# **When the hare-brained beats the otiose**

## **Introduction**

*The former NSW Opposition Leader proposed a* [*judicial inquiry*](#_top) *into WestConnex and Sydney Light Rail. The new Opposition Leader wants* [*public inquiries into major infrastructure proposals.*](#_top)

*The NSW Transport Minister called this a ‘hairbrained idea’ saying projects are already subject to ‘independent oversight’. He is wrong.*

*Existing oversight is otiose. Often outpaced by hare-brained proposals.*

*To prevent this further harming economic performance, social responsibility and democratic accountability there needs to be fundamental change to infrastructure assessments.*

## **NSW Projects**

NSW Government projects – road, rail, light rail, stadiums - are contentious to say the least.

Official information is contradictory. Many stated reasons are irrational. Reasonable options were overlooked. Expert advice was [ignored](#_top). The public was misled and not told about pivotal matters.

Little wonder there are growing calls for independent inquiries!

## **Why have independent assessments?**

Major public infrastructure proposals should be assessed independently – by someone other than (Government) proponents. Results and supporting information should be published.

Among the reasons: costs and consequences of projects may be hidden until they are irreversible and / or are unable to be considered by the electorate. The issues at stake go beyond money – even north of the $50billion involved in NSW - and into democratic accountability.

Whether such projects go ahead should be decided by elected Governments. Accountability for such decisions requires Parliament to be openly informed in an authoritative and timely manner of: motivations, effects and costs.

## **Assessments to date**

Advisers such as Infrastructure Australia assess some aspects of some infrastructure proposals - when asked by State Governments. Not all major proposals are considered. Very few are assessed prior to political lock-in.

Their considerations are not public. They do not call submissions, take evidence or examine witnesses. Only summaries are published. Reliance on untested information from (Government) proponents undermines effective [independence](#_top).

The too-frequent practice of publication just before - or after – the start of project construction creates suspicion that a hare-like decision has outpaced an otiose assessment.

Assessments of NSW projects have not answered the most important questions. Some - such as Infrastructure Australia’s 2017 assessments of WestConnex and Metro – in not even recognising the questions - were grossly [inadequate](#_top).

The result: descending confidence in projects and institutions.

NSW Parliament’s current inquiries into [Light Rail](#_top), [WestConnex](#_top) and the [port privatisations](#_top) show it has little confidence in relevant assessments.

## **What should be done – current NSW projects**

Much needs to be done to redeem the NSW situation. A start would be public inquiries into current major projects.

The inquiries should aim to establish:

1. The purposes and motives for projects;
2. Likely effects – economic, social, location and distributional;
3. Likely costs - including disruption.

They should examine more than ‘business cases’ – most of which are rubbish. Reports should be better than what ‘independent’ advisers published.

The inquiries need information from a variety of sources, some of it highly technical and some of which has been withheld. They should:

* operate with Parliamentary powers;
* be independent from project proponents;
* be assisted by experts;
* take submissions from interested parties;
* call evidence and test claims;
* issue draft reports for public comment prior to final reports.

There should be consequences for those who mislead or conceal information. The apparent absence of such consequences is a big flaw in current assessment processes.

## **Parliamentary or judicial inquiries?**

The Light Rail and WestConnex Parliamentary inquiries have been eye-opening – especially for some who highly rate Premier Berejiklian’s infrastructure ['credentials'.](#_top)

Should there be judicial inquiries?

Like Parliamentary inquiries, NSW judicial inquiries (Special Commissions) should enable Parliament to hold Government to account. However, they are initiated by the Executive Government – rather than Parliament, are undertaken by judges and follow legal rules of [evidence.](#_top) They are rare and should be used only for grave matters.

They might be preferred over a Parliamentary inquiry if there is a need to:

* ascertain facts without fear, favour or political influence;
* deal with fears of wrongdoing;
* have the highest public credibility.

Special Commissions can get results where Parliamentary inquiries do not. The Banking etc. Royal Commission is a case in point. They get more attention than Parliamentary inquiries. However, this potential can induce mischief when Government motives include denigrating opponents.

## **The NSW cases**

Turning to the proposed NSW cases; there is running media commentary about **Sydney Light Rail** problems. Its cost at $2bn or so is less than other NSW projects. Its network effects – impacts on the metropolitan transport system and residents – are small.

While many consider the project an embarrassment a Parliamentary inquiry is right. Similar reasoning applies to the knock-down/rebuild of **stadiums**.

**WestConnex** threatens to be up to ten times the cost of the Light Rail. It will have greater effects on metropolitan transport but perhaps not so much on residents other than in its localities – even if some [face damage to their health.](#_top) A big concern is the Government gave WestConnex a corporate form which [reduced disclosure.](#_top)

The Parliamentary – Upper House - inquiry followed a campaign by people who may be traffic-affected or have an a priori objection to motorways – local and political matters.

The inquiry report concluded the project should go ahead given its current under-construction state. However, the report raised a litany of accountability, transparency and community relations problems with the project. The beagle will comment on this report later.

WestConnex does not warrant a Special Commission. However, were there to be a wider inquiry, say into road etc. lobby influences on transport policy (see below) it should be a case study.

The most pressing candidate for a public inquiry is [**Metro**](#_top). John Menadue and I have called for this for some time. Its issues are far more serious and enduring than WestConnex’s – it threatens to physically divide Sydney.

There should be [suspicions about Metro.](#_top) Its history is curious and some of it inexplicable. The Government essentially admits it is an inferior, high cost transport system. [Infrastructure Australia's assessment was strange.](#_top) There is evidence consistent with a hidden agenda to cruel the existing railway and other transport proposals – exacerbating locational inequities in Sydney. It is possible to draw inferences Commonwealth and State departments have covered up its effects.

Yet there is no Parliamentary inquiry and it escaped Opposition and media attention. Something needs to change. It might need to be examined by a Special Commission.

## **Future NSW cases**

There are fairly specific proposals for new projects such as Western Sydney rail, West Metro and motorways to the north and south of Sydney city.

**Western Sydney Rail** etc, intimately associated with [Metro problems,](#_top) should be handled in a Metro inquiry.

Beyond this are **mooted roads** and there will be other proposals. The Opposition’s idea is for public inquiries for those costing over $1bn. While the extent of the project/program effects should be the determining factor, a $1bn threshold is a reasonable proxy.

There would be benefit in setting up a regular process for such inquiries. A Standing Committee of the Parliament, such as a reinvigorated public works committee, could be suitable.

## **Other States and the Commonwealth**

Given the current nationwide Government infatuation with infrastructure there is a good case for similar processes - public inquiries - in other States.

There are two stand out candidates. One is **Melbourne’s mooted $100bn** [**rail loop**](#_top).

The other is **road etc. lobby influences on transport policy** / Government infrastructure decisions. This would not be (yet) another inquiry into road reform, but into decision making and influences. Such an inquiry should be national (Commonwealth) as the issues relate to all jurisdictions. Such an inquiry would allow any necessary stable cleaning before a Commonwealth integrity commission starts in earnest.

When Commonwealth support is sought for a major State project – almost always - its Parliament should satisfy itself a public inquiry has been undertaken. If one has not been undertaken, the Senate should initiate one.

In addition to usual public inquiry matters – purposes/motives, effects, costs (above) - Commonwealth inquiries should comment on how the proposal advances the Commonwealth’s Constitutional roles such as reducing barriers to trade and commerce between States e.g. transport interoperability.

In many transport infrastructure cases, especially big city motorways and mass transit systems, Commonwealth support for a project must rely on Constitution s.96 – conditional/tied grants or specific purpose payments. As s.96 envisages that the Parliament – not the Government - sets conditions, the Senate should conduct any relevant inquiry. The inquiry into [Western Australia's FreightLink](#_top) is an example of what might be done.

## **The independent advisers?**

What of the independent advisers – Infrastructure Australia, Infrastructure NSW etc. who Governments (wrongly) claim [presently deal with the issue](#_top)? Would they become redundant?

Perhaps not. They could have several roles:

1. Assist /work under the Parliamentary inquiries on matters like benefit:cost analysis;
2. Publish reviews of proposals not considered by Parliamentary inquiries
3. Assist in identifying potential infrastructure policy and project requirements – to help Governments and Parliaments develop longer term ‘plans’.

A particularly important additional role, to assist Parliaments, would be ex-post reviews of major projects that have been ‘completed’. At present this is a yawning chasm in infrastructure policy.

Another very large policy/project gap, which can only be assessed by a Commonwealth organisation - perhaps Infrastructure Australia or the InterState Commission - relates to the Commonwealth’s (Constitutional) responsibilities. At issue are matters which should be pursued by the Commonwealth even if they are not a priority of – indeed over objections by – States.

Two basic changes are needed for them to properly play these roles.

First, they need to be more open. They should:

* be less reliant on Government sources of information;
* conduct their activities in the public domain e.g. forums, draft reports;
* publish the details of and behind their advice.

Second, to do so, the present organisational forms of ‘boards’ with behind-closed-doors-collective decision making should be abandoned. They should be reformed into standard statutory authorities rather than corporate entities. The Commonwealth’s Productivity Commission or the NSW Independent Pricing and Regulatory Tribunal are potential models.

## **To conclude**

Parliamentary inquiries – and ex-post reviews - should be routine for major infrastructure project proposals.

There are fairly unique / unprecedented circumstances in NSW at present, especially in relation to Metro. In this very exceptional case, a Special Commission of inquiry may be warranted.

Existing ‘independent’ infrastructure advisers need to have their organisations and practices reformed to better serve the community. Two big infrastructure policy/project gaps are ex-post evaluations and pursuit of Commonwealth Constitutional objectives.

While the NSW Transport Minister might consider such ideas to be ‘hairbrained’, the public needs to know whether his projects are ‘harebrained’ – impatient, ill-considered reactions with tremendous adverse consequences.

Only public inquiries, and later ex-post reviews, will tell us that. They are neither hairbrained nor otiose.

Only the certainty of public inquiries will lead to development of decent infrastructure proposals.

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