perhaps using a builder that had never had any experience building a \$1.5 billion hospital, whether or not we might incorporate greater contractual controls for the benefit of the state in those contracts. It is a hypothetical question; it is designed to take advantage of your experience to inform how the government makes decisions into the future.

Ms GENONI: I probably do not know enough about contracting and writing contracts. The builder at the end of the project was not the same builder that we started with either. The builder that was awarded the contract was looking quite different by the time the project was finished.

Mr D.C. NALDER: Because of the ownership?

Ms GENONI: Yes.

Mr D.C. NALDER: Perhaps there should have been clauses around that, in hindsight—around changes of ownership requiring something. Is that what you are suggesting?

Ms GENONI: I do not know enough about contract law to know whether you can design that kind of flexibility in. It is all a bit crystal ball reading.

The CHAIR: I think we are briefly going to go into closed session, but before we do you mentioned that there was a lot of discussion about the governance structure being different. Do you believe, though, that the way the task force was structured and the dual governance was structured, it would appear that you did not have the capacity to deal with the problems that you were being confronted

with in the construction by John Holland. I am coming to the conclusion that basically you felt helpless.

Ms GENONI: I am not sure that is a governance solution. I do not think it matters what kind of governance you have to solve that problem.

The CHAIR: Basically, rather than saying that the governance structure was wrong, but the governance structure that you did have—maybe there was no governance structure; maybe it was the contract levers that might have been the magic pudding here, if we had better contract levers. Did you feel helpless or hopeless in trying to overcome these constant problems that you were being confronted with in the construction phase?

Ms GENONI: I think more frustrated that the information that we were given from the construction side from the managing contractor was way too detailed, very difficult to interrogate and incredibly unreliable. We did not seem to be able to do anything about that, despite every effort to do so.

The CHAIR: Was that related to the Premier in your briefing notes?

Ms GENONI: It was a theme in every cabinet report.

The CHAIR: The committee has resolved to conduct the rest of the hearing in closed session. Could I please ask the gentleman in the public gallery to leave the room. We will not be having any more hearings, so you do not need to come back. Thank you for your cooperation.

[The committee took evidence in closed session]
