

IN CAMERA

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON TASWATER OPERATIONS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON TUESDAY, 3 NOVEMBER 2020.

Ms RACHAEL MATHESON, CEO, CIVIL CONTRACTORS FEDERATION TASMANIA LIMITED, Mr MICK REARDON, Mr HUGH MASLIN, Mr DANNY HILLS, Mr ASHLEY COOPER, Mr NEIL ARMSTRONG, Mr JESSE BRUNSKILL, Mr ELLIOTT BOOTH AND Mr PETER BARWICK WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR - Thank you very much, lady and gentlemen; much appreciated.

This is in an in-camera contribution to the Select Committee Inquiry on TasWater Operations. Your evidence will remain in camera. It will be held in a vault and it will not be used and it will not be referenced.

I want to thank you very much for reconsidering your original submission and providing some of that submission to the open forum. That was always going to be a challenge for the committee to be able to progress some of the matters that were raised without being able to have some reference to it. From my personal briefing that was something that we discussed on that day and I am very pleased and I know other members of the committee will be.

While I'm talking about the committee we have an apology from Jo Palmer, the member for Rosevears, who has had to step out. We have with us Ivan Dean, the longest-serving Legislative Council member in the parliament; myself, Tania Rattray, and the member for Rumney, Sarah Lovell. We are in your hands and we have about an hour. Whoever would like to kick-off, seeing that we are possibly going to be doing some interchanging. Rachel, are you going to kick-off?

Ms MATHESON - I think we're going to get Ashley and Hugh CCF president and vice president, to provide an overview.

Mr MASLIN - I guess we, as an industry, have a level of frustration with the amount of work that has come out through TasWater over a period and also the way it's come out and the fact that the conditions under which we're working has been problematic.

CHAIR - You provided some examples in the submission.

Mr MASLIN - Yes. A global issue with all our stakeholders now is the time between when we put in a tender, and when we actually know we've got the work, and then when we actually start. It's very difficult now with a lot of State Growth and a lot of other clients bringing contracts out and a lot of people not knowing where they're at. That's a big issue.

Fundamentally, the managing contractor model, whilst it might work on a \$15 million or \$20 million job, doesn't seem to be scalable down to small projects. So we're finding smaller projects are overly burdened by bureaucracy and over-supervision. That's probably all I want to say. The managing contractor model works fine on \$20 million to \$50 million jobs but doesn't translate well to a \$1 million or even smaller job.

CHAIR - Does anyone else want to lead in on that before we go to a general discussion?

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Mr ARMSTRONG -

As an industry organisation - and I mentioned this to LGAT last week - it doesn't sit well with us to be here as builders and constructors not telling tales, but having issues with one of our significant clients. That's not something that we get any joy or any benefit out of.

However, it's got to the point where at any level, whether they be mum and dad contractors through to international contractors - there are a couple of those based in the state - they have different but very similar frustrations with their ability to be able to deliver the work to the organisation. It's across the board unfortunately, whether it be, as Hugh mentioned, project procurement, the process that it takes to interpret and understand and accept the risks around the contractual nature of the works. The systems and processes are what they call tier 1. They are quite high level but they are still embryonic in their development in this state, so there's been a mishmash of organisations that have come together to form what is the TasWater CDO. While they have some best practice state-of-the-art systems in a piecemeal sort of way, as a collective they still aren't mature enough to be articulated clearly to contractors, some of whom are very inexperienced. But some also are very experienced, so they are able to pick holes in the system.

So, there is the procurement of the works. There is the delivery of the works. Then there is the - what appears to be a challenging - relationship between parties that are trying to deliver the works. By that I mean the original TasWater people and the Capital Delivery Office people and the designers and the Tasmanian contractors and our consultants and our workers and our supervisors and the approvals process and the permit process and the design issues -. It just doesn't seem to be working.

The model, for whatever reason, doesn't seem to be working.

It is hard for me to even speak like this because we saw the multi-million-dollar forecasts. We saw the opportunity and a number of people at this table and other organisations have committed funds. They have added systems. They have added process. They have geared up. They have the expertise but we don't seem to be able to get across the line.

CHAIR - You are sitting around waiting.

Mr ARMSTRONG - Yes. Finally, the interactions and communications we have had with TasWater are not hostile or anything like that, but they are either a little misinformed or oblivious, or probably not in the weeds enough to fundamentally understand. Because of this we get piecemeal answers and they compartmentalise various issues. In isolation, they may look like operational issues.

This is something I tried to articulate to LGAT last week. There are two significant things that are a theme you may hear from other people that couldn't be further from the truth. One of those is that these are just operational issues and it is just an organisation trying to bed themselves in. There is always going to be a honeymoon period or a breaking in period.

I keep hearing the word COVID-related. COVID might have added some challenges but, if anything, COVID added momentum and impetus into this industry. It didn't add hurdles and stuff like that.

CHAIR - There is a lot of nodding around the room with you on that statement.

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CHAIR - Peter, when you came to the briefing at an earlier time, you shared quite a bit of information. I welcome you to come up.

Mr BARWICK - By way of introduction, who were not privy to that initial briefing, I have been in the industry in this state for 25 years. I worked at Hobart Water for about 12.5 years and was privy to their first approach at moving into water and sewer reticulation as they embarked on a growth strategy just before the government legislated to transition into the TasWater that we have now.

As part of that I worked on the asset evaluation of the Derwent Valley Council and likewise with the Glamorgan-Spring Bay Council. I had a fair bit of inground knowledge on that sort of stuff. That led into forming my own company which I have run now for 12.5 years based predominantly on the specialist skills and needs of Tasmanian water and sewer infrastructure. I saw where some of it was lacking and I was excited about an opportunity to add some value for the Tasmanian community.

As I pointed out, my company has had about 10 apprentices. One of the things that was identified early on was the ageing workforce of councils and the loss of specialist skills in municipal sewer and water infrastructure. I was really passionate about ensuring that skills set was maintained within Tasmania and by Tasmanians, and I currently have six apprentices. We have delivered many specialist and niche projects to the Tasmanian community and we are very passionate and proud - sometimes I think too much so - about what the Tasmanian community needs and deserves.

Over the journey we have seen some changes and some difficult times as you grow a company. But without doubt, without question and evidenced by all of us here today, it is probably the most challenging time I have witnessed in my 25 years in Tasmania in the water and sewer industry. That's not saying there are not some really good guys within the organisation and it's not that they're not faced with some significant challenges, some legacy issues -

CHAIR - You mean like once you start a project you don't necessarily know what's underground?

Mr BARWICK - Yes, that's right. It's a specialist area and that was part of the catalyst for forming a unique, specialised organisation that had the balance sheet to deliver the capital Tasmania needed and the combining of skills and resources to deliver that. It's evident that that idea was there but it's just not happening. A company like mine that has built its core business around is struggling to the point where there's some really tough decisions to be made if there's not some significant and relatively quick changes with the way that TasWater get that worked out. As Neil alluded to, it's not a good situation for anyone. The CDO, I'm sure, was misled when they were told about the amount of shovel-ready projects that they had. They signed a contract based on X amount of shovel-ready projects only to find that's not the case.

The TasWater guys who had a great idea because they could see they were struggling, weren't really listened to in the way that some of the other options, the models they could choose, and none of us here are happy because we just want to get on and do the job. We know that the industry needs it, we know that the Tasmanian community needs it, and we're frustrated

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that it's not happening. We're frustrated at the lack of dollars we see going out of this state as profit to a multinational company and councils aren't getting paid dividends. It's just a really sad situation that no-one is happy with.

Mr DEAN - What do you see as a shovel-ready project? I'd be wanting to ask TasWater what they see as one as well.

Mr BARWICK - Effectively a shovel-ready project is a project that's had the engineering detail undertaken and the approval DA applications put in with that engineering detail behind them so that they're at a point where they can go to tender knowing that the cost-benefit analysis has been done. One thing that really strikes me currently is they don't look at life-cycle costing that well. We implement some technology that might be a short-term fix, but the long-term implications are quite onerous on the Tasmanian community because of technologies that we choose. So they don't really look at life-cycle costing and life-cycle benefit costing that much.

All of that background return on investment, the dollars that we're going to spend on the asset versus the dollars that we deliver in-ground - that's one of the things that we're really seeing. They keep telling us, 'Look, we've got 105 contracts, we've done so much and we've spent so much money', but we don't see any value in any of the assets going in the ground. We might be spending money on capital but we're not seeing those assets put in the ground deriving the benefit and obviously increasing the balance sheet of the organisation for the same amount of the money we are spending.

I can speak for my company. Prior to the CDO we were putting 150mm pipe in for \$350 per metre. Post-CDO that can rise up to \$700 per metre, so it can be double, as Hugh alluded to, because of all the bureaucracy we have for tier 1 contract compliance on such a small project. It just bogs it down and adds no value. So we don't make any money and no-one else does, other than the overheads that are soaked up as capitalisation for the CDO. It is a really, really frustrating situation.

CHAIR - I'm keen to get everyone to have some input here.

Ms MATHESON - Based on the back of Peter's conversation then around the contracts and tier 1 and the complexities around that, we can probably throw to Ashley and Mick now to elaborate a bit more on the contracts.

Mr DEAN - Madam Chair, can we ask a question or two as we go along, because I'm going to forget what some members have said if we don't?

CHAIR - We don't normally have this much interest. That is fair and reasonable, so thank you for asking that question.

Mr DEAN - I did have a question. You have raised a lot of issues. What response have you got from TasWater? No doubt you have raised it with them in the right way. How are they responding?

Mr BARWICK - Yes. They're responding pretty much - I like to describe it as a straight bat approach. They sort of bat it away and continue to say -

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CHAIR - They're a new organisation, they're just finding their feet.

Mr BARWICK - Yes - 'We've signed up 105 contracts', but we keep saying, 'Well, show us those contracts, because we as members who represent 80 per cent of the industry just aren't seeing them', and they keep saying, 'No, we can't do that, it's a commercial sort of thing'. We feel like they are just fobbing us off, to be honest.

Mr DEAN - You said it had gone to mainland contractors and so on.

CHAIR - That's the CDO.

Mr BARWICK - Yes. The CDO is effectively owned by CIMIC, a huge multinational corporation - Thiess and Leightons. They have two companies within their mix, CPB Contractors and UGL Engineering, and they formed an alliance partnership to then form the alliance partnership with TasWater, which has become the Capital Delivery Office. That capital delivery office is effectively a combination of those.

Mr BRUNSKILL - If I can just add to that, one of the problems we see is the way that relationship exists between TasWater and these tier 1 contractors. The CDO, which has a project alliance agreement, is set up in a way that the CIMIC companies can benefit from an under-run or pain share/gain share arrangement. This was explained to us at an industry briefing by the first alliance manager. It would seem that that arrangement is probably not in the interest of our members as civil contractors, because if they can drive the cost down it would be to our detriment but it would increase margins on the other side.

There are a few mechanics there that I would encourage you to ask to be explained by TasWater, and how that works, because it doesn't feel fair as a contractor, that one, there is the option to potentially negotiate a commercial outcome on a contract, which would mean the benefit of that would go to the CIMIC group of companies, and coupled with that, we're not being engaged under an alliance agreement which are generally quite contractor-friendly. Anyone who is a contractor whose done them would say it is a pretty good deal because you can work collaboratively. CPB and UGL are engaging our members under a very tier 1 contract and that is unfair.

A lot of our members have had lawyers review them and the recommendations. It's not fair, it's one of the worst we've seen. I would encourage anyone to get an independent lawyer to review it and advise whether any contractor should sign it. What we're finding is that each individual contractor may negotiate some dispensation or some relaxation of a handful of the terms, but then when they go to the next contractor they start with the base contract again and it is up to every individual contractor to try to negotiate where they can.

Mr BARWICK - Right.

Mr BRUNSKILL - A lot of our members don't have capacity to engage lawyers who are capable of interpreting it. Some members have, and they have said you wouldn't pick it, they are so complex - it's a tier 1 contract which you wouldn't sign.

CHAIR - Ashley, I know you want to add something.

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Mr COOPER - There's a lot of good topics bouncing around here but there is a statement in the TasWater 60-page document that has been made available - what's the name of that document?

Ms MATHESON - I found it on the parliamentary website.

Mr COOPER - Yes, yes.

CHAIR - Yes, their submission.

Ms MATHESON - Their submission. We've had a read through that, as a group, over the last few days.

Mr COOPER - Yes. There is a lot of good in-principle value statements in that document. What we're seeing is - as Peter is describing, and Neil has opened with - there seems to be a disconnect between what our membership is feeding back and what TasWater is saying they aspired to achieve, and even saying that they are achieving which is just -

CHAIR - No evidence, or little.

Mr COOPER - Yes, that's right. We try to read a document like that and not become emotional, because you are aware of the reality of each of the things that you were saying. However, as Jesse just alluded to, in the terms and conditions - there's a statement from TasWater saying whilst these are typical terms and conditions in other states, or the rest of Australia, this market is not used to it. It's just not true. I've worked in a number of states -

Mr DEAN - Through you, Madam Chair - would it be possible for you people to identify that to us, and to simply say you've looked at the submission of TasWater; they've made these statements; they are not accurate from our perspective because of certain issues? That will give us a way to talk to TasWater and raise these issues. We don't identify you people in any way, as the Chair has said.

Mr COOPER - Absolutely, we can. There are other things within the document that turns on itself a little bit. For example, the CDO was finally established mid-2019, and the document celebrates that. However, the 10-year spending time line started in mid-2017, and it says that in the document. What it doesn't say is you actually promised the market that's when it would commence. And, as we see from people like Danny who have depended on this market performing and delivering work that there has been a hiatus of a lot of the interim period, as they call it - where they're creating a huge sausage machine that can't yet produce sausages but 'we're getting there'. How long can the Dannys of the world survive paying wages every day until the sausage machine actually puts out sausages you can eat?

Mr HILLS - TasWater has made a contradictory statement about the contracts that have been signed. They're saying that there was 147 -

Mr BARWICK - They said originally 105, and then amended it to 157.

Mr HILLS - One hundred and fifty seven contracts have been signed - but, in the same document, they are saying the CDO only has 57 projects under their banner at this point in time.

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Mr DEAN - So 157 contracts have been signed -

Mr HILLS - But only 57 projects have been asked -

CHAIR - Fifty-four projects.

Mr HILLS - Yes.

CHAIR - So, 103 are somewhere out there.

Ms MATHESON - There is a lack of transparency across the organisation.

Mr BRUNSKILL - I also noticed the comment about the number of contracts. It is probably confusing when you read it, because there are contracts and then there are projects. As a managing contractor, there are multiple contracts per project, but when you look at the numbers in that letter they must be very small, because they have named 105 contracts for \$41 million. The contractors around this table would probably account for about \$40 million of those contracts and none of them is actually doing much.

The question that should be asked - and what is important to our members - is about revenue flowing to our contractors, and that's what hasn't happened. We've been to seminars and briefings. We've seen programs with dates, but the dates might be for when they reach the next milestone in their procurement process. However, we've never really seen the milestone when contractors will get paid some money. Out of that \$41 million, I challenge them to tell us how much has actually been paid out to contractors in Tasmania, because it won't be much.

Mr REARDON - I've come along to talk predominantly about the contract itself -

CHAIR - With the CDO?

Mr REARDON - With the CDO, or the contract that they are asking us to sign. The contract originally was put out to the broader contracting community back in June under the lineal renewals program. It was an open contract. I suppose it was a contract that would have some modifications depending on the type of work we were doing. What concerned us as a small business, and we only employ 10 people, was that -

CHAIR - It's important in Tasmania.

Mr REARDON - Yes, it is important. If you employ 10 people then you can be personally exposed because when someone asks you for a personal guarantee, or a director's guarantee that doesn't only risk your business, it often risks all your assets. I didn't want to sign anything that was going to expose us personally. From that perspective, we desperately needed the work and work was, sort of, on offer and we just couldn't bring ourselves to sign it because we couldn't resolve the issues.

We went back to our submission when we submitted our contract, and our objections to some of the clauses of the contract, and that was part of what was submitted earlier to the council. The response was no negotiation, or words similar to that. Even though we had raised

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the objections, and they said they would look into them, there was no response really. The only response was no negotiation.

One of the members of the CCF has gone to a lot of trouble to identify a significant number of issues with the contract, not that I'm going to go through those now. I've picked out 10 that I consider to be significant. I'll read those, rather than try to remember them and risk missing something. I consider it highlights the one-sided, all-risk-to-the contractor unfairness of what we're trying to deal with as either individuals, or as companies, as we try to protect ourselves from being exposed and to manage the risk that we can be exposed to.

Ms MATHESON - Noting that you're not actually the head contractor.

Mr REARDON - We're not the head contractor. We're only ever the sub-contractor. For us, because we're small, is that we're usually another layer down from that. So, we've got the head contractor, the sub-contractor, and then we're probably third tier.

A member - You're sub-sub?

Mr REARDON - Yes, sub-sub-contractor. Our exposure as we go down the food chain obviously becomes greater, because if there's a problem up here there's usually someone trying to push the responsibility down. But this contract exposes us incredibly if we were to sign it as it is, and some people have signed it. I don't know why, but obviously they need the work, and they are intimidated by the pressure. They can't afford not to work.

I will only name one clause. The main issues are personal and director's guarantee - providing a deed of guarantee from the directors. The legal advice that's been passed on to CCF members is that a sub-contractor must not agree to that term, because if we pass on personal guarantees, or director's guarantees, how long does that last for, and at what point does it stop? It only stops when the bank's empty or you've sold all your assets, and that's a sad reality.

Another issue is release of security - 50 per cent being held for 24 months. After substantial completion, that's unreasonable. How can we be held to that, after we've substantially completed the project - down to probably a sign-off. For our business, that's usually a point at the end where an inspector comes in and signs off, and then we realise we need some money in the pot there just in case something goes wrong in the first 12 months. Under a normal construction -

Mr BRUNSKILL - That time frame is from the overall project, not from the package that you're doing, so that means if you do something in the first year of a two-year contract that clock doesn't start until the whole project's finished.

Mr REARDON - Yes. It's 24 months after the final bolt's been turned.

The other thing is changes to the scope of work, or the scope of work not being finalised by the CDO after the date of execution of contract. So we've signed up and they still have a right to change the scope of work after we've already signed off, signed on the dotted line.

Mr DEAN - To the job.

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Mr REARDON - To the job. We've gone through the tendering process, we've won the tender, we've sat down and negotiated some sort of terms and then we've signed up, and then all of a sudden, 'Oh, hang on a minute, we're going to change this', and we have no right of reply to that. If you read into the document a little bit further there's this process for variations that's difficult to achieve.

Mr DEAN - No right of reply even if that was going to put you to more cost to do it?

Mr REARDON - Exactly right. They're saying -

Mr DEAN - You know, that could be the case.

Mr REARDON - Yes, it could be the case. You may be able to negotiate a variation but then again the rules around negotiating a variation are pretty tight.

CHAIR - Honourable member, you might need to use that lovely little microphone there because you're making some really good statements but we're missing them.

Keep going, Mick, because I'm keen to get around.

Mr REARDON - I will try to speed it up because we're down half an hour of our time. The operation of proportional liability legislation is excluded. The subcontractor is required to indemnify the CDO completely, removing any risk for the CDO or TasWater. The CDO/TasWater must accept liability for the portion of the project it is responsible for, so that's what we say. We're happy to accept responsibility for the bit that we did or we do, but to accept responsibility for -

CHAIR - If it's a poor design and it doesn't work and you did the work, it's not your problem.

Mr REARDON - If we sign this, we're responsible.

CHAIR - Yes, right.

Mr REARDON - This clause is definitely a sticking point for everybody, I think. Indemnity and liability, clause 44 - the CDO asking for a 'hold harmless' clause, meaning no responsibility, and the subcontractor to indemnify all the actions, claims, demands and proceedings against the principal, the CDO, and any other subcontractors. So not only are we responsible for ourselves, we're responsible for the CDO and then if I get Pete to come and do a job for me, I'm responsible for him as well.

We've taken this to two brokers, one here and one on the mainland, and both insurers or both brokers have said no insurer will agree to 'hold harmless' clauses to remove the subjugation rights against the CDO or other parties under this clause - all risk being passed onto the contractor. What the insurance companies are saying is, 'Don't worry about asking us to insure that because we're not going to', and no insurance company in the country will agree to that.

Regarding disputes and arbitration, the local office of the arbitration is in Sydney so we can't even fly there at the moment.

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CHAIR - I was going to say thank goodness for Webex.

Mr REARDON - Yes. That increases the cost to local contractors and it's really unrealistic for us to be able to have to deal with that. The work's being done here, it's being managed here so you would think the dispute resolution process would be conducted under Tasmanian laws rather than New South Wales laws.

Mr DEAN - Are you saying that some have already signed that?

Mr REARDON - Yes, I know someone who's signed it.

Mr DEAN - Did they get advice?

Mr REARDON - I don't know. The one I know who signed it I'm pretty confident he wouldn't have got advice.

Mr DEAN - My next question from that is, were they likely to pick up work that you people who didn't sign up missed out on?

Mr REARDON - Yes, more than likely.

Ms MATHESON - There are contractors taking the work.

Mr DEAN - That's what I mean, contractors taking the work under those conditions.

Mr BRUNSKILL - The feedback that we get is if you have an issue raise it and when you raise it usually you don't get very far. The commentary is that a lot of contractors sign it but that's for billion-dollar projects in Victoria and it might be appropriate there when you're dealing with tier 1's but we're not, we're in Tasmania and we're not dealing in billion-dollar projects. Some of these are hundred thousand-dollar projects so it's just -

CHAIR - How are you going there, Mick?

Mr REARDON - A couple to go and I'll be finished. Step-in rights and other powers due to non-conformance. Say for instance we're on site and one of our guys does something that's inappropriate, if we don't respond to that, rectify that or make some sort of response within 24 hours, they can actually pull the pin, ask us to leave the site and take over the contract. That is unreasonable. I understand a non-conformance is a non-conformance, but to be thrown off the job within 24 hours is unrealistic.

Cancellation of contracts is at the sole discretion of the CDO. If they want to cancel the contract they strike the pen through and we leave the job and out the door we go. I don't know where that all finishes.

Mr DEAN - No dialogue entered into? The CDO can simply veto it?

Mr COOPER - What happens obviously is that they get the next person dearer than yours to finish and any other costs and then they go and sell your house you gave them when you signed up at the start, under the director's guarantee, to pay for the difference and any other costs. It is a crazy risk profile.

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Mr REARDON - In summary, this contract fails the fairness test in our view. It places all the risk at the feet of the subcontractor. The principal and the CDO have a responsibility. For example, they sign off on the scope of work, they own and control the worksites, they control and determine the safety and compliance on the worksites, and the CDO is the project managers. Whose responsibility is it to manage the projects? At the moment it's our responsibility to manage the projects but we don't control anything.

There must be a reasonable risk allocation for all stakeholders to ensure equity and an ethical relationship. That's really what we're asking for. We're not asking for anything exorbitant. We're just asking for fairness.

Mr DEAN - Would you be able to table that document?

CHAIR - Are you able to table that document for the committee? Again, it would be in camera.

Mr REARDON - I'm happy to table it.

CHAIR - Thank you. Elliot, you're the only person who hasn't had a chance to sit in that chair yet, so come on down. I am keen for everyone to have some input into this process.

Mr BOOTH - I'll just follow up from Mick. We're Andrew Walter Constructions; we employ 103 staff. We've had a lot of jobs through TasWater in the past. We're a very diverse company. We do Hydro dams, we do subdivisions, we do DIER work. I haven't had the same experience as a lot of these guys because we just point-blank refuse to be involved because of that document Mick was talking about. It's a show of support. We feel it puts us too much at risk. In the past, eight or nine years ago, we did big pipelines through Berriedale, the dam out through the back of Tea Tree. We've done a lot of jobs for TasWater.

We're lucky we've had such a good year. COVID-19 hasn't affected people like they think in the construction industry, I don't think, because we've probably had our best year ever. That's the truth of it, but we haven't had anything to do with TasWater. From my point of view it's a blessing for us, but it's not a blessing for the industry or the state. It's a pretty poor situation, to be honest.

I can't add much more than that but I thought people needed to know that there are companies out there that have just point-blank refused because of the risk - and we're not a small company.

CHAIR - Not with 103 employees you're not a small company.

Ms LOVELL - I might have missed this and apologies if I did. Is the contract you are being asked to sign with the CDO for each particular job, or is that a blanket contract to engage with them and be able to be given work?

Mr HILLS - It's both in that it will be issued with a successful tender and/or it could be issued with an expression of interest for nomination for a panel of works. That could be 10 contractors specialising in a certain type of work and they would have to sign that contract

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before they were offered any work at all. One of the things we were highlighting is that that could be for a \$50 million job or a \$50 000 job, but the same risks for the subcontractor exist.

Mr DEAN - So the company getting the contract has to sign that and accept those conditions?

Mr HILLS - It has to accept those conditions, if they want it to work.

Mr DEAN - Any company subcontracting, even those on a third tier, sub-subcontracting, do they have to all accept that? Do they sign the document? What happens down that road where the work is done?

Mr HILLS - That would depend upon the risk. We have to understand that the CDO is the principal contractor under all contracts. Correct? Jesse?

Mr BRUNSKILL - Yes.

Mr HILLS - We are only subcontractors. That subcontract could take on a \$50 million job or a \$50 000 job.

If you were to employ a subcontractor, and you had signed that document, then you would have to pass on the terms and conditions, or accept all the risk for that sub-subcontractor, yourself. You won't get too many sub-subcontractors in Tasmania accepting those terms and conditions.

The sub-contractor being the person directly employed by the CDO, would nine times out of ten be accepting all that risk.

Mr DEAN - How do you pass those conditions on to the sub-subcontractor? In other words, do you take them a document with those details in and have them accept that and sign off? How is that done?

Mr HILLS - That would depend on the size of the job, and the amount of risk that you would be prepared to accept. If, say, Hazells were doing a \$100 million, then I would imagine their contracts department would pass on that to all other subcontractors.

If it was ourselves, doing a one-off job, we would probably accept that risk by managing the project through a quality management procedure, so that we reduce that amount of risk from a commercial perspective.

Mr BARWICK - Just one other bit of clarification. The CDO ties you up more than that because they will say that anyone that works on a site - even if Danny is doing the job - has to have CDO induction, has to abide by all of the CDO policies, has to have all of their plant and equipment registered through Damstra Technology, which is an external CDO-nominated process. By default, then you actually become part of the CDO terms and conditions, even if you are a sub-subcontractor, because they tie you up in that way, as well. There is no escape.

CHAIR - Did you want to add something, Mr Cooper?

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Mr COOPER - I think at high level we represent our membership, who are the contractors, and, as we are talking about this risk profile, and grappling with the topic of risk. We have talked the systems, and we have talked about the terms and conditions. These are all feeding this drastically high-risk profile that we are being asked to sign up to as contractors, purely to put pipe in the ground.

The unfortunate fallout is, ultimately there may be contractors who are prepared to do it, and price it, and may be even succeeding and get through it -

CHAIR - Until something goes wrong.

Mr COOPER - Until something goes wrong, or even if nothing goes wrong, you will spend \$1.8 billion, no question, but you might only get half the pipe in the ground.

That is the bitter disappointment that all of us. Yes, we represent our membership as contractors, but we are also Tasmanians. We are the ratepayers to the councils who are losing their dividends because of this structure that is set up with such a disproportionate risk profile that means you are paying way too much for what you are actually getting done. As examples, our members have -

CHAIR - Double.

Mr COOPER - There are projects that are only big enough for six or eight workers on the job. One of our members has this scenario right now. They have three staff managing in the office, and there are three or four CDO staff managing them, and there are only six or seven workers out the window. It's a disproportionate overhead spend, just to administer this huge beast of a system, and to try to comply with the terms and conditions.

Mr HILLS - I would like to say something. I'll probably be a bit emotional about it as it's hard for me to disconnect with it. Much like Peter, we've been with TasWater, Hobart Water, Southern Water, for 22 years. In that time, we've probably completed projects in excess of \$15 million. That relationship has had its ups and downs over the years in regard to the whole thing. But when it went to TasWater, as the entity that was put in charge of updating - the concept was great. It's a great idea to pull together resources, expertise, the whole thing as far as delivering what we knew was a deficit in regards to project sizes and conditions.

We delivered some of those projects for TasWater. We as a business struggled over the last three years. We felt that there was a disconnect between what we'd known as far as the way that they managed contractors and where they were heading. We voiced our concerns as a single business to management and it was basically ignored. It seems to me, from a personal level, that this has been a stopgap measure through the appointment of the CDO to try to fix pre-existing problems from a project delivery perspective and the spend of capital that needs to be done. It hasn't improved. It's gotten far worse because of the model that they have chosen. I have refused to work for the CDO.

In the last three years we would've completed \$8 million worth of work with TasWater and successfully and happily done that. Although, there were issues that we raised about those, there was a lot of money wasted that we weren't happy with.

IN CAMERA

What really concerns me is the legacy that we're going to leave in regard to not only ratepayers but it's a double-whammy because this capital expenditure is uncontrolled as far as we can see, it is ad hoc. There is, from our perspective, a lot of wastage, so that has got to come back and be paid for at some stage.

Now when we're talking about doubling of cost of an asset in the ground purely because of the model they chose, to me, management has to be questioned in regard to that appointment because we're going to suffer not only rate increases as far as the councils not being able to achieve enough income and having to replace that, but we're going to have to look at the prospect of increased sewerage and water costs as well. We're not seeing that at the moment but we will see it, I'm sure of it.

CHAIR - Only because they've been directed not to increase them.

Mr MASLIN - I would like to add a little bit to the question that Mr Dean asked. We had a meeting with Mike Brewster and Steven Gumley for about an hour - Ash, myself and Rachael - following all of this process.

CHAIR - I guess they heard you had been getting around us.

Mr MASLIN - Well, we haven't been doing it in secret.

One of the things he said was that he does want to set up a regular meeting with the CDO office and himself and that he would like a list of the 10 worst contract conditions.

CHAIR - We can give them to him.

Mr MASLIN - But he said he couldn't guarantee he could change them because of the contractual relationship between the CDO and TasWater, so his hands may well be tied.

Mr DEAN - How long has the document been in place for?

Mr MASLIN - Since the CDO started, which was 30 June 2019.

Ms MATHESON - We did ask if they would consider an Australian Standards contract and the answer was a flat no.

Mr MASLIN - A very flat no.

CHAIR - Really? They didn't like the Australian Standards contract?

Mr COOPER - No, it's too far the other way, was the response. I mean, CPB must have brought - I'm speculating - their own standard terms and conditions and it's probably part of their agreement to address these topics - it's a must, really - and for every one of these there's honestly five more. So these topics are handpicked but there are plenty more of those.

Mr DEAN - My next question was going to be, what was in place before this document? What was the type of contract in place then?

Mr HILLS - TasWater standard terms.

IN CAMERA

CHAIR - Which would have been an Australian Standards contract?

Mr BARWICK - Yes, it was based on Australian Standards. Because there's some uniqueness around water and sewer infrastructure construction with metropolitan and regional water association approval on that there's a little bit of uniqueness added in to be specific for the industry. For the panel agreement that we were on, it was an eight-page contract that set out that. This is a 72-page contract for the CDO, so that gives you the quantum change in the contractual terms.

To follow on what Hugh said, and this is only my speculation and perhaps cynicism, I've suspected that CIMIC as the parent company would have a pretty tight contract with TasWater and Brewster saying, 'My hands might be tied because of the contract arrangement' adds weight to what I suspected, that TasWater actually got into bed with them -

CHAIR - And they've been done over.

Mr BARWICK - with the best intent, but they've actually been done over.

CHAIR - Yes.

Mr DEAN - So with the previous contract that was in place, are there any issues that you're aware of that arose in relation to poor work, contracts not being abided by?

Mr BARWICK - No. Most of that \$40 million capital was done through service delivery through that panel arrangement. Even now, when they say about this, a lot of that is legacy that is still being delivered through service delivery through those existing TasWater contracts. They're small-value contracts. They range from \$15 000 up to say \$250 000 maximum without it sort of going to a formal tender full-blown arrangement. If you look at the risk profile, say you're putting in 63mm pipes 100 metres up a street and three connections into houses, I'm not aware of any significant quality, safety or environmental issues that ever happened under those contracts.

CHAIR - I am not an expert by any stretch of the imagination, but why wouldn't TasWater have entered into an arrangement where it is only for those very large contracts that they used a CDO-type of arrangement and still kept those smaller contracts, not off the side of their desks, but you know what I mean, still in-house, if you like?

Mr BARWICK - That was one of the big recommendations from a number of the senior project managers and staff in-house but, as I said, they're in bed with a pretty big player and they said, 'You told us \$140 million a year was your capital spend; we're not having \$40 million outside of that and we get \$100 million that we can deliver -

CHAIR - We want the lot.

Mr BARWICK - we want the lot'.

Mr MASLIN - It is fair to say, though, that Brewster does recognise that in the \$1 million to \$2 million range the overheads are way too high. He does recognise that in that size job they are doubling up on their staff and our staff, and I gave him a couple of examples.

IN CAMERA

CHAIR - Three people looking over three people, who are looking over six people doing the work.

Mr MASLIN - Less workers and the right people in the office.

Mr COOPER - I remember the words of Sam Quigliata at an industry briefing in mid-2018. I asked the questions in front of the industry. When we asked about terms and conditions before anyone had seen these contracts, he said, 'The contracts are pretty much the same as TasWater's terms and conditions, we're just going to enforce them'. That was his exact response, but as we're hearing from you, it's chalk and cheese.

Mr BARWICK - They just use a lot bigger words because TasWater can get it in eight pages and -

CHAIR - I am mindful of the time. We can always do this again but I am not sure we can get all of this powerful team assembled again in a hurry, so some words for the committee, Jesse, would be welcomed and then I will go around the table - some winding-up words from your perspective.

Mr BRUNSKILL - I think they've had a chance and we're two years in now and I would challenge what it has cost to date compared with the cost of stopping and doing something different. It sounds like they're stitched up to a contract but it's obviously not working for us or them, so I think it's time to rethink it. It hasn't worked.

Mr COOPER - Just a really quick one that we haven't really covered but it might be worth just having in the back of your minds.

It's been quite an effort for us to collate the information and work out what's going on because procuring by invitation is a very private process. So as a market we're not even aware what's gone out or what has been stalled. One or two of us knows but the others don't. There are other issues probably with that process as well. It's worth mentioning that because the lack of information available to the market is part of the reason it's taking us a while to try to work out what's going on or not going on.

Mr HILLS - I think all the focus shouldn't be on the CDO and the delivery model. I think that is a symptom. I think you've got to look at the problem and how long the problem has existed. If it's existed for seven or eight years with regard to project delivery and the lack of spend on capital and/or the focus and the determination to get on this and get it done right -

CHAIR - You're very generous to the CDO, good on you.

Mr HILLS - I think the CDO had its projects that it should have been used on as far as that model's concerned. It's definitely not across Tasmania as far as a whole, across all businesses. It's a symptom. We've got to look at what the problem is and where the problem lies and fix the problem. Before we can fix anything else we need to fix where that problem lies. And that's management.

IN CAMERA

Mr BARWICK - Exactly right. We need to do something now before all our children and all their children pay exorbitantly for mismanagement, for poor processes and for people who have got in over their head and then haven't put their hand up and said, 'Look, we need some help'. We're all here to help. This is what we want to do. We want to help and that's not happening. We can see people losing jobs, people paying too much.

Mr MASLIN - Two things quickly. First, I'm committed to trying to work with TasWater to fix this. I think we're not going to get the CDO thrown out. We still have to work out the best way to work with these people to try to get as much change as we can.

The other thing I pointed out, which I think might be of interest to you, is that we've got two dams. We tendered one dam two years ago and **Mikany** Dam not being built. To give you an example of best practice: Renison Tailings Dam went out for tender and closed on 8 October. The contractor was advised a week later that his preferred contract was signed on 28 October, work is going to start on 9 November. That's a five-week turnaround and that's what can happen. It's a pity that all these GBEs and government departments couldn't get even remotely close to what private enterprise can do.

Mr REARDON - The only thing that possibly hasn't been raised here today is the gain-share model that they're using as far as the incentive for taking the cheapest price. For instance, if an expression of interest is called and the price is given, an estimate is given, then it goes to open tender and another price is achieved which is cheaper than that, the CDO then gets a bit of fat back plus they still get their margin on top of that. I don't really see long term the incentive. There's an incentive there to take the cheapest price but that's not always the best deal for TasWater or the Tasmanian community.

CHAIR - Rachael, thank you for assembling your team around you today. Would you like to leave us with something?

Ms MATHESON - Thank you for inviting us to participate. It was timely that the inquiry was called. For about six to eight weeks prior to the inquiry being called I was fielding calls every day from concerned members. Then I've had new members join as a result because they needed somewhere to go and they needed to raise their concerns and they were not getting through to TasWater, as you've heard today from a number of guys in the room.

I am proud of all the guys for coming together because not a lot of organisations would sit in a room together and discuss this openly. It's been really challenging for a lot of people. It's been emotional as well. As Hugh said, we want this to work for Tasmanians and we need to be cost-effective long term for Tasmanians as individuals, as ratepayers in the state. We will work with TasWater as best we can going forward but under the current arrangements I don't think that is possible.

CHAIR - Elliott, I know you're here for support. This is your five minutes in the sun.

Mr BOOTH - I don't really want five minutes in the sun. It's just that, as I said, I haven't been a big part of the TasWater thing. There are probably four of the biggest civil contractors in Tasmania represented here today, as well as some people who are very specialised in TasWater. Wherever you go there seems to be a lot of issues. It's clear in my mind that Tasmania's not a good spot in relation to TasWater. We're going to be living with problems in the future if something's not changed.

IN CAMERA

CHAIR - Thank you very much. On behalf of the committee, including Jo Palmer who's not here, we sincerely thank you for your time. As I've already indicated, this will be in a vault somewhere - I don't even know where the vault is. When I looked to establish the committee, and I feel sure that the members who are here would know that I had no idea that this was one of the issues that we'd be looking at. I am very pleased that we are able to provide a forum for you to come and share your expertise and knowledge around where this organisation appears to be missing the mark.

I appreciate your comments, Danny, that we've got to look at the bigger picture and not just put all the blame on the CDO. I'd put it all there after reading.

Ms MATHESTON - The CDO has been employed to do a job and that's their job, no matter who takes them on.

CHAIR - Yes. It's really important, and I acknowledge that you are all proud Tasmanians, as we are, and we want the best too. We've got kids and grandkids and we really do want the best for our community and our state.

Thank you so much.

THE WITNESSES WITHDREW.