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Hi,

At the inquiry, I was asked: "How do we make the processes more transparent?"

The flow of conversation was such that I did not give an answer at the time.

Please find my answer below.

Regards, Ben

CHAIR: How do we make the processes more transparent? Mr Aveling, do you have a view?

Perhaps the biggest challenge to transparency is that decisions are published, but not the numbers and assumptions upon which those decisions are based.

Two of the larger blockers to transparency are Commercial in Confidence and Cabinet Confidential.

Both mechanisms have legitimate applications. Both have been subject to misuse. To the common citizen, confidentiality connotes concealment, cover-ups, cronyism, cock-ups and conspiracy.

Pragmatically, no government is going to change the rules if it believes that it will be put at a disadvantage by doing so. Reform of Commercial in Confidence or Cabinet Confidentiality should be brought in over time, and without retrospectivity. A two or three year lag might be ideal, enough time not to be threatening to the current government, but not so much time as to be forgotten or disowned. As reform is introduced, projects already lodged should be grandfathered from scrutiny.

Cabinet in Confidence and Commercial in Confidence should be reformed to make as much available as much information as possible, by default, preserving confidentiality only where strictly necessary, and for no longer than necessary.

Even where the contents of a document need to be kept partially or totally confidential, the existence of the document should be put on the public record.

There should be a publicly available register listing all confidential documents. For each document there should be a title and a unique id number. There should be the word count and page count. There should be a list of the non-classified sources relied on. There should be a table of contents and a list of included documents. There should be the date created, and a date upon which the information is to be released. There should be an explanation, in general terms, of what the document contains, why the information needs to be kept confidential, and why it needs to be kept confidential for the designated period.

All Confidential documents should be independently reviewed, and this too should be recorded in the register.

For Cabinet in Confidence documents, the approximate cost of preparing each document should be public, as should the authoriser's identity. Cabinet in Confidence status should not be retrospective: it should be restricted to documents specifically prepared for cabinet; it must not be a mechanism for 'sterilising' documents from scrutiny. Where necessary, a new confidential document may be created from an existing non-restricted document, with or without additional changes, thus keeping confidential the exact submission to cabinet, while not concealing information that would previously have been available to the public.

Submission 27 to this Inquiry claimed that:

"cost-sensitive information such as return expectations and projected profits, if shared, could give competitors (potentially including overseas corporations) an unfair advantage or could impede the competitiveness of future procurement processes"

Given that competitors would also be subject to an equivalent level of disclosure, the claim of unfair advantage stretches credibility. It is far more likely that an increase in disclosure would lead to an increase in competition, which may not be welcome to incumbent suppliers, but can hardly be considered to be a negative for the government or for the nation.

In NSW, State Significant Development presents additional challenges. The Legislation exists to support projects of higher than normal "size, economic value or potential impacts". The main impact is to bypass many of the usual checks and balances that would otherwise apply. While this may occasionally be necessary for unforeseen urgencies, the majority of State Significant Developments, although important, are not urgent, and should not thus be exempted from transparency.

The tollroad industry has a track record of overly optimistic assumptions. Transparency alone will not fix this, but it should help us understand the reasons the problem is so reliably bad.