

# **PUBLIC ACCOUNTS COMMITTEE**

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



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
MONDAY, 18 SEPTEMBER 2017**

**SESSION FOUR**

### **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 1.08 pm****Mr NICHOLAS EGAN****Acting State Solicitor, State Solicitor's Office, 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. To my left is committee member Mr Vince Catania, member for North West Central. To my right is Mr Simon Millman, member for Mount Lawley; and Mr Barry Urban, member for Darling Range. Unfortunately, the deputy chair, Mr Dean Nalder, who is also the member for Bateman, is unable to attend this afternoon. 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 today's proceedings.

Do you have any questions about your attendance here today?

**Mr EGAN:** No, sir, I do not.

**The CHAIR:** Before I ask you if you would like to make a brief opening statement, in regards to your submission to the inquiry, which we thank you for providing us, we do intend placing it up online for public viewing. Do you have any concerns about that?

**Mr EGAN:** None at all.

**The CHAIR:** Thank you very much. Before we ask you some questions, do you have an opening statement you would like to make?

**Mr EGAN:** Yes, I do.

**The CHAIR:** Thank you.

**Mr EGAN:** I was appointed by cabinet of the former government as a member of the Perth Children's Hospital task force at the inception of the task force in 2013. I was appointed for two principal reasons, and therefore had two principal roles. The first was because of my experience in governance roles on other major social and economic infrastructure projects, and therefore to be part of a multidisciplinary team providing oversight to the project. Secondly, because of my role in the State Solicitor's Office, providing legal support during the life of the project, and specifically providing advice on this project and managing the provision of advice by others. Given this latter function, whether that advice be provided in writing or orally during the course of task force meetings or otherwise, that advice is privileged—examples of which would include matters that deal with the state's contractual obligations vis-a-vis John Holland. Any decision to waive privilege rests with the Attorney General as first law officer, notwithstanding that the advice was provided to task force, the Department of Health or Strategic Projects and Asset Sales. Therefore, to the extent that I am asked any questions by the committee that touch upon matters to which legal professional privilege ordinarily attaches, I may need to request that any answer be reserved for a closed session; alternatively, that I take the matter on notice and discuss it with the Attorney General. In the event that I do need to seek instructions from the Attorney, once those instructions are received, I propose to write to the committee about the matter and, subject to the views of the committee, either seek for a further audience; alternatively, to provide answers in writing. Obviously, there are many

matters about which I can be questioned where privilege does not attach, and obviously in those cases I will endeavour to provide answers as fulsomely as possible.

**The CHAIR:** Thank you. As you stated, you have been involved on the task force since its inception for this Perth Children's Hospital project.

**Mr EGAN:** Yes.

**The CHAIR:** In your submission you mention that the task force provides advice and support on emerging risks for the project delivery.

**Mr EGAN:** Yes.

**The CHAIR:** And that the task force reports directly to the relevant minister, being the Minister for Health, and cabinet.

**Mr EGAN:** Yes.

**The CHAIR:** You basically said that it serves as a monitoring and oversight body, and in regards to the PCG, you said it has a similar role but at a more intermediary level, so it looks at more the risks as they first apply, or at first instance —

**Mr EGAN:** Correct.

**The CHAIR:** — and then considers whether it should be moved up the chain. In regards to the PCG, do they have functions in regards to the commissioning and also the construction stage of the hospital?

**Mr EGAN:** The PCG as a body comprises a multidisciplinary team of both construction and commissioning matters. They do have oversight of matters relating to construction of the hospital. John Hamilton was a member of the project control group and reported to that group on construction matters. It was ultimately, however, a matter for the state representative, John Hamilton, in terms of how the contract was administered. That was not a role that was ultimately performed by PCG, but instead, as I say, by John Hamilton in conjunction with Strategic Projects and Asset Sales executive director, Richard Mann.

**The CHAIR:** I think in your submission you mentioned that the task force identifies all risks that are high or extreme.

**Mr EGAN:** Yes and no. The task force maintained a risk register that sought to identify all risks. Of those risks, there were varying gradations of severity. Ones which were extreme were discussed at task force on a regular basis, but task force got to see the risk register. Task force would not only comment upon matters within the risk register which it thought should be elevated to a higher level—that occurred quite frequently; alternatively, or in conjunction with that, taskforce members could seek to raise other issues which were not on the risk register and have them incorporated within the risk register and identified at whatever category was appropriate.

**The CHAIR:** So the PCG dealt with the risk at first instance, and then they and/or you—the task force—determined whether you would look at it. Is that right?

**Mr EGAN:** Yes. PCG would seek to identify certain levels of risk, and matters would be elevated to task force for consideration at high or extreme, for instance. To the extent that there were other matters on the list that task force members considered were high or extreme but had not been noted as such, then they likewise got discussed and, if appropriate, elevated to a higher level.

**The CHAIR:** So in regard to the lead issue in the water, first detected in May 2016, we are led to believe that the task force was notified on 2 August.

**Mr EGAN:** Yes.

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**The CHAIR:** Why was there this nearly three-month period before the task force were notified?

**Mr EGAN:** That would be a matter you would have to put to Richard Mann. What I can tell you is that I learned of the matter, I think, in the week or two immediately before it was first raised at task force, and it was raised by me because I felt that it was a matter that should be raised at task force if there was lead in the water.

**The CHAIR:** Are you able to tell us in open session how you became aware of this issue?

**Mr EGAN:** As I recall, it was a matter that had been either discussed at PCG level; alternatively, it had been discussed as between the Strategic Projects and asset team and one of my solicitors within the State Solicitor's Office, and he identified it to me. I cannot recall which of the two it was.

**The CHAIR:** Okay. Then you brought it to the attention of the task force.

**Mr EGAN:** Correct.

**The CHAIR:** Do you consider that that was not actually the ideal way that things should have been communicated to you?

**Mr EGAN:** Yes, I would concede that it probably should have been elevated to task force much sooner than what it was.

**The CHAIR:** In regards to the specific tasks that you performed on the task force, can you just expand on that, and also what level of involvement did you have at the various task force meetings?

**Mr EGAN:** As I discussed in my opening statement, I assume I was appointed to task force for two principal reasons. Firstly, because of the extent and nature of the experience that I have on major social and economic infrastructure projects for the state, both providing advice in relation to those projects and sitting on task force, or their equivalent, steering committees. I have indicated within the submission what those steering committees and task forces might be. Secondly, by dint of the fact that on a very regular basis there are matters which arise that require legal input, I was in a position to comment upon those or provide advice or assistance in relation to those matters on a regular basis, either myself or, alternatively, managed others providing that, whether it be someone else within the State Solicitor's Office. In terms of my involvement, I would not constrain my involvement to matters that required legal advice; rather, as with any other task force member, I would receive all papers, and to the extent that there were issues which I considered that needed interrogation or discussion or the like, then I would seek to raise those, and one such example, as we have discussed, is the identification of the lead in water issue in August 2016.

**The CHAIR:** In regards to the governance of the project—you have ostensibly covered it in your written submissions, so thank you—the fact that there was a kind of dual governance structure with the task force and Strategic Projects, can you just for the record tell us why you think that was a good structure or good governance structure? There have been expressions that actually it was a bit of a problem having a dual governance structure. What is your response to that?

**Mr EGAN:** The structure of a multidisciplinary task force of the nature that was formed in 2013 is fairly standard for a complex project such as Perth Children's Hospital. It is a model which is recognised in the literature as being an appropriate model for projects which are necessarily complex. In Western Australia it is a model that has been tried and tested with success on various other projects, whether or not the ultimate governance body is called a task force or a steering committee. At the moment there are a number of steering committees in place for other major social and economic infrastructure projects. In terms of the functionality of the task force for PCH, tensions developed within and amongst task force primarily in the later stages of its existence because of the dual reporting role as between Department of Health—that is, David Russell-Weisz

to the Minister for Health, who was responsible as chair of the task force for oversight and delivery of the commissioning aspect of the hospital, on the one hand—and, on the other hand, I guess Richard Mann, who was not a member of task force but nevertheless was a regular attendee at task force meetings because of the fact that the construction contract was with the minister for works, who had delegated authority to the Under Treasurer pursuant to certain provisions and delegations within the act. As a consequence of that, Richard Mann was providing management and oversight responsibility for the contract and reporting up through the Under Treasurer to the Treasurer. So there were these two separate and distinct reporting roles—one to the Minister for Health, and the other to the Treasurer. There were some concerns in the latter stages of task force formation that that was creating some problems.

**The CHAIR:** When you say “later stages”, can you actually put a calendar period on that?

**Mr EGAN:** In the lead-up to the grant of practical completion and immediately thereafter. All governance bodies need to be revisited from time to time as to whether or not they are fit for purpose, and that is a matter which I have raised in the paper. It was ultimately determined by task force members that the matrix style of task force, which had the dual governance responsibility and a multidisciplinary team, was no longer fit for purpose given that practical completion had been granted and there was a greater focus on commissioning activity.

**The CHAIR:** So the task force communicates or is answerable to the Minister for Health; is that correct?

**Mr EGAN:** Correct.

**The CHAIR:** But as the State Solicitor, or the Acting State Solicitor or the representative of the SSO —

**Mr EGAN:** Yes.

**The CHAIR:** — who was your client—who is your client?

**Mr EGAN:** In terms of legal advice which is provided by the State Solicitor’s Office to any particular entity within and across government, the view of the State Solicitor’s Office is that there is one client because the state is one emanation, notwithstanding that it comes in different forms. So we have one client, which is the state.

**The CHAIR:** Yes.

**Mr EGAN:** In terms of to whom we provide that advice, we provide it to various individuals, agencies and instrumentalities, and that would be, for instance, to task force as a whole, the Department of Health should David Russell-Weisz request it; alternatively, to Richard Mann, should he request it in relation to matters to do with the construction contract.

**The CHAIR:** Obviously, individuals and different organisations within the government structure will have their own interests. How do you govern the conflicts that may arise in that while you are saying that the state is your client—that is understandable—you are receiving instructions from a particular individual? Now, the advice that you give that individual—how do you give that advice? Is it advice that you give on behalf of the state, or do you give that advice on behalf of that individual and obviously conflicts can arise?

**Mr EGAN:** It is given on behalf of the state. We are not a private sector firm in the sense that we represent a particular client against another client. A good example of that might be if a private sector organisation were retained by the Department of Health, they would be providing advice for the sole benefit, as they see it, for the Department of Health, and that might be contrary to the interests of Strategic Projects, taking into account the fact that Strategic Projects are responsible for

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contract management. That is not a view or approach that we take. We have one client—that is the state. We provide the same advice to Health or Strategic Projects in relation to the same question.

**The CHAIR:** If the state is the client, you receive instructions from the state and you act on instructions from the state. For instance, Richard Mann seeks your advice.

**Mr EGAN:** Yes.

**The CHAIR:** Do you then provide him advice on his instructions or do you have to have that cleared by someone else in the state organisation?

**Mr EGAN:** On his instructions.

**The CHAIR:** Is that not potentially a problem? I am just using Richard Mann as a hypothetical person here just because it is a name. He may want to protect his own interests that may be different from the interests of the state. If you are then providing him advice on his instructions, it may not be the instructions that the state would like you to advise him of.

**Mr EGAN:** Well, that presupposes a position by which I would be prepared to provide that advice in those circumstances, and I would not. I would not provide advice to any agency or instrumentality or individual within government that sought to advance their position over and above another agency's position or a state position.

**Mr S.A. MILLMAN:** Were the challenges that were faced by the task force in its later days that you described earlier in your evidence such as to prevent you from providing advice because it was evident to you that there was a conflict within the operations of the task force, or you would not elevate the conflict within the task force to that level such as to prevent you from providing advice?

**Mr EGAN:** It did not prevent me from providing advice at all in relation to —

**Mr S.A. MILLMAN:** So to the extent, if any, that there were conflicts amongst the task force, you would say that they were minor and did not prevent you from providing advice?

**Mr EGAN:** I would say that they did not prevent me from providing advice. To the extent that there were conflicts in terms of the governance approach, then that is a matter that would need to be resolved either by those individuals or in conjunction with their ministers. It is not uncommon for the State Solicitor's Office to provide advice on any matter that will identify issues that need to be resolved at minister level because of conflicts of position.

**Mr S.A. MILLMAN:** I understand now, I think. So the nature of the advice proceeded is: "This is something we cannot provide advice about. This is something that should be resolved at the ministerial level."

**Mr EGAN:** If it is a policy matter. If it is not a legal question, clearly that needs to be resolved at ministerial level, if it cannot be resolved at director general or agency level.

**The CHAIR:** From your submission, the task force did not exercise control over contractual matters.

**Mr EGAN:** I beg your pardon—over the?

**The CHAIR:** Contractual matters—the task force itself.

**Mr EGAN:** No.

**The CHAIR:** But, of course, you as the State Solicitor —

**Mr EGAN:** Provided advice on matters.

**The CHAIR:** In regard to the actual contract that governs this project, were you responsible for or involved in the drafting of the contract?

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**Mr EGAN:** Yes.

**The CHAIR:** So any questions that come up in regard to the contract, you are the first port of call as far as providing legal advice to the state?

**Mr EGAN:** Yes.

**The CHAIR:** In that contract, are there issues in regard to performance indicators that are built into the contract in regard to John Holland?

**Mr EGAN:** When you say “performance indicators”, do you mean key performance indicators or something of that nature?

**The CHAIR:** Yes.

**Mr EGAN:** No, because it is not a service contract. It is not like a contract, for instance, where Serco are delivering facilities management services for the operation of Fiona Stanley Hospital. Because it is a service contract, they will have KPIs that they need to meet or establish for performance. They will be abated or managed vis-a-vis those performance issues. As a design and construction contract, the builder—in this case John Holland—would need to meet certain milestones in order for them to be paid and it is the milestones upon which they are paid. So, to the extent that they achieve the milestone, they get paid; if they do not achieve the milestone, depending upon the level of achievement, they might get a portion of the payment.

[1.30 pm]

**The CHAIR:** We were told in evidence this morning in open session with the director general of Health that this contract was rather different from Fiona Stanley in many ways, and one being that John Holland also have been given responsibility for the procurement of health equipment, and that seemed to be unusual because John Holland does not have a track record, as far as we know, in procuring health equipment. Do you know why the contract was written in that way?

**Mr EGAN:** I was not party to the decision as to why that decision was taken.

**The CHAIR:** But you were asked to draft the contract based on those decisions.

**Mr EGAN:** Yes.

**Mr V.A. CATANIA:** Did you ever raise any questions about how they are so different between Fiona Stanley and PCH in terms of the procurement of equipment? Evidence was given today in regard to, I suppose, the ability to get repairs of equipment in a timely fashion when it comes to being able to deal with Serco compared with John Holland. There does not seem to be the right—what is the word I am looking for?—ability for the health department to get equipment repaired or —

**Mr S.A. MILLMAN:** Remediation.

**Mr V.A. CATANIA:** — remediation on any of the equipment if something was to go wrong. There are no time lines that John Holland have to adhere to to be able to get the equipment fixed compared with the Serco situation. Did you raise any questions that the two contracts are so different?

**Mr EGAN:** I may well have interrogated that issue at the time that I was provided with the instruction or, alternatively, at the time that it came to draft those elements of the contract; I cannot specifically recall. That said, to the extent that there are issues with the equipment on delivery or during the life of the equipment as it is being maintained, in the event that John Holland failed to take action in relation to it, there is an opportunity for the state to step in and rectify that largely in exactly the same way that it is permissible under a Fiona Stanley Hospital Serco model. Whilst I do not have to hand the provisions of the facilities management contract with Serco, to the extent that they fail to

achieve their KPIs or, alternatively, fail to maintain the equipment in accordance with a proper standard, which is prescribed within the contract, they are either given a notice as to the need to do that, abated to the extent that they can be abated, or directed in order to fix the equipment if they have failed to do so; and, in circumstances where they do not do that, the state can step in and correct it. That is largely no different from that which occurs in this particular contract. But there are no KPIs in this contract, whereas with Serco, for instance, there are.

**Mr V.A. CATANIA:** Why is that? Why has that been taken out? I do not know if you can answer that or recall that conversation that you may have had. Why is that the case?

**Mr EGAN:** I cannot recall a conversation, but one of the reasons why ordinarily it would be the case is because for a Serco facilities management contract, they are delivering soft FM services. If you take, for example, cleaning, that is a soft FM service. They are required—I say this hypothetically—to clean particular aspects of the hospital every hour or, alternatively, within five or 10 minutes of something being notified to them as being on the floor and presenting a risk. To the extent that they fail to do that—that they fail to meet the KPI—that might give rise to an abatement. They also, as you have indicated, provide hard FM services, and that is the provision of medical equipment. As we have discussed, whilst there might not be—as I say, I do not have the contract with me—hard KPIs for that equipment, to the extent that something goes wrong with it, they are obliged to fix it.

**Mr V.A. CATANIA:** Is there an opportunity for the state to negotiate that part of the contract to provide some greater certainty, given the fact that what has happened with the building of the hospital is, one would say, probably not the best relationship between the government and John Holland? You could question the delivery of the hospital and the way in which John Holland, perhaps, has tried to deliver the hospital. Is there the ability to change that contract that is in place to ensure that there are KPIs and greater oversight, ensuring the procurement of medical equipment or service delivery in general and that there are some clear lines that cannot be broken?

**Mr EGAN:** There is no mechanism in the contract that enables the state to implement such a change to the contract at the discretion of the state. That does not mean that there is not an opportunity, if the state so desires, to seek to negotiate with John Holland the incorporation of KPIs for particular matters. John Holland may or may not be prepared to agree to doing that and it may or may not come at a cost to the state.

**Mr S.A. MILLMAN:** Such a negotiation would be subject to the normal principle of contract law, though, presumably?

**Mr EGAN:** That is correct.

**Mr S.A. MILLMAN:** That is contrasted with the situation at Fiona Stanley, where there are express provisions in the contract to allow for further negotiation between the parties. You can take that question on notice if you do not have an answer.

**Mr EGAN:** Yes. I meant to check that provision.

**Mr S.A. MILLMAN:** The Fiona Stanley contract, which is an FM contract, is a contract where one of the parties is incentivised to make sure it discharges its obligations because it is an ongoing contract, whereas the contract between John Holland and the state, accepting that it is a hybrid contract because it has primarily building and construction but has this long-tailed hard FM at the end of it, is a contract that is necessarily going to come to an end contra to the Serco Fiona Stanley contract.

**Mr EGAN:** Yes, that is right.

**Mr S.A. MILLMAN:** Does that not, by its nature, expose the state to a greater risk?

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**Mr EGAN:** It should not, no, other than in one particular area, and I will come to that. The reason for that is that, to the extent that the contractor John Holland failed to comply with their contractual obligations in terms of hard FM, there is an ability on behalf of the state to either step in or, alternatively, breach them and recover any loss or damage. The difficulty that you have identified is that the risk to the contractor John Holland in the Perth Children's Hospital example is that the state would need to take steps in order to recover those moneys.

**Mr S.A. MILLMAN:** Sue for breach of contract.

**Mr EGAN:** Correct. Alternatively, it could call upon a performance bond that is in place, and I can talk to you about that, whereas for Serco under a Fiona Stanley Hospital contract, they can get abated. I have mentioned a performance bond in place. There is a \$25 million defects liability performance bond in place for John Holland to the extent that the state asserts a right in relation to moneys during the period of time when the state holds that performance bond. An example might be where John Holland, in exercising or performing its hard FM services, fails to take certain action or do something in particular, requiring the state to step in and incur costs. If John Holland does not meet that obligation, the state would be entitled to call upon the performance bond and take the moneys out of the bond.

**Mr S.A. MILLMAN:** The next couple of questions I accept may infringe on the privilege; and, if they do, I am sorry and I do not expect an answer. Were you asked to provide the state with advice on whether or not, in a \$1.5 billion contract, \$25 million was sufficient as a performance bond?

**Mr EGAN:** I would prefer to answer that question in closed session.

**Mr S.A. MILLMAN:** I accept that. I am sorry about that. Mr Egan, I might leave the rest of those questions on that particular issue until closed session.

**Mr B. URBAN:** I was going to ask the same question. I wanted to get your opinion, but then the opinion came.

**The CHAIR:** In your submission, you mention that John Holland liaised with Strategic Projects to identify construction risk and the control groups would cover other aspects of commissioning not identified by John Holland and Strategic Projects. Were there any mechanisms in place in regard to the governance structure that allowed construction risks to be independently identified and evaluated or was there an over-reliance on John Holland itself reporting?

**Mr EGAN:** Strategic Projects maintained a separate risk register, as I understand it, and they would identify risks over and above those which would be raised by John Holland. In broad terms, the state and task force would be very, very slow to rely solely upon any risks by John Holland, because naturally they have a self-interest in under-reporting those risks which they want the state to know about. So it would be improper for a task force to seek to rely solely upon any risks which may or may not have been raised by John Holland.

**The CHAIR:** You mentioned that Strategic Projects would have had its own independent risk register.

**Mr EGAN:** Construction register, yes.

**The CHAIR:** How was that information obtained to put something on the risk registry?

**Mr EGAN:** Richard Mann would be best placed to identify how those risks were raised within the register. I would say that my assumption would be that they would be raised by the likes of John Hamilton and any and all of his team members as and when they came to their notice.

**Mr V.A. CATANIA:** In regard to risk in terms of the government taking over some of the potential risks of taking over practical completion, did you provide that advice obviously to government in

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taking over practical completion or leaving it in the hands of John Holland? What were some of those potential risks in taking over PCH?

**Mr EGAN:** Detailed advice was provided in the lead-up to the grant of practical completion. In terms of what the risks might be, I might leave that for the closed session.

**Mr B. URBAN:** Based on your observations, was there any difficulty in obtaining accurate and timely data around the milestones, which you talked about, and work programs from John Holland; and, if so, how did the governance structure deal with these issues?

**Mr EGAN:** With great difficulty and great frustrations in terms of the material that was provided by John Holland in relation to work programs—so, the provision of programs that identified how work was progressing. They were discussed on multiple occasions at task force and the mechanisms that could be employed under the contract to require that John Holland provide the documentation.

**Mr S.A. MILLMAN:** Were you happy that the contract was sufficient in obtaining that material from John Holland when it eventually came through, or in terms of looking forward in terms of suggestions that this committee might have for government, is that a part of the contract that could be strengthened in further contracts, or is it just a rogue provider this time around?

**Mr EGAN:** I do have some views in relation to that. One of the challenges that the task force and the state had in relation to John Holland was the non-provision of a detailed program. There is a contractual obligation on the part of John Holland to provide it as and when required—that is, as and when demanded. John Holland repeatedly failed to provide it. One of the lessons learned from this contract moving into subsequent contracts of this nature would be to develop a mechanism that perhaps better encouraged John Holland to provide that documentation as and when it was demanded or required.

[1.45 pm]

**Mr S.A. MILLMAN:** Forgive me if I am wrong, but that document will exist. Every major contractor engaging in a significant construction exercise would have a construction program surely. Perhaps it is a question better directed to them.

**Mr EGAN:** Yes.

**Mr S.A. MILLMAN:** I just come back to some questions that were posed earlier about how risks were elevated to the project control group. To the best of your knowledge, can you delineate the proportion of how those risks were elevated, how many of them were self-referred, how many of them came through John Holland and how many of them through Richard Mann or John Hamilton or somebody from Strategic Projects?

**Mr EGAN:** When you say “self-referred”, what do you mean?

**Mr S.A. MILLMAN:** How many of them were issues that the PCG would have brought to their own attention, where they would have said, “Hang on, this is a risk that we can identify. This is something that has come about”, not externally referred?

**Mr EGAN:** I would not be in a position to identify with any precision what the proportion of risks were as between self-identification by PCG members, John Holland and Strategic Projects.

**Mr S.A. MILLMAN:** Is there somebody to whom it would be better for me to direct that question?

**Mr EGAN:** Richard Mann would know very well what level of risks were identified as far as Strategic Projects and John Holland are concerned. He, as I recall, was an attendee at PCG meetings, so would be in a position also to comment upon how frequently those matters were discussed at PCG, although it was before PCG, the PMO—the project management office—would collate all risks into

a central register. They would be best placed to identify how it came that all the risks were collated in one space.

**Mr V.A. CATANIA:** I think the cost of Princess Margaret at the moment is about \$6 million or something like that to keep open. Obviously, there are some time frames to build PCH. The builder has not met those time frames. Is there anywhere in the contract where if the builder does not meet the contractual obligations of finishing the hospital, does the state have the ability to recoup some of those costs Princess Margaret Hospital is now incurring, given the fact that it should have moved across? Is there any ability for the state to recoup those costs?

**Mr EGAN:** The contract has a liquidated damages clause. That clause provides in broad terms that, in the event that practical completion is not achieved by a certain date, the contractor will be penalised to the tune of \$180 000 per day up to a total of \$45 million, so it is capped out at that point. To the extent that Princess Margaret Hospital costs are captured within the \$180 000 and, in turn, the \$42.5 million, yes, that opportunity is in place and existing. However, as and when you get to the cap of the \$42.5 million, the possibility of claiming anything over and above that falls.

**Mr V.A. CATANIA:** Have we reached that cap yet?

**Mr EGAN:** Yes, sir, we have.

**Mr V.A. CATANIA:** By taking over practical completion, if you did not reach that cap, does that void any ability of recouping some of those costs?

**Mr EGAN:** No.

**The CHAIR:** The committee has resolved to conduct the rest of the hearing in closed session. Could I please ask all people seated in the public gallery to leave the room. If you intend remaining for the next hearing, please wait in the foyer and the secretariat will advise when we have reopened proceedings. Thank you for your cooperation.

**[The committee took evidence in closed session]**

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