



LEGISLATIVE COUNCIL

PUBLIC ACCOUNTABILITY COMMITTEE

Transport Asset Holding Entity

Report 13

April 2022



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Public Accountability Committee

Transport Asset Holding Entity

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Transport Asset Holding Entity

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Chair: Mr David Shoebridge MLC



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Terms of reference

1. That the Public Accountability Committee inquire into and report on the Transport Asset Holding Entity, including:
 - (a) its establishment and operation, and
 - (b) any other related matter.

The terms of reference were referred to the committee by the Legislative Council on 23 June 2021.¹

¹ *Minutes*, NSW Legislative Council, 23 June 2021, p 2360.

Committee details

Committee members

Mr David Shoebridge MLC	The Greens	<i>Chair</i>
Hon Robert Borsak MLC	Shooters, Fishers and Farmers Party	<i>Deputy Chair</i>
Hon Scott Barrett MLC*	The Nationals	
Ms Abigail Boyd MLC**	The Greens	
Hon Scott Farlow MLC	Liberal Party	
Hon John Graham MLC	Australian Labor Party	
Hon Daniel Mookhey MLC***	Australian Labor Party	
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* The Hon Scott Barrett MLC replaced the Hon Lou Amato MLC as a substantive member of the committee from 1 March 2022. The Hon Lou Amato MLC replaced the Hon Trevor Khan MLC as a substantive member of the committee from 25 January 2022 to 1 March 2022. The Hon Trevor Khan MLC was a substantive member of the committee to 6 January 2022.

** Ms Abigail Boyd MLC was a participating member from 26 August 2021 for the duration of the inquiry.

*** The Hon Daniel Mookhey MLC was a participating member from 26 August 2021 to 20 February 2022. He substituted for the Hon Courtney Houssos MLC from 21 February 2022 for the duration of the inquiry.

Chair's foreword

The Transport Asset Holding Entity (TAHE) is a financial and organisational mistake that needs to be undone. TAHE was established by the Coalition government with the promise that it would provide a commercial return on rail assets, strengthen the rail safety framework and deliver a positive real impact on the state budget. Almost two years into TAHE's operations and it has achieved none of these goals. It is now abundantly apparent that it is not fit for purpose. The continuation of the TAHE experiment places an unnecessary, and unacceptable, financial and safety risk for NSW.

The principal reason the Coalition created TAHE was to provide a multi-billion dollar reduction in the state's deficit without having to find any new revenue or reduced expenditure. Rushing to realise the benefit of a favourable paper budget result, the NSW Government moved to create TAHE, and with that a favourable accounting outcome that converted capital expenses for the rail network into capital investments into TAHE.

In its enthusiasm to produce this accounting turnaround the Coalition failed to give due consideration to the accounting standards that needed to be met to make TAHE commercially viable or the safety requirements that are vital in a public rail system. It was alarming to learn that, even when alerted to these issues, the government refused to change its position on the establishment of TAHE. Instead it sought to discredit independent advice that was critical of the TAHE model and to aggressively forum shop for alternative advice to bolster its case for TAHE. This continued despite multiple warnings from within government and from external consultants that highlighted the glaring issues TAHE faced.

The key issues covered in this inquiry were the inadequacy of the government's proposed rate of return, the failure to anticipate and account for a \$20 billion asset write down caused by the establishment of TAHE, concerns about TAHE's independence from the government, disputes over access and licence fees for rail operators and how these fees would impact the state budget, and long term safety concerns with the separation of asset ownership and rail operation.

This inquiry was not the first time concerns about TAHE have been raised. Senior public servants, the Auditor-General of New South Wales and external consultants have been raising concerns about TAHE since it was first conceived. Notably, the accounting issues were so significant that the Auditor-General had to delay the completion of the state's financial statements for 2020-2021 while resolving some of these issues with NSW Treasury. Similarly, the safety issues were so concerning that the former Secretary of Transport of NSW raised these with the Premier and Audit Office, and began to seriously doubt whether he could effectively lead his department if the TAHE project continued. Instead of listening to these concerns, Treasury and the NSW Cabinet turned on their critics seeking to discredit them, marginalise them and, ultimately, sack them. This was an unedifying spectacle and gives a very troubling insight into an increasingly politicised public sector.

It is clear that, without a continuous flow of additional taxpayer support, TAHE will not be able to make a viable commercial return on its assets in the short, medium or long term. A viable economic return can only be achieved by diverting billions of dollars from the public rail operator to TAHE in order to prop up its net financial return. This creates inevitable tensions inside government between rail safety and rail investment, and the need for TAHE to receive yet more revenue to deliver a real return on assets. This ongoing tension is evidenced by the fact that the multi-billion dollar stop-gap funding arrangement that was signed at the end of 2021, in order to obtain a set of audited accounts, is still not legally enforceable. As the TAHE experiment unravels it will inevitably have a serious negative impact on the state's budget overall. For this reason, it is essential for the NSW Government to unwind TAHE as soon as practical to prevent the ongoing bleeding of public finances to sustain it.

In addition to the accounting and safety concerns detailed in this report, it is clear from the evidence that senior NSW Treasury officials from the Secretary down, demonstrated poor judgement throughout TAHE's establishment and in the audit process. This conduct reflects poorly on the professionalism of NSW Treasury. These failings were not only made clear in the evidence before this inquiry, but also in the Auditor-General's report on the state's 2020-2021 accounts. It was disturbing to see the lack of insight and continued denial of the former Treasury Secretary in his evidence to the committee. His inability to see the very obvious failures in Treasury's approach and the lack of frankness in his evidence on the financial implications of the Auditor-General's review of TAHE did neither him or his agency credit. It was refreshing to see the incoming Treasury Secretary's more open approach to the matter and it is hopeful that the lessons learned from this saga will be implemented under his leadership.

This inquiry shows the importance of the Public Accountability Committee's role in scrutinising the government's decisions and holding the government to account. It also demonstrates how the parallel use of the House's power to order papers under Standing Order 52 can be an essential tool to provide information to assist in complex inquiries. This coupled with a respectful engagement with the Auditor-General's office has enabled the committee to obtain a far more comprehensive overview of a complex financial and political undertaking like TAHE than would be traditionally available to parliamentary committees.

With little information on the government's decision-making process in setting up TAHE, the Public Accountability Committee established this inquiry to seek answers from key stakeholders. Little did we know how important this inquiry would be to uncover the truth about TAHE's establishment and its negative impact on future state budgets. This inquiry also demonstrates the importance of the Auditor-General's work in providing transparency on the government's accounts. The necessity to maintain the independence of the Auditor General's office, including in its engagement with this committee, is another clear lesson from this inquiry.

On behalf of the committee, I'd like to thank all those who participated in the inquiry, in particular those who gave frank and forthcoming evidence that assisted the committee in piecing together the story behind TAHE's establishment. At times this evidence was highly charged and inevitably drew a vigorous and critical response from some senior public and private sector witnesses. Giving that evidence took courage and that courage is noted and respected. I also thank my committee colleagues for their contributions, and the secretariat and Hansard for their assistance in this important inquiry.



Mr David Shoebridge MLC

Committee Chair

Findings

- Finding 1** 38
That the NSW Government established the Transport Asset Holding Entity with the primary aim of improving the state's fiscal position in the budget papers, rather than for other purported efficiency and safety benefits.
- Finding 2** 38
That the NSW Government implemented its policy decision of creating the Transport Asset Holding Entity without due consideration of the real financial impact on the budget and the applicable accounting standards and rules that would apply to the entity.
- Finding 3** 39
That it is inappropriate for the Transport Asset Holding Entity to have property development as its primary business focus, given it holds some of the state's most critical transport infrastructure and should be focused on the rail system.
- Finding 4** 52
That the NSW Government failed to give proper consideration to safety, accountability and risk mitigation matters before implementing its policy decision of creating the Transport Asset Holding Entity.
- Finding 5** 69
That it was highly inappropriate for NSW Treasury to instruct Mr Brendan Lyon, former Partner, KPMG Australia, to amend his report, given the report was provided pursuant to KPMG's engagement with Transport for NSW.
- Finding 6** 70
That NSW Treasury failed to adequately co-operate with the Audit Office in the Audit of the State Finances 2021.

Recommendations

- Recommendation 1** 40
That the NSW Government unwind the Transport Asset Holding Entity, due to the further negative financial impacts it will cause to the General Government Sector budget and its inability to credibly make a commercial return.
- Recommendation 2** 40
That the NSW Government ensure that the Audit Office is adequately and independently funded.
- Recommendation 3** 70
That the NSW Government, when engaging consultants, urgently implement:
- controls to ensure consultants are chosen to provide genuine independent advice rather than to deliver desired outcomes
 - measures to ensure agencies share information with each other, to avoid the same consultancy firm being used to provide advice in instances where agencies may have disparate interests in the same policy area
 - measures to prevent conflicts of interest when engaging consultants from more than one agency.
- Recommendation 4** 71
That NSW Treasury address its engagement with the Audit Office in the Audit of the State Finances 2021 by:
- accepting the critique of their performance regarding the audit of the Transport Asset Holding Entity
 - conducting an independent assessment as a matter of priority
 - ensuring that the assessment includes a detailed evaluations of the actions of senior NSW Treasury officials involved
 - taking appropriate action to hold any individuals to account and improve NSW Treasury's processes in the future
 - publishing the findings of its assessment.

Conduct of inquiry

The Legislative Council referred the terms of reference for the inquiry into the Transport Asset Holding Entity (TAHE) on 23 June 2021. The committee received nine submissions and two supplementary submissions, and held six public hearings including one via videoconference.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Procedural issues

There are a number of procedural issues to note in the conduct of this inquiry. These are discussed in turn below.

Documents produced to the House

Prior to and during the course of the inquiry, the Legislative Council made a number of orders for the production of documents under standing order 52 relating to the establishment and operation of TAHE. The returns to these orders helped inform committee members ahead of the committee's hearings. The documents did not strictly form part of the evidence to the inquiry, except for those documents which were specifically tabled by a committee member during hearings.

Publication of Cabinet documents

In addition to tabling documents obtained through standing order 52, a committee member tabled several documents identified as cabinet in confidence.

Following the publication of these documents on the committee's webpage, the Secretary of the Department of Premier and Cabinet, Mr Michael Coutts-Trotter, wrote to the Committee Chair stating that the disclosure of the documents to the committee 'directly or indirectly, was not authorised by the Premier or the Cabinet'. He therefore requested that the committee remove the documents from the committee's webpage, destroy all digital copies, return any hard copies to the Department of Premier and Cabinet and refrain from using or disclosing the documents as part of the inquiry.

Following a more detailed submission from the Department of Premier and Cabinet, the Clerk of the Parliaments briefed the committee on the issues raised and possible options for the committee to consider. The committee resolved to respond to Mr Coutts-Trotter noting the request to remove the documents from the committee's website, and to prepare a special report to the House, recommending that the matter be referred to the Privileges Committee for inquiry and report as to examination, publication and use of cabinet documents by Legislative Council committees.

In February 2022, the Privileges Committee tabled its report finding that most participants to its inquiry advised that there is no legal or constitutional impediment to a Legislative Council committee using a cabinet document in an inquiry. In light of this report, the Public Accountability Committee reconsidered the cabinet document published on its webpage and resolved that on balance it is in the public interest that these documents remain on the website.

The Public Accountability Committee's special report and the Privileges Committee's report can be found on the Parliament's website.

Summons to give evidence

Three witnesses were issued a summons to give evidence at a public hearing. The decision to issue a summons is not taken lightly and witnesses are always invited to attend voluntarily as a first step. Should witnesses decline the first time, the committee issues a second invitation noting the committee's power to issue a summons in the event the witness declines a second time.

Former KPMG Partner, Mr Brendan Lyon and former Transport for NSW Secretary, Mr Rodd Staples were summoned after they declined to attend because of concerns they raised about giving evidence due to confidentiality obligations with their former employers. Mr Lyon's summons to give evidence included a summons to produce documents relevant to the establishment and operation of TAHE. Former NSW Treasury Secretary, Mr Michael Pratt, was also summoned, given difficulties the committee experienced obtaining the co-operation of Mr Pratt to attend and give evidence.

Procedural fairness process

The final matter to note relates to procedural fairness, and the committee's consideration of adverse allegations and matters which could seriously damage the reputation of a person or organisation. In accordance with the procedural fairness resolution adopted by the House on 25 October 2018, the committee wrote to a number of individuals adversely named during evidence, even in some cases where those individuals were also provided with an opportunity to give evidence at a public hearing. Despite not all individuals responding as part of this process, the committee respects and acknowledges the importance of this process in parliamentary inquiries. The responses the committee did receive have been given due weight in this report.

Chapter 1 Background

The Transport Asset Holding Entity (TAHE) took responsibility from 1 July 2020 for managing the state's rail assets including train stations and facilities, rail tracks and other infrastructure, rolling stock, signal and power systems, retail space and other land surrounding stations.

This report begins with relevant background to TAHE's establishment and operation. This includes a brief timeline of events leading up to TAHE's establishment and a discussion of TAHE's status as a state owned corporation, before moving onto an overview of TAHE's operating model.

Establishment of the Transport Asset Holding Entity

- 1.1 TAHE assumed ownership of RailCorp's assets from 1 July 2020.² RailCorp was initially established in 2004 as a state owned corporation but was later restructured as a government agency by 2011.³
- 1.2 According to the NSW Government, TAHE's aim is to 'improve the value of assets it manages for the state and deliver a range of commercial services and projects that improve New South Wales' transport system'.⁴
- 1.3 The NSW Government first communicated its intention to transition RailCorp from a government agency to a state owned corporation in its 2013-2014 Half Yearly Budget Review. The NSW Government then made a detailed announcement in the 2015-2016 Budget Paper.⁵
- 1.4 In 2017, the NSW Parliament passed the *Transport Administration (Transport Entities) Act 2017* to establish TAHE. The Act consists of two schedules which commenced on separate dates. TAHE was therefore established in two key stages.⁶
- 1.5 Below is a table summarising the key changes that occurred with the commencement of each legislative schedule.

² Submission 5, Transport Asset Holding Entity, p 3.

³ Submission 6, NSW Government, pp 7-8.

⁴ Submission 6, NSW Government, p 2.

⁵ Submission 5, Transport Asset Holding Entity, p 4; Submission 6, NSW Government, pp 6 and 8.

⁶ Submission 5, Transport Asset Holding Entity, p 4; Submission 6, NSW Government, pp 6 and 8.

Table 1 Establishment of TAHE under the *Transport Administration (Transport Entities Act 2017)*

Schedule 1 – 17 July 2017	Schedule 2 – 1 July 2020
Sydney Trains and NSW Trains became stand-alone government agencies and were no longer subsidiaries of RailCorp.	RailCorp was renamed to the Transport Asset Holding Entity of New South Wales and converted from a government agency to a statutory state owned corporation.
RailCorp's functions were expanded to enable it to 'hold, manage, operate and maintain' transport assets more generally so that it was not confined to just 'rail infrastructure facilities'.	The Treasurer and Minister for Finance and Small Business became TAHE's shareholders.
	An independent board of directors was appointed to TAHE, including the Secretary of Transport for NSW.
	The Minister for Transport and Roads, as the Portfolio Minister, was given the power to grant one or more operating licences to TAHE to regulate TAHE's functions.

Submission 5, Transport Asset Holding Entity, p 5; Submission 6, NSW Government, pp 8-9.

- 1.6** TAHE's board of directors comprises the Chair, the Chair of Audit and Risk Committee, the Chair of the Asset Safety and Environment Committee, the Secretary of Transport for NSW and the Chief Executive Officer of TAHE.⁷
- 1.7** Notably, TAHE was proclaimed as a statutory state owned corporation as part of the second phase of establishment in July 2020. A state owned corporation is a commercial business owned by the government. According to NSW Treasury, state owned corporations are set up on behalf of the people of New South Wales as they 'provide services critical to the economy and infrastructure to the state'.⁸
- 1.8** State owned corporations are established through legislation and must comply with the requirements set out in the *State Owned Corporations Act 1989*.⁹ These include, among other things, the requirement to remain independent of government and to make a commercial return.¹⁰

⁷ Submission 5, Transport Asset Holding Entity, p 12.

⁸ NSW Government, Treasury, *State owned corporations*, <https://www.treasury.nsw.gov.au/information-public-entities/government-businesses/state-owned-corporations>, last updated 3 February 2022.

⁹ NSW Government, Treasury, *State owned corporations*, <https://www.treasury.nsw.gov.au/information-public-entities/government-businesses/state-owned-corporations>, last updated 3 February 2022.

¹⁰ *State Owned Corporations Act 1989*. See also, Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury, 1 October 2021, p 40.

- 1.9 According to the NSW Government, many different structures were considered for TAHE before adopting the statutory state owned corporation model under Part 3 of the *State Owned Corporations Act 1989*.¹¹

How do state owned corporations fit within the state budget?

- 1.10 Central to this inquiry is the way in which TAHE's structure as a state owned corporation is accounted for and how this impacts the state budget. This section explains how state corporations fit within the New South Wales Total State Sector budget.
- 1.11 The Australian Bureau of Statistics (ABS) sets out classifications which determine the structure and thus accounting treatment of government entities. According to these classifications, the New South Wales Total State Sector comprises entities which fall under the General Government Sector and the Non-General Government Sector.
- **General Government Sector** agencies are those which provide public services or carry out policy or regulatory functions. These agencies are directly or indirectly funded through taxation. Some are budget-dependent while others are not.
 - **Non-General Government Sector** agencies are government-controlled businesses which generally provide goods and services paid for directly by consumers. These agencies are either classified as public financial corporations or public non-financial corporations.
 - Public financial corporations have one or more of the following functions: that of a central bank, the acceptance of demand, time or savings deposits, or the authority to incur liabilities and acquire financial assets in the market on their own account.
 - Public non-financial corporations operate broadly commercial businesses with user charges representing a significant proportion of revenue.¹²
- 1.12 A state owned corporation is considered a public non-financial corporation if it satisfies the criteria specified in the ABS' Government Finance Statistic Manual. According to Mr San Midha, Deputy Secretary Policy and Budget, NSW Treasury, a public non-financial corporation is considered a state owned corporation if its control and operations sit outside the General Government Sector.¹³ For a state owned corporation to be considered independent, Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury, explained that it must have an independent board, be regulated under the *State Owned Corporations Act* and be a market producer.¹⁴
- 1.13 Ms Wilkinson also highlighted a number of criteria which the ABS classification takes into account when determining whether an entity is a public non-financial corporation. These include whether the entity:
- is a market producer by charging economically significant prices for goods and services
 - recovers a portion of operating costs from sales over multi-year periods

¹¹ Submission 9, NSW Treasury and Transport for NSW, p 2.

¹² Audit Office of New South Wales, *Financial Audit: State Finances 2021*, 9 February 2022, p 86.

¹³ Evidence, Mr San Midha, Deputy Secretary Policy and Budget, NSW Treasury, 1 October 2021, p 40.

¹⁴ Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury, 1 October 2021, p 40.

- can distribute surpluses from operations as a dividend or treat them as a return of capital, noting that the entity does not have to have a primary goal of making a profit.¹⁵

1.14 As a state owned corporation sitting under the Non-General Government Sector, funding provided from the government to TAHE is accounted for differently than if it is treated as a General Government Sector agency. This is discussed further in Chapter 2.

Operation of the Transport Asset Holding Entity

1.15 The establishment of TAHE separates rail asset ownership and management from day to day operations which remain the responsibility of Transport for NSW, Sydney Trains and NSW Trains. This section sets out TAHE's operating model and the way it operates alongside other transport agencies.

1.16 TAHE's scope is defined by a number of documents which form the organisation's operating model. These include:

- **legislation** which defines TAHE's objectives and functions
- a **statement of ministerial expectations** which provides guidance to ensure TAHE's strategic direction aligns with the government's policy objectives
- **operating licence/s** which define the scope and remit of TAHE
- a **statement of corporate intent** which outlines TAHE's corporate strategy and plans, and provides performance expectations.¹⁶

1.17 The *Transport Administration Act 1988* sets out TAHE's objectives and functions. Stakeholders described TAHE's legislative objectives as of 'equal importance'.¹⁷ These are:

(1) to undertake its activities in a safe and reliable manner

(2) to be a successful business and, to this end:

a. to operate at least as efficiently as any comparable businesses, and

b. to maximise the net worth of the State's investment in TAHE;

(3) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates;

¹⁵ Evidence, Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury, 1 October 2021, pp 40-41; Answers to questions on notice, NSW Treasury, received 5 November 2021, p 2.

¹⁶ See, Submission 5, Transport Asset Holding Entity, pp 5-6; Submission 6, NSW Government, p 11; Submission 6, NSW Government, p 12; Submission 6, NSW Government, p 12; Transport Asset Holding Entity, *Statement of Corporate Intent*, 2022-2024, p 3.

¹⁷ See, Submission 5, Transport Asset Holding Entity, p 6; Evidence, Ms Trudi Mares, Deputy Secretary, Corporate Services, Transport for NSW, 1 October 2021, p 21.

(4) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6(2) of the *Protection of the Environment Administration Act 1991*; and

(5) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.¹⁸

1.18 TAHE's functions are set out in the Act as follows:

- holding, managing, operating and maintaining vested transport assets;
- establishing, financing, acquiring, constructing and developing transport assets to be vested in or owned by it;
- promoting and facilitating access to the part of the NSW rail network vested in or owned by TAHE in accordance with any current NSW rail access undertaking or otherwise lease or make available transport assets vested in or owned by TAHE to other persons or bodies;
- acquiring and developing land for the purpose of enabling TAHE to carry out its other functions (including the acquisition of land).¹⁹

1.19 Consistent with other NSW Government state owned corporations, the *Transport Administration Act 1988* provides that the Portfolio Minister issue an operating licence to authorise TAHE to carry out its functions. An operating licence includes terms and conditions determined by the Minister on the following matters:

- compliance by TAHE with network and asset standard requirements issued from time to time by TfNSW [Transport for NSW]
- pricing regime or structure relating to assets leased or to which access is made available by TAHE
- arrangements under which TAHE assets are leased or to which access is made available
- safety
- integration of transport modes
- transport services which TAHE is permitted or not permitted to operate itself;
- capital works programs, procurement and asset lifecycle
- businesses and activities conducted outside the state
- development, use or disposal of TAHE's real property or transport infrastructure.²⁰

1.20 The Minister for Transport and Roads, as the Portfolio Minister, issued the latest operating licence on 1 July 2021 for a term of two years, from 1 July 2021 until 30 June 2023. One of the key terms is that TAHE is to 'have regard to safety integrity and the policies and objectives of the NSW Government in relation to integration of transport modes'.²¹

1.21 The Minister for Transport and Roads also issues a statement of ministerial expectations to ensure that TAHE is in alignment with the policy objectives of the government.²² The most recent statement of expectations came into effect on 1 July 2021, providing TAHE with a list

¹⁸ Submission 5, Transport Asset Holding Entity, pp 5-6.

¹⁹ Submission 6, NSW Government, p 11.

²⁰ Submission 6, NSW Government, p 11.

²¹ Submission 5, Transport Asset Holding Entity, p 7.

²² Submission 6, NSW Government, p 12.

of asset, safety and environmental outcomes it is expected to take into account, including a number of reporting responsibilities.²³

- 1.22** In addition to being accountable to the Portfolio Minister, TAHE is also accountable to its Shareholder Ministers, the Treasurer and the Minister for Finance. Each year, the Shareholder Ministers issue performance expectations through a statement of corporate intent. The latest statement of corporate intent issued for the 2022-2024 financial years was endorsed by the TAHE board in September 2021.²⁴
- 1.23** Significant to TAHE's operating model is its relationship with Transport for NSW, Sydney Trains and NSW Trains. Transport for NSW remains responsible for train policy, system planning, timetabling, procurement and delivery of transport infrastructure operations, while Sydney Trains and NSW Trains continue to run day to day customer services and operations.²⁵
- 1.24** In addition, TAHE has entered into a number of legal agreements, including access and licence agreements, with Transport for NSW, Sydney Trains and NSW Trains to make assets available to them on a commercial basis.²⁶ The access and licence fees associated with these agreements are discussed further in the next chapter, being relevant to TAHE's fiscal objectives.

Committee comment

- 1.25** Holding billions of dollars' worth of rail assets and separating asset ownership from day to day operations, the establishment of the Transport Asset Holding Entity (TAHE) was a significant transport reform and development in the New South Wales state sector. However, there was little transparency on the decision-making behind TAHE's establishment and there is no evidence that the government had a viable plan in place to ensure the entity's commercial viability or to maintain the rail network's operations and safety well into the future.
- 1.26** Prior to the establishment of this inquiry, media reports and documents received through the Upper House raised important questions about the reasons why the NSW Government established TAHE and how it impacted the state budget. Ultimately, questions were raised about the government's integrity.
- 1.27** Our committee set up this inquiry to provide some much needed transparency around TAHE. We sought information from key stakeholders, including senior government officials, about the multi-billion dollar budgetary impact of TAHE and the safety of the rail network.
- 1.28** Unfortunately, the concerns held by stakeholders and committee members at the very beginning of this inquiry were only amplified as the inquiry progressed, particularly through the frank evidence of some witnesses and the dismissive and contradictory evidence of others.
- 1.29** This inquiry is a clear example of the important role Upper House Committees play in scrutinising government decisions and policies. It was crucial to uncovering the truth about

²³ Submission 5, Transport Asset Holding Entity, p 8; Submission 6, NSW Government, pp 16-17.

²⁴ Submission 6, NSW Government, p 12; Transport Asset Holding Entity, *Statement of Corporate Intent*, 2022-2024, p 3.

²⁵ Submission 6, NSW Government, p 12.

²⁶ Submission 6, NSW Government, p 12; Submission 5, Transport Asset Holding Entity, pp 8-11.

TAHE's establishment, and to provide a public forum to review an almost \$40 billion decision of the government that comes with a high degree of financial and community risk.

Chapter 2 The impact of the Transport Asset Holding Entity on the state's budget

The key focus of this inquiry was the accounting treatment of the Transport Asset Holding Entity (TAHE), whether it is financially viable in the long term and its impact on the state budget. Central to this discussion was how government funding to TAHE is accounted for in the state budget given TAHE's classification as a state owned corporation, TAHE's rate of return on equity, the revaluation of TAHE's assets and TAHE's independence from the government.

Establishment of the Transport Asset Holding Entity as a state owned corporation

- 2.1 As outlined in Chapter 1, TAHE assumed ownership of RailCorp's assets from 1 July 2020.²⁷ The financial and accounting treatment for statutory state owned corporations means that they are accounted for in the state budget differently to other government-controlled entities. Essentially, statutory state owned corporations are part of the Non-General Government Sector, given their broad commercial orientation, as opposed to agencies part of the General Government Sector which provide public services.²⁸
- 2.2 The current and former Auditors-General referred to the 2015-2016 Budget Paper which announced TAHE's classification as a public non-financial corporation and how this classification would change the treatment of TAHE's government funding. Prior to 1 July 2015, the NSW Government paid grants to RailCorp, TAHE's predecessor, to deliver its capital program. These grants were recorded as an expense to the General Government Sector budget. From 1 July 2015, government funding for RailCorp's capital projects were provided through equity injections rather than grants, which were no longer recorded as an expense.²⁹
- 2.3 The 2015-2016 Budget Paper provides that the reason for this change was RailCorp's expected transition to TAHE which would provide a commercial return over time. The Budget Paper also held that the accounting change would improve the General Government Sector budget result each year by \$1.2 billion to \$1.9 billion.³⁰
- 2.4 In light of this, the committee explored the budgetary impact of setting up TAHE as a state owned corporation and whether the fiscal benefits were a primary reason for TAHE's establishment.

The basis for the establishment of the Transport Asset Holding Entity

- 2.5 Given the improvement to the 2015-2016 budget generated by an accounting change, the committee explored the basis for TAHE's establishment as a statutory state owned corporation and TAHE's impact on subsequent budgets.

²⁷ Submission 5, Transport Asset Holding Entity, p 3.

²⁸ Audit Office of New South Wales, *Financial Audit: State Finances 2021*, 9 February 2022, p 86.

²⁹ Submission 4, Auditor-General of New South Wales, p 4; Submission 1, Mr Tony Harris, pp 1-2.

³⁰ Submission 4, Auditor-General of New South Wales, p 4; Submission 1, Mr Tony Harris, pp 1-2.

- 2.6** As mentioned in Chapter 1, the NSW Government stated that it had considered many different structures for TAHE before adopting the statutory state owned corporation model.³¹ The NSW Government asserted that 'TAHE's establishment as a state owned corporation facilitates a more effective, efficient and commercial approach to the management of heavy rail assets'.³²
- 2.7** Government stakeholders argued that since the introduction of the *State Owned Corporations Act*, state owned corporations have demonstrated that they can safely and efficiently manage public and partial monopolies, such as water and energy.³³
- 2.8** In a joint submission, NSW Treasury and Transport for NSW highlighted the advantages of state owned corporations including that they:
- keep essential assets in public ownership while achieving greater organisational and market efficiency
 - can invest with partners outside the competing priorities of the state budget to achieve innovation.³⁴
- 2.9** The departments noted that to counter-balance the commercial interests of a state owned corporation such as TAHE, public accountability is achieved through clear statutory objectives in the enabling legislation of a state owned corporation and the oversight of two Shareholder Ministers and one Portfolio Minister who are accountable to the people of New South Wales. In addition, the Portfolio Minister has the power under the *State Owned Corporations Act* to direct the corporation in certain circumstances including where necessary in the public interest.³⁵
- 2.10** NSW Treasury and Transport for NSW described TAHE as a 'critical reform in the Transport Cluster', referring to the government's *State Infrastructure Strategy and Long Term Transport Master Plan* developed in 2012 which 'proposed better use of existing assets'. The departments also held that the TAHE reform is consistent with policies that the NSW Government has been adopting with regard to the National Competition Policy, which seek to improve market design in a way that encapsulates the benefits of competition while maintaining state ownership of natural monopolies such as railways.³⁶
- 2.11** However, given that TAHE was announced as a public non-financial corporation in 2015, the committee explored TAHE's impact on the budget from 2016-2017 onwards.
- 2.12** In particular, the committee questioned witnesses from Treasury NSW about TAHE's impact on budget results in 2017-2018, 2018-2019 and 2019-2020, noting that without TAHE the state would have likely had a deficit in 2018-2019 instead of a surplus, and there would have been a greater deficit in 2019-2020.³⁷

³¹ Submission 9, NSW Treasury and Transport for NSW, p 2.

³² Submission 6, NSW Government, p 5.

³³ Submission 9, NSW Treasury and Transport for NSW, p 2; Submission 6, NSW Government, p 5.

³⁴ Submission 9, NSW Treasury and Transport for NSW, p 2.

³⁵ Submission 9, NSW Treasury and Transport for NSW, p 3.

³⁶ Submission 9, NSW Treasury and Transport for NSW, pp 1-2.

³⁷ Tabled document, NSW Government, *Cabinet Submission: Establishment of a Transport Asset Holding Entity* (referred to in evidence as Treasury tender 003), May 2016, p 4, tabled by the Hon Daniel Mookhey MLC, 1 October 2021.

- 2.13** In evidence, Mr San Midha, Deputy Secretary Policy and Budget, NSW Treasury stated that the establishment of TAHE had no 'material change or impact to the bottom line'. He contended the position has been 'neutral', explaining that there was no change as the financial treatment that existed prior to TAHE's establishment with RailCorp continued and that the budget would have only been impacted if the government decided to convert TAHE's status from a public non-financial corporation to a General Government Sector agency or chose not to move forward with independent governance and the state owned corporation model.³⁸
- 2.14** NSW Treasury later clarified Mr Midha's evidence, stating that NSW Treasury understood the committee's questions to be in relation to the impact on the Total State Sector accounts. Consistent with Mr Midha's responses to the committee in evidence, NSW Treasury reaffirmed that the 'conversion of RailCorp to TAHE did not have any material impact on at the New South Wales total state sector level or on the budget's net debt metric'.³⁹
- 2.15** However, the department noted that if the committee was referring to the impact on the General Government Sector accounts, it sought to clarify that in 2015-2016 'there was a positive impact from the conversion of RailCorp to TAHE, as funding to RailCorp for heavy rail capital expenditure was classified as equity instead of grants'.⁴⁰
- 2.16** Referring to a number of cabinet documents, the committee questioned stakeholders whether the reclassification of grants as equity injections was the main reason why the NSW Government established TAHE. In response, stakeholders from NSW Treasury and Transport for NSW declined to comment on the documents due to their status as cabinet documents and instead referred to TAHE's objectives.⁴¹
- 2.17** The committee referred Mr Midha to a May 2016 cabinet submission titled *Establishment of a Transport Asset Holding Entity*, showing that there would be a positive budget impact of \$1.8 billion in 2015-2016 and a forecast of \$6.8 billion over the forward estimates. The document stated that 'by holding public transport assets in an independent, commercial entity, these expenses [grants paid to RailCorp] can be reclassified in the budget as a capital investment'. The document went on to highlight that there is 'no net change in underlying financial position, it is purely a reclassification of budget expenses that, in effect, moves them to an off-Budget entity'.⁴²
- 2.18** When asked whether TAHE was created to reclassify grants paid to RailCorp as equity injections and to shift costs off-budget, Mr Midha declined to comment on the document and referred to TAHE's legislation for its objectives:

³⁸ Evidence, Mr San Midha, Deputy Secretary Policy and Budget, NSW Treasury, 1 October 2021, pp 41-45.

³⁹ Correspondence, Mr Michael Pratt to the Chair, Public Accountability Committee, 2 November 2022, p 2.

⁴⁰ Correspondence, Mr Michael Pratt to the Chair, Public Accountability Committee, 2 November 2022, p 2.

⁴¹ See, Evidence, Mr San Midha, Deputy Secretary Policy and Budget, NSW Treasury, 1 October 2021, p 45; Evidence, Ms Trudi Mares, Deputy Secretary, Corporate Services, Transport for NSW, 1 October 2021, p 27.

⁴² Tabled document, NSW Government, *Cabinet Submission: Establishment of a Transport Asset Holding Entity* (referred to in evidence as Treasury tender 003), May 2016, p 4, tabled by the Hon Daniel Mookhey MLC, 1 October 2021.

... that is not my place to comment on any Cabinet-in-confidence document. From what I understand, I take the establishment of TAHE or the objective of TAHE that is in the bill, and those are the principles of establishing TAHE ...⁴³

- 2.19** Mr Midha further commented that his understanding of TAHE's establishment 'was to set up a commercial entity to better manage and deliver asset management for the rail portfolio...'.⁴⁴
- 2.20** When questioned about the same document, Ms Trudi Mares, Deputy Secretary, Corporate Services, Transport for NSW, also declined to comment, stating that financial and accounting treatments are a matter for Treasury, and that she cannot comment on cabinet documents.⁴⁵
- 2.21** With regard to other purposes for TAHE's establishment from a transport perspective, Ms Mares highlighted that there are 'some joint outcomes that, as the strategic asset owner, would really maximise the commercial opportunities of the assets while retaining safety and maintenance within Transport itself'. Ms Mares added that there is a benefit to Transport for NSW through a 'third line of assurance' regarding safety.⁴⁶
- 2.22** Mr John Hardwick, Executive Director, Asset Management, Safety Environment and Regulation, Transport for NSW, elaborated on this third line of assurance, explaining that TAHE's independent board and Chief Executive Officer critically assess whether risk exposures are 'appropriately controlled' by Transport for NSW and whether rail operators are complying with their safety legislation obligations.⁴⁷
- 2.23** Another document that was of interest to the committee was a *Joint Briefing to the Minister for Transport and Roads and the Treasurer* in 2014 which made similar assertions about TAHE's establishment to the cabinet submission discussed above. The briefing stated:
- Treasury supports this initiative, but Government added a further objective of creating an asset structure that, where feasible, improves the state's short and medium term fiscal results.⁴⁸
- 2.24** When asked about this document, and whether TAHE was established to improve the state's short and medium term fiscal results, Ms Mares noted that there have been 'further advancements' since that briefing, and that she cannot comment on Cabinet documents.⁴⁹
- 2.25** On this issue, former Transport for NSW Secretary, Mr Rodd Staples, stated that 'at the outset' he understood TAHE's objective was to generate more commercial return from rail assets, as

⁴³ Evidence, Mr San Midha, Deputy Secretary Policy and Budget, NSW Treasury, 1 October 2021, p 45.

⁴⁴ Evidence, Mr San Midha, Deputy Secretary Policy and Budget, NSW Treasury, 1 October 2021, p 45.

⁴⁵ Evidence, Ms Trudi Mares, Deputy Secretary, Corporate Services, Transport for NSW, 1 October 2021, p 27.

⁴⁶ Evidence, Ms Trudi Mares, Deputy Secretary, Corporate Services, Transport for NSW, 1 October 2021, p 27.

⁴⁷ Evidence, Mr John Hardwick, Executive Director, Asset Management, Safety Environment and Regulation, Transport for NSW, 1 October 2021, p 28.

⁴⁸ Tabled document, Transport for NSW, *Public Transport Asset Holding Corporation (AssetCo) Establishment: Joint briefing to the Minister for Transport and Roads and the Treasurer* (referred to in evidence as Transport Tender 001), 2014, p 2, tabled by the Hon Daniel Mookhey MLC, 1 October 2021.

⁴⁹ Ms Trudi Mares, Deputy Secretary, Corporate Services, Transport for NSW, 1 October 2021, p 27.

stated in the legislation and the second reading speech. He acknowledged, however, that there was an 'underlying objective' to present 'the fiscal position for the state budget in a certain way'.⁵⁰

- 2.26** Mr Staples elaborated that when he sought to address concerns about control, decision-making and accountability, it was clear that the 'top criteria' was to meet the objective around the accounting treatment of TAHE and its impact on the budget:

As we sought to address some of the concerns around control and decision-making and accountability and who would be doing what within that space to get confidence and clarity that we could maintain safety, good customer service and good clarity about who was doing what, it became apparent that the top criteria in all of that was that we needed to make sure we met the fiscal objective of the treatment on the budget.⁵¹

- 2.27** Appearing as Secretary of NSW Treasury, Mr Michael Pratt refuted claims that TAHE was established to improve the budget position. Instead, Mr Pratt highlighted the government's policy of micro-economic reform as the motivation for TAHE's establishment:

There has been a false narrative that TAHE was created to perpetuate an accounting trickery. That is wrong. The truth is TAHE was created to pursue Government policy of micro-economic reform to bring about the most optimum structure for the management of Transport assets. This reform will deliver demonstrable and measurable benefit to the people of New South Wales.⁵²

Accounting concerns

- 2.28** The accounting treatment for TAHE is highly complex, such that stakeholders expressed different views about whether it has been appropriately accounted for and whether it is therefore financially viable. In fact, the committee heard conflicting evidence about the:

- potential for a negative impact on the General Government Sector budget of up to \$14 billion
- appropriate rate of return on the government's investment in TAHE
- revaluation of TAHE's assets by over \$20 billion
- need for a letter of comfort from NSW Treasury to sign off TAHE's accounts
- independence of TAHE.

- 2.29** In this context, it is important to note that the majority of the committee's hearings were held while the Auditor-General was conducting her annual audit of the state's finances (which includes TAHE's accounts). Below is a discussion of the key accounting concerns as they stood before the Auditor-General released her audit on 9 February 2022.

⁵⁰ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 28.

⁵¹ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 28. See also p 30.

⁵² Evidence, Mr Michael Pratt, Secretary, NSW Treasury, 16 December 2021, pp 3-4.

Potential negative impacts on the budget

- 2.30** Early in the process, concerns were raised that the accounting and financial treatment applied to TAHE may not work and could result in a negative impact on the budget for various reasons. These concerns emerged as a result of information included in the following documents:
- PwC, *TfNSW Structure Considerations - 'TAHE' Business Model Assessment*, December 2019, commissioned by Transport for NSW
 - KPMG, *TAHE: Long-term operating model assessment*, 8 November 2020, commissioned by Transport for NSW
 - NSW Treasury, *Transport Asset Holding Entity ('TAHE'): Treasury Update*.
- 2.31** This section considers each of these documents regarding the issues raised in relation to TAHE's accounting treatment and the potential impact on the state budget.
- 2.32** In December 2019, PwC assessed TAHE's business model in the context of two new ABS accounting standards which had direct financial implications on the General Government Sector. Although both standards had different requirements, the premise was that entities would have to include all the assets they control on their balance sheets, regardless of ownership.⁵³
- 2.33** Based on the proposed business model for TAHE, PwC advised that Transport for NSW may have been required to bring back onto its balance sheet the majority of transport infrastructure when the new ABS standards were implemented on 1 July 2020. The reason for this was that the proposed TAHE business model was not sufficiently independent of government for the purposes of the ABS standards. In turn, this meant that the infrastructure and its associated depreciation would be brought back into the General Government Sector, potentially resulting in a cumulative impact of negative \$10 billion over four financial years.⁵⁴
- 2.34** Mr Staples gave evidence that 'the advice from PwC was that there was a risk that the accounting treatment that was being adopted by the government could not be sustained'. Mr Staples recalled that he was 'very surprised' to receive this advice as his focus had been on implementation, safety, customer issues and financial issues as they impact Transport for NSW. He explained that he 'very quickly engaged' with PwC to understand the issues and alerted Mr Michael Pratt and Mr Tim Reardon, who were the respective secretaries for NSW Treasury and the Department of Premier and Cabinet at the time.⁵⁵
- 2.35** The three secretaries subsequently met in March 2020 to discuss PwC's advice that there would be challenges with TAHE's accounting treatment. Mr Staples told the committee that Mr Reardon and Mr Pratt 'took that on board'.⁵⁶

⁵³ Tabled document, PwC, *TfNSW Structure Considerations - 'TAHE' Business Model Assessment*, December 2019, p 8, tabled by the Hon Daniel Mookhey MLC, 15 November 2021.

⁵⁴ Tabled document, PwC, *TfNSW Structure Considerations - 'TAHE' Business Model Assessment*, December 2019, p 8, tabled by the Hon Daniel Mookhey MLC, 15 November 2021.

⁵⁵ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 35.

⁵⁶ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 36.

- 2.36** Mr Staples added that in conversations with Mr Pratt, the feedback he received in relation to the potential negative \$10 billion impact to the budget was 'that we needed to get on and implement this policy and we would find a way to make it work'.⁵⁷
- 2.37** Following conversations with Mr Reardon and Mr Pratt, Mr Staples felt that Transport for NSW had been more focused on the operational rather than the fiscal aspects of TAHE. The concerns around the fiscal and accounting treatment of TAHE that emerged from the PwC report was a catalyst for Mr Staples to engage KPMG in April 2020 to look at TAHE from a more holistic perspective.⁵⁸ Mr Staples also speculated that the PwC advice was 'probably the catalyst to bring KPMG back in on the accounting to actually get an update on the advice that Treasury got from KPMG previously'.⁵⁹
- 2.38** Mr Staples explained that the brief for the Transport KPMG engagement was to 'identify the risks and come up with an operating model to make that work and achieve the financial outcomes that the government was seeking to achieve'.⁶⁰ He added that Transport for NSW chose KPMG due to their knowledge and understanding based on modelling they provided to Transport for NSW in 2017, and their ability to cover the breadth of the brief regarding both operational and financial aspects.⁶¹
- 2.39** Transport for NSW subsequently engaged Mr Brendan Lyon, former Partner, KPMG, who produced the following reports in 2020:
- KPMG, *Transport Asset Holding Entity: Initial Assessment of Options*, 21 July 2020
 - KPMG, *TAHE: Long-term operating model assessment*, 8 November 2020.
- 2.40** Mr Lyon summarised that his first report 'advised Cabinet of problems with Treasury's modeling of TAHE's costs and benefits and a range of safety risks'. Mr Lyon went to explain that based on this work, Transport for NSW insisted that the June Cabinet submission be changed to allow TAHE to only 'be stood up, not to operate'.⁶²
- 2.41** Further, Mr Lyon explained that Cabinet then required that his team provide to Cabinet later in the year 'a detailed operating model capable of passing independent safety review, and a robust financial model'. Mr Lyon asserted that his second report 'confirmed that:
- ... Treasury's numbers used for the budget are wrong, and had essentially made up the benefits used in the June cabinet submission – seeing ... the budget some \$10 billion or more worse off than Treasury has claimed.⁶³
- 2.42** Mr Lyon asserted that NSW Treasury was dissatisfied with his work. With regard to the first report, Mr Lyon alleged that it 'caused a very high degree of umbrage from Mr Pratt' because the report raised safety issues and advised that TAHE was not ready to operate on 30 June 2020

⁵⁷ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 36.

⁵⁸ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 38.

⁵⁹ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 36.

⁶⁰ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 38.

⁶¹ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 38.

⁶² Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 2.

⁶³ Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 2.

and assume control of the rail system.⁶⁴ Mr Lyon stated that Mr Pratt complained to Mr James Hunter, a former senior partner with KPMG, who then formed a 'Conflict Oversight Governance Committee'.⁶⁵

2.43 Commenting about his second report, Mr Lyon similarly alleged that senior officials at NSW Treasury were unhappy with his work, displayed unprofessional behavior towards him and his team, and pressured him to change his report.⁶⁶ Further detail about NSW Treasury's involvement in Mr Lyon's work is discussed separately in Chapter 4.

2.44 The set of financial assumptions used by Mr Lyon in this second report led him to conclude that TAHE would have a negative impact of \$5.3 billion. By contrast, NSW Treasury's assumptions indicated that there would be a positive impact on the budget of \$4.7 billion.⁶⁷ There were two key differences in the assumptions that the committee explored with Mr Lyon:

- KPMG's assumptions calculated the return on equity based on TAHE's \$37.9 billion net assets at the time, while Treasury's assumptions based their calculations for the return on equity on the \$10.8 billion equity it had contributed to TAHE since 2015
- KPMG calculated the rate of return as one to three per cent from 2023 to 2027 and four per cent onwards after that, while Treasury calculated its rate of return as 1.31 per cent based on the 10 year government bond rate.⁶⁸

2.45 Relevant to these assumptions, the committee referred to the statement of expectations from the then Portfolio Minister, the Minister for Transport and Roads, to the Chief Executive Officer of TAHE as of 9 June 2021, which informed TAHE that:

The state's current equity investment in TAHE is projected to be approximately \$7 billion at 1 July 2021. Capital grants prior to corporatisation in 2015-2016 to RailCorp do not constitute equity for the purposes of calculating government's return on investment.⁶⁹

2.46 When asked whether that direction endorsed assumptions that his report rejected, Mr Lyon agreed it did 'precisely that'. He also agreed that the statement indicated that the Minister wanted the \$7 billion to be the 'denominator for the calculation of return on equity'.⁷⁰

2.47 My Lyon was asked whether in the course of producing his report, there was any evidence to conclude that the state's investment in TAHE for the purposes of calculating a return on

⁶⁴ Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 5.

⁶⁵ Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 5.

⁶⁶ Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 2.

⁶⁷ Tabled document, KPMG, *TAHE: Long-term operating model assessment*, 8 November 2020, p tabled by the Hon Daniel Mookhey, 1 October 2021, p xiii.

⁶⁸ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, pp 25-29.

⁶⁹ Tabled document, Correspondence from the Hon Andrew Constance MP, Minister for Transport and Roads to Mr David Jurd, Acting Chief Executive Officer, Transport Asset Holding Entity, 9 June 2021, tabled by the Hon Daniel Mookhey MLC, 8 November 2021.

⁷⁰ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 28.

investment was \$7 billion. He replied: 'Absolutely none. We did reject it out of hand in quite a detailed case study'.⁷¹

- 2.48** Another difference between KPMG and NSW Treasury's financial assumptions was the amount charged to operators in access and licence fees. KPMG's assumptions provided that access fees should commence at \$700 million for the financial years 2021-2022 to 2023-2024, then increase onwards. The report went on state that TAHE should be charging operators a minimum of \$1.4 billion and a maximum of \$4.3 billion. It noted that 'the introduction of access charges to the public operators is the key reason for the deterioration of estimated budget performance under both TAHE scenarios'.⁷²
- 2.49** When asked whether TAHE is undercharging its customers, Mr Peter Crimp, Executive General Manager, Finance and Business Performance, Transport Asset Holding Entity, disagreed, pointing to the difference between the KPMG and Treasury calculations on what the return on equity and the rate of return should be.⁷³
- 2.50** On whether NSW Treasury created the policy to minimise the impact on the state budget, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, responded: 'I would not comment on Treasury's intention in terms of creating the policies'.⁷⁴
- 2.51** With regard to Treasury's financial assumptions, in October 2020, NSW Treasury engaged Ms Heather Watson, KPMG Partner, to 'assist in the development of a financial impact statement for TAHE'. KPMG submitted that Ms Watson's engagement was a continuation of work she was providing to NSW Treasury from February 2020. Ms Watson's scope included 'the provision of accounting advice in line with the government's framework of budgetary reporting, as well as an assessment on the reasonableness of the NSW Treasury assumptions as they relate to TAHE'.⁷⁵
- 2.52** Ms Watson issued her report, titled *Transport Asset Holding Entity (TAHE): Assessment of assumptions used for accounting estimates*, on 3 November 2020. Ms Watson gave evidence that she reviewed NSW Treasury's assumptions against the requirements of applicable financial and budgetary reporting frameworks and concluded that they were reasonable and prepared in accordance with the relevant requirements.⁷⁶
- 2.53** On the complexity of the accounting treatment for TAHE, NSW Treasury and Transport for NSW, emphasised:
- ... the accounting treatment for TAHE is complex. However, it is important to emphasise that the accounting issues at hand are not about mathematical calculations - they are about interpretation of words contained in accounting standards (and principles

⁷¹ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 28.

⁷² Tabled document, Lyon report also evidence 1 October, p 19

⁷³ Evidence, Mr Peter Crimp, Executive General Manager, Finance and Business Performance, Transport Asset Holding Entity, 1 October 2021, pp 19-20.

⁷⁴ Evidence, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, 1 October 2021, p 20.

⁷⁵ Submission 8, KPMG, pp 2-3. See also, Evidence, Ms Heather Watson, Partner, KPMG Australia, pp 8-9.

⁷⁶ Evidence, Ms Heather Watson, Partner, KPMG Australia, p 9.

under the framework rules) which are in the realm of judgment and which depend on the cogency of supporting evidence. Treasury has in good faith interpreted the standards and rules correctly and has prepared a significant volume of technical papers that support the government's approach...⁷⁷

- 2.54** The former Secretary of Treasury NSW, Mr Michael Pratt, also refuted that TAHE would lead to a negative \$10 billion impact on the budget, describing this as a 'false narrative'. Mr Pratt also highlighted his concerns with Mr Lyon's evidence to the committee:

There has been a false narrative that TAHE will lead to a \$10 billion or more worse-off result. These are figures that have been put forward by Mr Lyon, who under oath conceded that he is not an accountant, selectively chose to omit evidence, adjusted time lines to fit his narrative, made statements which are false...⁷⁸

- 2.55** The committee referred Mr Pratt to a Cabinet document titled *Transport Asset Holding Entity ('TAHE'): Treasury Update*, which indicated that if TAHE were to be reverted back to the General Government Sector, it would have a \$14.6 billion negative impact on the budget over 10 years. In response, Mr Pratt stated: 'There has been a lot of different modelling done, but ... I cannot comment on Cabinet-in-confidence documents'.⁷⁹

- 2.56** The committee questioned Treasury officials on why their position should be accepted, when the PwC report, Mr Lyon's KPMG report and the Treasury update, all suggested a budget risk of up to \$14 billion. Deputy Secretary, Mr Midha responded that the PwC report did not consider TAHE as an independent state owned corporation:

The PwC report, the TAHE Light model, did not have TAHE as an independent SOC [state owned corporation]. When PwC was first looking at this, this was a while ago. It has nothing to do with the current model, which is an independent SOC. In those different scenarios it was how to minimise control. With account to the new accounting standards that were emerging, the service concession, it has no relevance to the current SOC model that is happening. That was then dismissed because that even included an opportunity to privatise all of transport. All those models were dismissed because they did not meet the standard that was set as a SOC.⁸⁰

Rate of return

- 2.57** Another key issue associated with TAHE's accounting treatment related to the appropriate rate of return. TAHE's rate of return is significant to its accounting treatment as TAHE must earn a profit on its equity in order to maintain its status as a public non-financial corporation in the Non-Government General Sector accounts.
- 2.58** At the beginning of this inquiry, the rate of return set for TAHE was 1.5 per cent. After concerns were raised by the Auditor-General, the rate of return was increased to 2.5 per cent, the long term inflation rate, in December 2021.

⁷⁷ Submission 9, NSW Treasury and Transport for NSW, p 3.

⁷⁸ Evidence, Mr Michael Pratt, Secretary, NSW Treasury, 16 December 2021, p 4.

⁷⁹ Evidence, Mr Michael Pratt, Secretary, NSW Treasury, 16 December 2021, p 19.

⁸⁰ Evidence, Mr San Midha, Deputy Secretary Policy and Budget, NSW Treasury, 16 December 2021 p 21.

- 2.59** TAHE Chair, Mr Bruce Morgan, confirmed during his appearance before the committee on 8 November 2021 that TAHE's target return on equity was 1.5 per cent.⁸¹ TAHE also confirmed that 'the expectation of the 1.5 per cent return was communicated by the government as part of the 2021-2022 budget process'.⁸²
- 2.60** Looking towards a 10 year plan, TAHE further advised that the statement of corporate intent provides that TAHE is expected to earn up to 1.5 per cent return on equity in its tenth year of operation, noting that 'no returns from commercial activity have been incorporated'.⁸³
- 2.61** Commenting on whether the TAHE board had any input in determining the target return on equity, Mr Morgan advised that 'it was an iterative process between management and Treasury' and that it was reported to the board which was 'satisfied with the return'.⁸⁴
- 2.62** Mr Trevor Bourne, Non-Executive Director, TAHE, elaborated that the board discussed the return rate and considered the return to be 'reasonable' for a start-up business given the 'current economic climate and the current interest rates'.⁸⁵
- 2.63** When asked why the board accepted a return on equity that is less than inflation, Mr Morgan highlighted that TAHE had not yet developed its other expected revenue streams. He further explained that the 10 year business plan will be reviewed annually, and as revenue streams are developed, then 'that return may well be beaten'. Mr Morgan described the return as 'satisfactory' as a starting point due to TAHE being a new state owned corporation.⁸⁶
- 2.64** A draft KPMG report authored by Ms Watson, *Application of financial and budgetary framework to NSW Government funding for heavy rail infrastructure*, issued August 2021 to NSW Treasury, showed that the rate of return for TAHE should be at least inflation.⁸⁷
- 2.65** The committee questioned Mr Pratt on 16 December 2021 whether he was confident TAHE would meet that requirement. Mr Pratt stated that he was not 'prepared to comment at the moment on the rate of return' but reiterated that the rate of return is a shareholder decision. Mr Pratt further pointed to the rate of return for other state owned corporations such as the Forestry Corporation of NSW which is zero, and Sydney Water which started at one per cent and is now the 'biggest earner in government at around six per cent'. He commented that as a new entity, 'it will take time to build and develop, and therefore from a shareholder perspective, one needs to weigh up all these issues in terms of return'.⁸⁸

⁸¹ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 42.

⁸² Answers to questions on notice, TAHE, received 10 January 2022, p 9.

⁸³ Answers to questions on notice, TAHE, received 10 January 2022, p 9.

⁸⁴ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 44.

⁸⁵ Evidence, Mr Trevor Bourne, Non-Executive Director, Transport Asset Holding Entity, 8 November 2021, p 44.

⁸⁶ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 46.

⁸⁷ Tabled document, KPMG, *Application of financial and budgetary framework to NSW Government funding for heavy rail infrastructure*, 3 November 2020, p 12, tabled by the Hon Daniel Mookhey MLC, 1 October 2021.

⁸⁸ Evidence, Mr Michael Pratt, Secretary, NSW Treasury, 16 December 2021, p 20.

Revaluation of assets

- 2.66** Also relevant to the accounting treatment for TAHE and therefore its impact on the budget, is the valuation of TAHE's assets. In 2021, TAHE's assets were revalued with a \$28.4 billion write down. The committee explored the circumstances surrounding this revaluation and whether stakeholders anticipated that TAHE's assets would be revalued.
- 2.67** A TAHE half-year report indicated that as at 31 December 2020, TAHE's net assets were valued at just over \$38 billion. At the committee's hearing on 8 November 2021, Mr Morgan confirmed that since that report, the assets would be 'revised downwards' in the draft accounts by up to \$20 billion.⁸⁹
- 2.68** While the committee was concerned to hear the change in TAHE's asset value, stakeholders explained that the change in TAHE's value was a result of a change in the accounting standards adopted for TAHE from a cost approach to an income-based approach. Under a cost approach, assets are valued based on what it would cost to replace the assets, while an income-based approach values assets based on the returns the assets can provide.
- 2.69** Mr Morgan explained that at its first meeting, the TAHE board agreed to continue with the cost valuation method that is used for government agencies, including RailCorp, knowing that as a state owned corporation operating independently of government, TAHE would have to eventually move to an income-based valuation.⁹⁰
- 2.70** Mr Morgan explained that adopting the income-based valuation was 'non-negotiable', and that the organisation could not operate as a state owned corporation using the cost valuation approach because the Auditor-General would qualify the audit opinion for not complying with an appropriate accounting standard.⁹¹
- 2.71** Mr Morgan elaborated that at 31 December 2020, TAHE was 'transitioning towards that outcome' and that the cost approach was adopted in the first instance because they did not yet have the relevant information available for an income based valuation nor did they know 'what the revenue streams would be associated with access and licence agreements'.⁹²
- 2.72** When asked whether he knew at the time of signing off the accounts that they were in the process of being reviewed for a write down, Mr Morgan responded that the accounts were prepared correctly in accordance with the cost method while TAHE was in a transitional period. He also highlighted that those accounts were not public and that the key readers of those accounts were the shareholders who would be aware of TAHE's transitional state.⁹³ When pointed to the accounts published on TAHE's website, Mr Morgan replied that he 'was not aware they are on the website'.⁹⁴

⁸⁹ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, pp 32-33.

⁹⁰ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 33. See also, pp 41-42.

⁹¹ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 34.

⁹² Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 34.

⁹³ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 39.

⁹⁴ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 39.

- 2.73** TAHE Non-Executive Director, Mr Trevor Bourne, was also asked whether he questioned signing off the accounts when he knew that the assets would be revalued. Mr Bourne responded:

My understanding was that those were prepared on the basis of one accounting standard and, in fact, during this transition year they would be treated in the same manner as other state owned corporations are treated and that would, in fact, change the valuation.⁹⁵

- 2.74** The committee also tried to clarify whether the half yearly accounts noted that the valuation method would change. In answers to questions on notice, TAHE advised that the half year accounts noted that 'the appropriate valuation technique for TAHE's assets is still considered to be current replacement cost after considering the limitations of the market and income approach'.⁹⁶

- 2.75** As outlined earlier, Ms Heather Watson, Partner at KPMG was engaged by NSW Treasury to provide accounting advice in accordance with the government's framework of budgetary reporting and assess whether NSW Treasury's financial assumptions pertaining to TAHE were reasonable.⁹⁷

- 2.76** Ms Watson's report commented on NSW Treasury's application of the replacement cost approach, stating:

NSW Treasury assumes that the existing measurement basis applied to TAHE's rail infrastructure assets will continue for the foreseeable future, that is, the replacement cost approach in relation to asset valuation is assumed to continue to apply to TAHE's whole asset base indefinitely from 1 July 2020 and consequential depreciation charges are assumed to reflect the impact of applying the cost approach to the measurement of assets.⁹⁸

- 2.77** When asked whether it was an accurate assumption from NSW Treasury that the cost approach would continue indefinitely, Ms Watson stated: 'If I had my time again and I was back then, that would be the exact same conclusion I would draw...'.⁹⁹ Ms Watson explained that the budgetary reporting framework requires that government agencies use information that is available. She highlighted that 'it was not appropriate for NSW Treasury to speculate and use information about what might happen in the future'.¹⁰⁰

- 2.78** When Ms Watson stated that she was not surprised by the write down, the committee questioned whether there was a reference to it in her report. Ms Watson responded that it was not part of the scope of her report, highlighting that her scope was to consider whether the

⁹⁵ Evidence, Mr Trevor Bourne, Non-Executive Director, Transport Asset Holding Entity, 8 November 2021, p 40.

⁹⁶ Answers to questions on notice, TAHE, received 10 January 2022, p 8.

⁹⁷ Submission 8, KPMG, pp 2-3. See also, Evidence, Ms Heather Watson, Partner, KPMG Australia, 15 November 2021, p 11.

⁹⁸ Tabled document, KPMG, *Application of financial and budgetary framework to NSW Government funding for heavy rail infrastructure*, 3 November 2020, p 12, tabled by the Hon Daniel Mookhey MLC, 1 October 2021. See also, Evidence, 15 November 2021.

⁹⁹ Evidence, Ms Heather Watson, Partner, KPMG Australia, 15 November 2021, p 10.

¹⁰⁰ Evidence, Ms Heather Watson, Partner, KPMG Australia, 15 November 2021, p 11.

numbers put forward by NSW Treasury were in accordance with the financial and budgetary reporting frameworks, and that she was comfortable that they were:

My scope did not ask: Do I think that in the future there may need to be a writedown? My scope was to consider whether or not the numbers at that point in time reflected the requirements of the financial and budgetary reporting frameworks, and I am comfortable that they did. Come the state budget of 2021-22, more information was available and the numbers were updated. It is only as a function of the information available. If that information had been available it would have been booked in the accounts as well. The financial statements and the budgetary reporting framework were consistent, and the financial statements need to be consistent with the budgetary reporting framework, and the financial statements had been endorsed by those charged with governance and accepted by the Auditor-General.¹⁰¹

- 2.79** Mr Paul Low, Partner at KPMG, indicated that in Mr Lyon's second report there was a range of references to further work being required, with regard to 'finalised balance sheet review, confirmed asset valuation basis, depreciation, substance of fees including accounting treatment, confirmation accounting practice and rules to be applied beyond July 2020'.¹⁰²
- 2.80** However, the committee sought to clarify why KPMG did not provide clear advice to the government on a possible write down when Mr Lyon's report ruled out the use of an income approach to develop a financial model and Ms Watson's report did not flag that such a model would be used. Mr Low contested this characterisation, arguing that KPMG delivered on their scope for the two agencies and that it is up to relevant government advisors to determine the appropriate financial treatment and operational matters.¹⁰³
- 2.81** Ms Watson added that no-one could predict with certainty the level of write down that would occur due to a number of uncertainties regarding how the accounts would present the assets and thus measure them. She explained that there was potential for the assets to be accounted for as leases, service concession assets or property, plant and equipment, each of which have 'slightly different measurement bases'. Ms Watson reiterated that her work 'was to consider how Treasury had addressed those uncertainties that existed at the time' and that they 'had addressed them in a way that was consistent' with the Australian accounting standards as required for the budgetary and financial reporting framework.¹⁰⁴
- 2.82** The committee put the proposition to Ms Watson that if she was not in position to forewarn about a \$20 billion write down in November 2020 that would occur six months later, then an inference could be made that the NSW Government commenced TAHE without knowing what its impact on the state accounts would be. Ms Watson disagreed with the statement, stating:

I cannot speak for what the government did or did not know... What I can say is that the TAHE reform has been long and complex; that it did commence with a transitional period in which all arrangements carried over for a 12 month period to enable the board to put in place other arrangements.¹⁰⁵

¹⁰¹ Evidence, Ms Heather Watson, Partner, KPMG Australia, 15 November 2021, p 11.

¹⁰² Evidence, Mr Paul Low, Partner, KPMG Australia, 15 November 2021, p 11.

¹⁰³ Evidence, Mr Paul Low, Partner, KPMG Australia, 15 November 2021, p 12.

¹⁰⁴ Evidence, Ms Heather Watson, Partner, KPMG Australia, 15 November 2021, p 12.

¹⁰⁵ Evidence, Ms Heather Watson, Partner, KPMG Australia, 15 November 2021, p 13.

- 2.83** Ms Watson added that as part of modelling conducted by KPMG in 2017, updated over 2018 and 2019, valuation work showed that a write down was likely. While Ms Watson could not comment on whether advice was provided to government as a result of KPMG's work in 2017 and 2018, she stated that the stakeholders involved, being Treasury and Transport for NSW, 'were well aware that a write down was a potentiality but the information was not yet available to determine that with any degree of reliability that could be reflected in the state's budget'.¹⁰⁶

The need for a letter of comfort

- 2.84** Following TAHE's first six months of operation, TAHE's accounts reflected a \$7 million loss.¹⁰⁷ In relation to this, the committee heard that it was necessary for NSW Treasury to issue TAHE a letter of comfort.

- 2.85** The committee put to Mr Morgan that the only reason he could sign off on the accounts was due to the letter of comfort. In response, Mr Morgan said:

Book losses do not equal cash, and the basis on which we as a board seek a letter of comfort from Treasury is on funding facilities to cover unforeseen cash positions. Whether or not there is a depreciation charge in here of \$736 million, it is a non-cash item. So the letter of comfort relates more to working capital comfort and to long-term debt facilities and potentially equity and it relates to the financial result of the company.¹⁰⁸

- 2.86** When pressed further about whether he could have signed off the accounts without that letter of comfort, Mr Morgan stated:

I think it would be clearer to say without that letter of comfort, as an independent director with lots of experience I would not be signing off on that set of accounts on the assumption, because I will not assume that our debt requirements would be met by increases in Public Authorities (Financial Arrangements) Act [PAFA] limits or whatever, or that I would receive equity.¹⁰⁹

- 2.87** The letter of comfort that was used to sign off on the half yearly accounts expired a week before Mr Morgan's appearance at the committee's hearing on 8 November 2021. In the event TAHE did not get a further letter of comfort from NSW Treasury, Mr Morgan confirmed that 'the accounts cannot be completed' but that he was 'pretty sure that a comfort letter from Treasury will be forthcoming'.¹¹⁰

- 2.88** The committee considered whether receiving a letter of comfort from NSW Treasury would be inconsistent with the ABS requirement that TAHE be independent of government. Mr Morgan explained that that the letter of comfort relates to an assurance that access to capital or debt

¹⁰⁶ Evidence, Ms Heather Watson, Partner, KPMG Australia, 15 November 2021, p 14.

¹⁰⁷ Transport Asset Holding Entity of NSW, *Half Yearly Report: For the half year ended 31 December 2020*, p 12.

¹⁰⁸ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 47.

¹⁰⁹ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 47.

¹¹⁰ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 47.

facilities will be available, not that NSW Treasury will provide grants. He added that this is 'entirely consistent' with his experience elsewhere.¹¹¹

- 2.89** Mr Morgan provided further detail on this, reiterating that the process has nothing to do with TAHE being a new organisation, with it instead being relevant to state owned corporations like other organisations which need assurances that they will have access to debt facilities or equity:

... one, this is a normal practice; two, state owned corporations need access to debt facilities provided through TCorp or equity provided effectively from the shareholding Ministers. This is nothing which is out of the ordinary; in fact, I am a bit of a pain with Treasury because I insist on it, to make sure that the independence of the organisation, the independence of directors is assured and we are undertaking our work properly. It is no different to working in a normal public company where one of the main jobs of directors is to make sure there is sufficient liquidity into the future, particularly to cover the preceding year's operations. This is no different; this is exactly normal practice. This is nothing to do with TAHE being a brand-new company. I would be doing that in all circumstances.¹¹²

Independence of the Transport Asset Holding Entity

- 2.90** The committee also raised concerns with stakeholders about whether TAHE was adequately independent from the government, given its status as a public non-financial corporation/statutory state owned corporation. As mentioned in Chapter 1, under the *State Owned Corporations Act 1989*, there is a requirement for state owned corporations to remain independent of government and to make a commercial return.¹¹³

- 2.91** In particular, the committee explored whether TAHE's independence was compromised by the fact that it had to accept the 1.5 per cent rate of return determined by NSW Treasury. Mr Morgan disagreed with this proposition, highlighting the independent role of the TAHE board:

TAHE is established with a separate board. We do discuss these matters at board, whether it be the return, the access fee amounts, the way in which the legal agreements are structured with the operators, how we go on safety and all the other things. We have a point of view, we can convey messages back to any of the shareholders or the portfolio Minister. I do not accept that TAHE is not independent.¹¹⁴

- 2.92** The committee also reflected on the agreements TAHE has entered into with Transport for NSW regarding responsibilities for maintenance of TAHE's assets, questioning whether these were created to enable the government to still maintain asset control. Ms Colin emphasised that TAHE was established as a state owned corporation with an independent board with a majority of independent directors', which provides a level of independence in terms of the decision-

¹¹¹ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 47.

¹¹² Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 48.

¹¹³ *State Owned Corporations Act 1989*. See also, Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury, 1 October 2021, p 40.

¹¹⁴ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 44.

making regarding its regulated assets. She ultimately concluded: 'I believe we have independence, and that is the reason I came to it [TAHE]'.¹¹⁵

Audit of the state finances 2021

- 2.93** The accounting issues explored in this inquiry were also a key focus of the Auditor-General's recent audit of the state finances for the 2020-2021 financial year. This section considers the significant delay in the state's audit, the Auditor-General's key findings relevant to this inquiry and stakeholders' responses to the Auditor-General's report. Before turning to the issues, it is important to note that the Auditor-General appeared before the committee on 10 February 2022, a day after the Audit Office's report on the State Finances 2021 was released.
- 2.94** The audit of the 2021 state finances was delayed by several months due to concerns about how a \$2.4 billion transfer, described as an equity investment, from the General Government Sector to TAHE was accounted for. One of the key areas of concern for the Auditor-General was 'forming a view as to what a "reasonable expectation of a sufficient rate of return on investment" should be with respect to the Australian Bureau of Statistics' Government Finance Statistic Manual 2015'.¹¹⁶
- 2.95** These issues were communicated to NSW Treasury to resolve, in order to prevent qualification of the government's 2021 financial statements. As the former Auditor-General explained, government financial statements are prepared according to Australian Accounting Standards, which auditors then use to determine whether government accounts are to be qualified or unqualified.¹¹⁷
- 2.96** Importantly, this was not the first time the Auditor-General had raised issues in relation to TAHE and the state's finances. In fact, in the previous year's state audit and the Transport financial audit, the Auditor-General issued a high risk finding regarding TAHE. The Auditor-General's Transport report raised concerns that a 'large portion' of planned arrangements for RailCorp's transition to TAHE from 2015 to 2019 were not implemented by 1 July 2020. At the time of the report, TAHE's operating model, statement of corporate intent and other key plans and commercial agreements were not finalised. The report also noted that TAHE was still operating in accordance with RailCorp's safety and maintenance plans.¹¹⁸
- 2.97** The Auditor-General therefore recommended that TAHE management:
- establish an operating model in line with the original intent of a commercial return
 - finalise commercial agreements with public rail operators
 - confirm forecast financial information to assess the valuation of TAHE's infrastructure
 - finalise asset and safety management plans.¹¹⁹

¹¹⁵ Evidence, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, 1 October 2021, p 20.

¹¹⁶ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 7.

¹¹⁷ Submission 1, Mr Tony Harris, p 1.

¹¹⁸ Submission 4, Auditor-General of New South Wales, p 3 and 6.

¹¹⁹ Submission 4, Auditor-General of New South Wales, p 5.

- 2.98** The Auditor-General concluded that 'resolution of the above matters are critical as they may significantly impact the financial reporting arrangements for TAHE in 2020-2021, in particular, accounting policies adopted as well as measurement principles of its significant infrastructure asset base'.¹²⁰
- 2.99** The committee attempted to clarify whether these issues were still in dispute ahead of the 2021 state audit. Ms Wilkinson asserted that Treasury, 'Transport for NSW and TAHE 'worked to close out all those items to our satisfaction'. However, she highlighted that she could not 'say for sure whether any of those things might be treated slightly differently' after seeking counsel from their 'reviewers'.¹²¹

The Auditor-General's most recent findings and recommendations

- 2.100** The committee turns now to the Auditor-General's latest audit report, which was required by law to be tabled in October but was actually tabled on 9 February 2022. The report highlighted that until 13 December 2021, evidence provided by NSW Treasury to support the \$2.4 billion transfer as an equity investment 'did not demonstrate a sufficient rate of return on the state's investment'. Rather, the evidence suggested that the transfer was a capital grant expense which would have impacted the General Government Sector result.¹²²
- 2.101** The key issue in determining a sufficient rate of return was TAHE's asset revaluation that resulted in a significant write down. According to the Auditor-General's report, 'prior to 14 December 2021, NSW Treasury's application of relevant financial reporting requirements was inaccurate, resulting in the significant write down of TAHE's asset value being excluded from NSW Treasury's rate of return calculation'.¹²³
- 2.102** The Auditor-General explained the circumstances in more detail. Prior to TAHE's transition on 1 July 2020, RailCorp's assets were valued at \$41 billion using a current replacement cost valuation method. This was the value of the assets as reported in the 2019-2020 total state sector accounts, which was appropriate as RailCorp was a not for profit organisation.¹²⁴
- 2.103** Once TAHE transitioned as a for profit entity, it had to use an income approach for the valuation of its assets. The finalisation of access and licence agreements with the operators on 30 June 2021 and effective 1 July 2021 enabled TAHE to develop financial forecasts and value its assets under an income approach using the discount cash flow valuation method. The outcome for this valuation resulted in a \$24.8 billion write down (later amended to \$20.3 billion) in TAHE's assets during 2020-2021.¹²⁵
- 2.104** However, NSW Treasury excluded the loss resulting from the revaluation from NSW Treasury's modelling of TAHE's rate of return calculations. NSW Treasury proposed to the Audit Office

¹²⁰ Submission 4, Auditor-General of New South Wales, p 5.

¹²¹ Evidence, Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury, 16 December 2021, p 20.

¹²² Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 7.

¹²³ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 10.

¹²⁴ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 10.

¹²⁵ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 10.

that it did not need to recover the \$20.3 billion holding loss when determining the government's rate of return on its investment in TAHE.¹²⁶

- 2.105** The Auditor-General's report provided an explanation of holding losses and how they are treated according to the Government Finance Statistics Manual. Holding gains and losses are 'changes in the current market value of an asset resulting from changes in the level and structure of prices, assuming the asset has not changed qualitatively or quantitatively'. Under the Government Finance Statistics Manual, holding losses and gains are included when determining a realistic of return.¹²⁷
- 2.106** The \$20.3 billion write down is considered a holding loss because a change in the level and structure of prices resulted in a decrease in the fair or market value of TAHE's assets. Because the access and licence fees were significantly below the ceiling price set by IPART, TAHE's asset value significantly decreased under the discounted cash flow method.¹²⁸
- 2.107** The Auditor-General's report referred to the work conducted by KPMG in 2017 which was the subject of evidence in this inquiry. The Auditor-General highlighted that this report showed that there would be a write down of its assets and an assumption was included in the modelling to this effect. The report advised that the government's ability to treat its investment as an equity injection and the assumptions it made around a rate of return would need to be considered in the context of a write down in the assets.¹²⁹
- 2.108** However, neither NSW Treasury nor Transport for NSW provided this report directly to the Audit Office. Instead, the Audit office only became aware of the report through this parliamentary inquiry. The Auditor-General's report noted that 'had NSW Treasury acted earlier on the potential implications of the 2017-2018 modelling, including discussing it with the Audit Office, relevant technical discussions considering the impact of write on the expected rate of returns could have been resolved earlier'.¹³⁰
- 2.109** The Auditor-General also found that the access and licence fees 'were well short of the regulated maximum and not sufficient to generate a reasonable return'. The Auditor-General's report pointed to the 2017 KPMG report and Mr Lyon's 2020 report for Transport for NSW which both indicated that higher access and licence fees would be necessary to earn a sufficient rate of return.¹³¹
- 2.110** The 2015-2016 state budget provided \$700 million per year in the forward estimates to be provided to the rail operators for the expected access charges that they would need to pay to TAHE once it was established. In 2020-2021, TAHE and the rail operators agreed to access and licence fees of \$680 million per year, increasing thereafter. The Auditor-General's report noted that higher fees would have 'likely impacted the General Government Sector budget as these fees are funded by the General Government Sector through grants to the operators'.¹³²

¹²⁶ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 10.

¹²⁷ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 10.

¹²⁸ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 10.

¹²⁹ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 11.

¹³⁰ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 11.

¹³¹ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 12.

¹³² Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 12.

- 2.111** The concerns around a sufficient rate of return would have caused the state's accounts to be qualified if not corrected. The Auditor-General's report explained that there were two ways for this to be corrected: by reversing the equity investment to a capital grant expense and therefore impacting the General Government Sector result or by providing additional funding to the rail operators to support additional TAHE access and licence fees, which would therefore add additional expenses to future General Government Sector results.¹³³
- 2.112** In addition, the Auditor-General found that 'NSW Treasury presented late, unsophisticated and inaccurate forecasts to the Audit Office, all of which sought to support the desired outcome of higher projected returns'. According to the Auditor-General's report, between 9 July and 1 December 2021, NSW Treasury submitted three versions of estimated returns on the Government General Sector's investment all of which were 'unsophisticated, containing errors, omissions and/or poor logic' and 'most importantly, none were able to demonstrate a realistic rate of return'.
- 2.113** The Auditor-General's report listed the errors as follows:
- excluding TAHE's original asset write-down value of \$24.8 billion (later amended to \$20.3 billion when access fees were amended) being holding gains/losses arising from valuation changes
 - including cumulative Government Guarantee Fees (GGF) of \$2 billion. These fees should not have formed part of the returns calculation as GGF's are akin to a tax on borrowings paid by the business and are not a return of distributable earnings. NSW Treasury had previously received external advice that these fees do not form part of returns
 - including \$4.6 billion in cumulative forecast commercial incentive revenue that was not supported with sufficient and appropriate evidence
 - including possible future cumulative revaluation increments of \$15 billion, which could not be supported with any evidence to explain how it was derived, and was described as a 'plug' figure
 - including the projected value of the residual net assets of TAHE in FY2061 of \$59.5 billion as part of the overall 'return' on investment.¹³⁴
- 2.114** According to the Auditor-General, the NSW Government made 'significant changes' from 14 December 2021 after the Audit Office communicated the likely audit outcome to NSW Treasury. These changes are summarised below.
- **14 December 2021** – The government revised shareholders' expectations of a rate of return to 2.5 per cent, being the long-term inflation rate, and increased grants to Transport for NSW for rail operators to pay increased access and licence fees to support the new rate of return.
 - **16 December 2021** – The 2021-2022 NSW Budget Half Yearly Review included an increase in expected returns through higher access and licence fees charged by TAHE. To facilitate these returns and pay for the proposed increased access and licence fees, the

¹³³ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 7.

¹³⁴ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 11.

government allocated an additional \$1.1 billion to Transport for NSW from 1 July 2022 for the forward estimates period of 2022-2025.

- **18 December 2021** – Transport for NSW, TAHE and the rail operators, Sydney Trains and NSW Trains, signed a Heads of Agreement to form the basis of negotiations to revise annual operating agreements to facilitate the shareholders' expected rate of return of 2.5 per cent. The agreement included indicative access and licence charges to be used as a basis for renegotiation. The access and licence fees to be paid by rail operators between 2022 and 2031 would increase by a further \$5.2 billion.¹³⁵

2.115 Importantly, the Auditor-General's report noted that 'the revised access fees will significantly increase costs to the Government General Sector budget in future years'. The report explained that the additional \$5.2 billion increase in access and licence fees by TAHE 'would appear to need to be funded through additional grants and subsidies paid by the Government General Sector to the rail operators'. This funding burden to the General Government Sector is 'expected to increase even more beyond the forward estimates period of 2023-2025' with equity injections from the Government General Sector expected to 'significantly' decrease over the same period. The Auditor-General's report explained the impact this would have on the budget:

This means the budget benefits of equity contributions are realised in previous years and the current budget forward estimates period, while higher expenses to the budget may be required in years beyond the forward estimates.¹³⁶

2.116 The Auditor-General also made findings with regard to TAHE's sector classification and independence. The Auditor-General highlighted that a projected \$17.14 billion is expected to be paid by Sydney Trains and NSW Trains to TAHE through to 2031, likely to be paid from the Government General Sector. As noted in Chapter 1, a public non-financial corporation must be a market producer to retain its status. The test for this considers:

- sales to cost ratio: the higher the proportion of total production costs that are covered by total sales (including subsidies), the more likely the unit is to be a market producer
- government intervention: the extent to which government can directly influence the prices, nature and level of services provided by the producer
- competition: the ability of consumers to buy similar goods and services from other producers on the basis of the process charged. This also considers the lack of competition when a unit is primarily supplying goods and services to other government units.¹³⁷

2.117 Given TAHE is now operating and is 'effectively a monopoly rail network access and licence provider in New South Wales', the Auditor-General recommended that NSW Treasury liaise with the ABS to re-confirm TAHE's sector classification. Similarly, given the Heads of Agreements means that the rail operators are likely to rely on government funding to access TAHE's assets, the Auditor-General recommended that NSW Treasury liaise with the ABS to re-confirm the classification of NSW Trains and Sydney Trains as public non-financial corporations.

¹³⁵ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 8.

¹³⁶ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 15.

¹³⁷ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 18.

- 2.118** The Auditor-General's report raised concerns with the level of control TAHE has over its assets. The report highlighted that restrictions that can be applied to TAHE through operating licences and the ability for the Portfolio Minister to change operating licences and statements of expectation raise a risk that limitations are placed on the board 'to operate with sufficient independence in its decision-making'. The Auditor-General recommended that NSW Treasury and TAHE monitor the risk that control of TAHE assets could change in future years. The report also noted that the Audit Office would also monitor this closely for the 2021-2022 state audit to assess whether TAHE can continue to operate as a state owned corporation.¹³⁸

Responses to the Auditor-General's findings

- 2.119** In light of the Auditor-General's findings, the committee questioned stakeholders about the negotiations regarding the Heads of Agreement, the circumstances surrounding the Auditor-General's comment that NSW Treasury provided inaccurate modelling to the Audit Office and NSW Treasury's view on whether they got the accounting treatment for TAHE wrong.
- 2.120** Turning first to the heads of agreement, Ms Benedicte Colin, Chief Executive Officer, TAHE, advised that she had conversations with Mr Midha, Deputy Secretary, NSW Treasury, prior to 14 December 2021 about the rate of return. Ms Colin recalled that discussions were held about a revised expectation on a return of investment and that she told Mr Midha that she would need written confirmation as she was at the time operating under a statement of expectations which specified the rate of return as 1.5 per cent. Ms Colin then indicated that she received formal confirmation of the change on 14 December 2021.¹³⁹
- 2.121** Mr Rob Sharp, current Secretary of Transport for NSW, who replaced Mr Staples from 7 April 2021, confirmed that through his role at that time on the TAHE board, he became aware of a potential change in the rate of return, noting that negotiations would commence in February-March 2022 that would take the new rate into account.¹⁴⁰ At that time, Mr Sharp was not aware that the Auditor-General was intending to qualify the state's accounts.¹⁴¹
- 2.122** The committee questioned stakeholders from Transport for NSW and TAHE about whether the Heads of Agreement was signed to avoid the accounts being qualified. Ms Colin stated that it was 'not my business to be speculating' and added:

What I am giving at the moment is facts. We have entered into are a heads of agreement which has been signed between TAHE, TfNSW [Transport for NSW], Sydney Trains and NSW Trains. We have [inaudible] a commitment to review the pricing as per the expectation and some guidelines. So I am afraid I cannot comment on the speculations.¹⁴²

¹³⁸ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, pp 20-22.

¹³⁹ Evidence, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, 10 February 2022, pp 32-33.

¹⁴⁰ Evidence, Mr Rob Sharp, Secretary, Transport for NSW, 10 February 2022, p 20.

¹⁴¹ Evidence, Mr Rob Sharp, Secretary, Transport for NSW, 10 February 2022, pp 19- 20.

¹⁴² Evidence, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, 10 February 2022, p 34. Please note, [inaudible] is used in Hansard transcripts when evidence provided at a virtual hearing cannot be deciphered.

- 2.123** In response to the same question, Mr Sharp outlined that the potential qualification of the state's finances by the Auditor-General was not a 'driver' for him when signing the heads of agreement. He also stated that negotiations occur each year:

I think the circumstances for Transport are that a major supplier comes to us and indicates that for the next round of negotiations—which is for financial year '23—that is what we are negotiating. I am not negotiating three or four years ahead; we negotiate each year. The reason for that is that the actual timing of assets and acquisitions varies, and for each year we adjust it.¹⁴³

- 2.124** In response to questioning about how a negotiation was completed in two days, resulting in Transport for NSW being charged an additional \$5.2 billion over 10 years, Mr Sharp maintained that the heads of agreement 'is not an agreement for the dollar amount', but rather an agreement to negotiate in February-March 2022 in the context that expectations on the rate of return have increased. Mr Sharp highlighted that he was 'happy to sign the heads of agreement', noting that negotiations would be subject to IPART which sets a floor and ceiling price.¹⁴⁴

- 2.125** However, Mr Sharp confirmed that 'the price will be at the upper end to towards the ceiling'. He also highlighted that there is no circumstance where he would agree to a charge what is above IPART's ceiling and that there would have to be 'good explanations' why a charge is at the ceiling.¹⁴⁵

- 2.126** In addition, Mr Sharp noted that the 10 year agreement has an annual review process where IPART reviews the charges year, emphasising that the negotiations are for a 12 month period and that the charges of \$5.2 billion over 10 years are a forecast. Ultimately, Mr Sharp asserted that Transport for NSW has not yet agreed to pay the additional charges.¹⁴⁶

- 2.127** With Transport for NSW confirming that it has not yet agreed to pay the \$5.2 billion in access and licence fees, the committee asked TAHE Chair, Mr Morgan whether this was a problem for TAHE. Mr Morgan responded:

I think that is an incorrect assumption. Where we are at is the negotiations have opened up and ... the assets and licence agreement are with the Ministers which is a normal mechanism which will not require the agreements to be put aside, but rather allow for the development of this additional amount in accordance with the bands across [inaudible]. ... I am ... confident that we will get to an agreement with Transport of that magnitude.¹⁴⁷

- 2.128** Ms Margaret Crawford, Auditor-General of New South Wales, told the committee she was 'quite alarmed' to hear Mr Sharp's evidence regarding the Heads of Agreement, stating that the Audit Office had accepted 'in good faith' that 'the terms of the heads of agreement would be converted into a legal agreement as soon as possible'. In response to Mr Sharp's evidence, Ms Crawford advised that her first course of action would be to 'go back to Treasury and seek

¹⁴³ Evidence, Mr Rob Sharp, Secretary, Transport for NSW, 10 February 2022, p 21.

¹⁴⁴ Evidence, Mr Rob Sharp, Secretary, Transport for NSW, 10 February 2022, pp 21-23.

¹⁴⁵ Evidence, Mr Rob Sharp, Secretary, Transport for NSW, 10 February 2022, p 24.

¹⁴⁶ Evidence, Mr Rob Sharp, Secretary, Transport for NSW, 10 February 2022, p 28.

¹⁴⁷ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 10 February 2022, p 39. Please note, [inaudible] is used in Hansard transcripts when evidence provided at a virtual hearing cannot be deciphered.

its affirmation that what it indicated in its heads of agreement would now be converted into a formal legal agreement'.¹⁴⁸

- 2.129** Deputy Auditor-General Mr Ian Goodwin elaborated on the importance of the Heads of Agreement to the audit process. As outlined earlier, one of the key accounting concerns to arise in the state audit process was whether the General Government Sector cash contribution could be considered an equity injection. Up until 13 December 2021, evidence was insufficient to support the treatment of the contribution as equity. Once the government took action to put additional funding towards TAHE that would create an intention to provide a realistic return, the Audit Office required to see this 'concretised in an agreement'.¹⁴⁹
- 2.130** While the Audit Office suggested that their 'strong preference' was to see signed agreements, NSW Treasury explained that those agreements take time. The Audit Office was assured that the \$5.2 billion 'absolutely would follow through to the heads of agreement'. Mr Goodwin concluded that 'if that \$5.2 billion does not have a reality, it undermines the projections that Treasury put to the Audit Office about that rate of return and we are back to where we were before mid-December'.¹⁵⁰
- 2.131** Had the \$5.2 billion funding for the operators to pay increased access and licence fees not come about via the heads of agreement, Mr Goodwin confirmed that the other way to ensure that the accounts were not qualified would have been to reverse the \$2.4 billion funding into TAHE Sector from an equity injection into an expense reflected on the Government General Sector.¹⁵¹
- 2.132** Mr Pratt, appearing following his departure from his role as Secretary of NSW Treasury, agreed that the only reason the accounts were unqualified is because the government had to inject a further \$1.1 billion to sustain TAHE's accounting treatment.¹⁵²
- 2.133** However, the committee questioned why the former Secretary asserted in his evidence at a hearing on 16 December 2021 that there were no budget issues with TAHE when he knew at the time that the government had to provide an additional \$1.1 billion to avoid the accounts from being qualified. Mr Pratt rejected the assertion that he had misled the committee, highlighting that there was no 'black hole' as money was moving from one entity to another:

... I totally reject that, and I find that very insulting. That is completely wrong. ... There is no budget black hole, and that is completely wrong. I mean, if you understand the structure of the Government's balance sheets, this is money moving from one entity to another. It is not a black hole. ... there is a \$7 billion provision in the budget papers on top of that...¹⁵³

¹⁴⁸ Evidence, Ms Margaret Crawford, Auditor-General, Audit Office of New South Wales, 10 February 2022, p 41.

¹⁴⁹ Evidence, Mr Ian Goodwin, Deputy Auditor-General, Audit Office of New South Wales, 10 February 2022, pp 41 and 46-47.

¹⁵⁰ Evidence, Mr Ian Goodwin, Deputy Auditor-General, Audit Office of New South Wales, 10 February 2022, pp 41 and 46-47.

¹⁵¹ Evidence, Mr Ian Goodwin, Deputy Auditor-General, Audit Office of New South Wales, 10 February 2022, p 55.

¹⁵² Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, p 11.

¹⁵³ Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, pp 12 and 15.

2.134 Moving onto the modelling NSW Treasury provided to the Audit Office, the committee sought a response from NSW Treasury on the Auditor-General's finding that NSW Treasury 'presented late, unsophisticated and inaccurate forecasts to the Audit Office, all of which sought to support the desired outcome of higher projected returns'.

2.135 The committee put this finding to Mr Midha asking whether NSW Treasury tried to give the Audit Office a preferred scenario hoping she would approve it. Mr Midha responded:

I do not understand exactly what you are referring to, because [inaudible] there is a number of different models and scenarios. Specifically, the fund flow model that was built for TAHE's returns—the 10-year model—was very thorough. That was built by TAHE; that we incorporated. Longer term scenarios were made—they were scenarios; they were not models—and that might be where that [inaudible] referred to—¹⁵⁴

2.136 Mr Midha added: 'I am comfortable that the models that we created are still the ones that are being used'.¹⁵⁵

2.137 TAHE and the Audit Office clarified that all models were provided to the Audit Office by NSW Treasury and not TAHE.¹⁵⁶ In answers to questions on notice, TAHE added that it provided a range of information during the year and the audit process, including the draft financial statements, a ten year income statement and balance sheet consistent with its the forward estimates. TAHE stated that it 'cannot comment on how NSW Treasury used this information'.¹⁵⁷

2.138 With regard to the decision to exclude the \$20.3 billion write down of assets from the accounts provided to the Audit Office, Ms Colin and Mr Morgan confirmed that the decision to do so did not come from TAHE.¹⁵⁸ Mr Morgan explained that the reduction has always been in TAHE's accounts and that it was discussed between NSW Treasury and the Audit Office as to whether that amount should be included in the calculated rate of return:

Our position is that the profit or loss you are referring to is in the balance sheet and always has been of TAHE because it is a real reduction in reserve. ... it is a discussion between Treasury and the Audit Office as to whether that amount should or should not be included in the calculation of return is not a question that I could answer.¹⁵⁹

2.139 When asked why the write down was excluded from the initial modelling, Mr Pratt highlighted that there was a key interpretation around whether the write down would be considered a holding loss and thus must be included in the accounts or a volume change which does not:

¹⁵⁴ Evidence, Mr San Midha, Deputy Secretary Policy and Budget, NSW Treasury, 10 February 2022, p 10. Please note, [inaudible] is used in Hansard transcripts when evidence provided at a virtual hearing cannot be deciphered.

¹⁵⁵ Evidence, Mr San Midha, Deputy Secretary Policy and Budget, NSW Treasury, 10 February 2022, p 10.

¹⁵⁶ Evidence, Mr Ian Goodwin, Deputy Auditor-General, Audit Office of New South Wales, 10 February 2022, p 43; Evidence, Ms Benedicte Colin, Chief Executive Officer, 10 February 2022, p 37.

¹⁵⁷ Answers to questions on notice, TAHE, received 11 March 2022, p 4.

¹⁵⁸ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 10 February 2022, p 38; Evidence, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, 10 February 2022, p 38.

¹⁵⁹ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 10 February 2022, p 38.

Firstly, I am not going to comment on the model ... because I have not seen those models, so I cannot comment specifically on those models. That is Mr Walters' responsibility. Secondly, there was a lot of discussion. This was a key accounting interpretation around the writedown, whether in fact it was a holding loss or a volume change. The strong advice from Treasury was a volume change, the advice from the Audit Office was a holding loss, and that was one of the changes that were made.¹⁶⁰

2.140 With regard to when change was made, Mr Walters stated:

We adjusted the model. The Audit Office believed that that was correct to include the write down. We made that correction. On 16 December the final models were provided to the Audit Office. They included, as you indicated, the write down [inaudible] as a return.¹⁶¹

2.141 The committee also questioned how NSW Treasury presented a model with a \$15 billion 'plug' figure with no evidence to support it. Mr Walters answered:

I did a 10-year model that showed the returns from TAHE. The Audit Office was not satisfied with the 10-year model ...

...

... the Audit Office asked us to provide a longer term model that showed the returns over a much longer period such that they would provide a return of equity and the write down. We were very clear with the Audit Office: "We will do so, but please acknowledge that we don't have a level of sophistication at this point that goes out to 35 years." That is a reasonably large request in a short period of time. We did as best as possible to create a scenario that ran for 35 years.¹⁶²

2.142 The committee questioned whether NSW Treasury was aware when it gave evidence on 16 December 2021 that the Audit Office was going to require an additional \$5.1 billion to be put into TAHE and that there was a \$20.3 billion asset write down that would need to be recovered over the next 30 years. Ms Wilkinson responded that she was aware of the Audit Office's view but that no 'adjustments had been agreed on that day' and NSW Treasury was 'still in discussions with the Audit Office at that time'.¹⁶³

2.143 The committee pressed the witnesses further on this issue, asserting that when NSW Treasury gave evidence in December 2021 it knew that there was a multi-billion dollar problem with TAHE. Ms Wilkinson disagreed with the characterisation, confirming they were aware of the Auditor-General's opinions, but 'had not yet agreed on a treatment that we would implement at that time'.¹⁶⁴

¹⁶⁰ Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, p 15.

¹⁶¹ Evidence, Mr Stewart Walters, Chief Finance and Operation Officer, NSW Treasury, 10 February 2022, p 12. Please note, [inaudible] is used in Hansard transcripts when evidence provided at a virtual hearing cannot be deciphered.

¹⁶² Evidence, Mr Stewart Walters, Chief Finance and Operation Officer, NSW Treasury, 10 February 2022, p 12.

¹⁶³ Evidence, Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury, 10 February 2022, p 14.

¹⁶⁴ Evidence, Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury, 10 February 2022, p 14.

2.144 Finally, the committee sought a response from NSW Treasury officials and Mr Michael Pratt, who appeared following his departure from NSW Treasury as Secretary, about whether they now believe that NSW Treasury was wrong about the accounting treatment for TAHE based on the Auditor-General's report and findings.

2.145 Ms Wilkinson highlighted that NSW Treasury officials did their best to deliver on TAHE policy, noting that the department welcomes suggestions from the Auditor-General:

... there are many areas of accounting where further technical work and discussion and interpretation of standards is necessary. I will say that people did their best to do very good work. We did our best work with our best intentions to deliver the policy that the Parliament passed and gave us the task to do. If the Auditor-General has suggestions on ways we can improve then we welcome that opportunity.¹⁶⁵

2.146 The committee pressed further whether NSW Treasury was solely relying on Ms Watson's report when the PwC report, Mr Lyon's report and the Auditor-General's report all have cast serious doubt on TAHE's accounting treatment. Ms Wilkinson disagreed, arguing that NSW Treasury relies on its own judgment:

... that is not correct. We rely on our own judgement. Our judgement is from time to time supported—we seek advice on technical matters, but ultimately the views we form and the advice we give to Cabinet is our own opinion. We have absolutely done our best to give the best advice we can and we stand by it. Having said that ... many of these matters are areas of emerging understanding of the application of standards, and we absolutely look forward to improving our work in the future as best we can, working with the Auditor-General.¹⁶⁶

2.147 Dr Grimes, current Secretary of NSW Treasury, highlighted that it was important to note that the Auditor-General accepted the accounting treatment and issued an unqualified finding on the accounts. Nevertheless, he noted that the Auditor-General raised further work that needs to be undertaken with regard to the accounting treatment which NSW Treasury would be 'following through very diligently'.¹⁶⁷

2.148 Similarly, when asked whether NSW Treasury had got it wrong with respect to assumptions around independence and the classification of TAHE, Mr Midha also asserted that NSW Treasury had not, highlighting that the accounts were unqualified and that NSW Treasury would be looking closely at the issues raised by the Audit Office:

No, we have not. The accounts that have been signed off take into account the independence of TAHE and the rate of return, so right now we are comfortable that this is an unqualified set of accounts that indicate that it is a commercial entity. There are things that have been raised by the Audit Office ... that we will closely look at, do an assessment and understand how we can improve this process as we go forward to

¹⁶⁵ Evidence, Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury, 10 February 2022, p 7.

¹⁶⁶ Evidence, Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury, 10 February 2022, p 7.

¹⁶⁷ Evidence, Dr Paul Grimes, Secretary, NSW Treasury, 10 February 2022, p 8.

make sure that tension needs to be the case in terms of its lending status and in terms of its accounting status.¹⁶⁸

2.149 The committee questioned Mr Pratt as to why NSW Treasury did not change its position, particularly when it had received warnings a year prior about the same issues raised in the Auditor-General's report. Mr Pratt responded: 'So you would not want Treasury to debate these issues at length? You think we should just accept what is served up to us?'¹⁶⁹

2.150 When pressed further about whether NSW Treasury did anything different after receiving a high risk finding in 2020, Mr Pratt stated that work had been done to understand the complex accounting standards:

... I charged my team, the responsible people, to do that work, with a lot more work that was undertaken. There was some very detailed accounting papers written on these issues and discussed with the Auditor-General at length—or the assistant Auditor-General.¹⁷⁰

Moving forward

2.151 In addition to significant concerns with TAHE's accounting treatment, the committee also explored what needs to occur next for TAHE, both financially and operationally.

2.152 While the accounts were unqualified, the Auditor-General issued an 'emphasis of matter', the first of its kind since 2011,¹⁷¹ which 'draws attention to the significant uncertainties' remaining with regard to the government's equity investment in TAHE and how the government will ensure a return on equity. The Auditor-General's report outlined a number of uncertainties that remained as at the time of signing the report. These are listed below.

- TAHE's future estimated access and licence fees, which are critical to its ability to earn a realistic rate of return, remain subject to re-negotiation and re-signing of current access agreements as set out in the heads of agreements.
- The \$1.1 billion in additional funding for TAHE's key customers was provided in the 2021-2022 NSW Budget Half Yearly Review consistent with the heads of agreement, however, this funding only extends to the end of the financial year 2024-2025. An additional \$4.1 billion will be required over the following six years which fall outside the forward estimates period. While this has been communicated to cabinet, it is yet to be provided for in the government's budget figures.
- A further significant portion of the required returns to earned outside the 10 year contract period ending 30 June 2031. NSW Treasury has estimated \$37.9 billion in returns on

¹⁶⁸ Evidence, Mr San Midha, Deputy Secretary Policy and Budget, NSW Treasury, 10 February 2022, p 16.

¹⁶⁹ Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, p 12.

¹⁷⁰ Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, p 13.

¹⁷¹ See, Evidence, Mr Ian Goodwin, Deputy Auditor-General, Audit Office of New South Wales, 10 February 2022, p 51; Evidence, Mr Scott Stanton, Assistant Auditor-General, Audit Office of New South Wales, 10 February 2022, p 49.

equity from 1 July 2022 to 30 June 2025 but has not identified the source or means of these returns beyond 2031.¹⁷²

- 2.153** In evidence, the Auditor-General noted that the \$5.2 billion commitment is only one consideration moving forward. She stated that 'there is a lot of work to be done' and that TAHE needs to provide evidence or a plan about its potential for commercial activity and greater returns from outside government.¹⁷³
- 2.154** Mr Morgan described the Auditor-General's unqualified audit opinion as a 'significant milestone' for TAHE. While he acknowledged the Auditor-General's emphasis of matter, Mr Morgan added that while there is uncertainty about what the annual review of TAHE's 10 year agreements with the rail operators will entail, this is not inconsistent with the 'uncertainty faced by most businesses'. He further highlighted that it is not unusual for regulated businesses to 'have some uncertainty over the long term funding base'.¹⁷⁴
- 2.155** Ms Benedicte Colin, Chief Executive Officer of TAHE, highlighted that TAHE should be judged on 'what we actually deliver and the additional value we create above and beyond the 2.5 per cent return on equity'. Ms Colin shared with the committee examples of the work TAHE has been progressing, such as:
- approval of funding to complete tender documentation for the revitalisation of the Central Station precinct
 - planning of the refurbishment of the Chief Mechanical Engineers building in the north-west Eveleigh precinct so that the space can be leased out
 - the preparation of a business plan to identify key locations where capital investment could result in improved rentals and returns
 - master planning and site investigation for regional precincts
 - investigating other commercialisation opportunities for assets in telecommunications and energy.¹⁷⁵
- 2.156** In addition to assets and licence fees, Ms Colin referred to the examples listed above when asked about TAHE's strategy to recover the \$20.3 billion holding loss.¹⁷⁶

Committee comment

- 2.157** The primary focus of this inquiry was whether TAHE was established solely to improve the state's fiscal position, without proper consideration as to TAHE's long term viability, and

¹⁷² Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 4.

¹⁷³ Evidence, Ms Margaret Crawford, Auditor-General, Audit Office of New South Wales, 10 February 2022, p 44.

¹⁷⁴ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 10 February 2022, p 30.

¹⁷⁵ Evidence, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, 10 February 2022, p 30.

¹⁷⁶ Evidence, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, 10 February 2022, pp 38-39.

whether such a significant structural reform in the transport sector would compromise commuter safety.

- 2.158** In effect, the establishment of TAHE has been undermined by highly predictable accounting issues. Serious questions have been raised about TAHE's rate of return, the revaluation of its assets and its independence from government. There has also been contention over access and licence fees for rail operators, and how these fees impact the state budget moving forward.
- 2.159** On the basis of evidence received, it is clear that the government did not give proper consideration to the complex accounting standards that would need to apply to ensure that TAHE would be viable in the long term and retain its status as a public non-financial corporation. The substantial delay in the Auditor-General's recent audit of the state's financial statements and the multi-billion additional commitments required of the government illustrate the significance of these accounting concerns.
- 2.160** The Auditor-General found that the basis on which the return on equity was calculated by NSW Treasury failed to include the \$20.3 billion write down in the calculations. It also found that the proposed rate of return of 1.5 per cent was also insufficient. The committee appreciates that TAHE's accounting treatment is highly technical and complex, however the audit process for 2020-2021 was far from the first time concerns with TAHE's accounting treatment were raised. Similar issues, among other others, were raised as a high risk finding in the audit report of the previous financial year's statements. They were also flagged in a report issued by Mr Brendan Lyon, former Partner, KPMG, in November 2020, as commissioned by Transport for NSW. It is unacceptable that NSW Treasury did not take Mr Lyon's report more seriously and, in fact, sought to discredit him and diminish his work.
- 2.161** In the committee's view, the government made a policy decision about establishing TAHE without first bedding down its applicable accounting treatment. The fact several transitional arrangements had to be put in place regarding TAHE's accounting treatment in its first year of operation lends support to our finding. Ultimately, the government has been extremely irresponsible in its establishment of TAHE, especially when billions of taxpayer dollars and rail safety are at stake.

Finding 1

That the NSW Government established the Transport Asset Holding Entity with the primary aim of improving the state's fiscal position in the budget papers, rather than for other purported efficiency and safety benefits.

Finding 2

That the NSW Government implemented its policy decision of creating the Transport Asset Holding Entity without due consideration of the real financial impact on the budget and the applicable accounting standards and rules that would apply to the entity.

-
- 2.162** The Auditor-General's most recent report on the state finances showed that NSW Treasury presented inaccurate modelling and forecasts to the Audit Office. It also showed doubts about TAHE's status as a public non-financial corporation. It is deeply concerning that NSW Treasury

not only failed to get this right before TAHE's establishment but also failed to address accounting concerns as they emerged in previous state audits.

- 2.163** While we note NSW Treasury's view that there can be different opinions on accounting standards, it is difficult to accept that key senior officials involved in managing the state's finances could not address these issues in a timely and constructive manner.
- 2.164** The committee acknowledges that the accounting issues were resolved to a point that the Auditor-General could issue an unqualified opinion. However, we also note that the report was issued after a delay of six months with an emphasis of matter, the first of its kind in 11 years. As will be discussed in Chapter 4, the report also provided a scathing account of NSW Treasury's competence and integrity in engaging with the audit process.
- 2.165** To resolve the accounting concerns raised by the Auditor-General and to prevent a qualified audit, it is clear that the NSW Government scrambled to arrange a Heads of Agreement between NSW Treasury and Transport for NSW, to support a commitment that an additional \$5.2 billion over 10 years would be provided to Transport for NSW and the rail operators to pay for increased access and licence fees. However, like the Auditor-General, we too were alarmed to hear evidence from the Secretary of Transport for NSW that the Heads of Agreement represented an agreement to renegotiate the access fees, not a finalised amount. The committee heard that the Audit Office accepted the Heads of Agreement in good faith with the outcome of the audit largely dependent on it. Given the battle that took place to get to a position in which the state's finances were unqualified, the fact that the agreement to some extent may be in contention is deeply concerning.
- 2.166** In our view, NSW Treasury has made significant mistakes and misjudgments relating to TAHE's establishment, including errors with its accounting treatment. The testimony of senior NSW Treasury officials and former Secretary of NSW Treasury, Mr Michael Pratt, before this committee were often unhelpful and at some points outright dismissive of the very real concerns relating to TAHE. Much of their evidence was also significantly contradicted by other stakeholders including Transport for NSW, TAHE and the Audit Office. At no point has NSW Treasury conceded its mistakes, even after the Auditor-General's scathing report.
- 2.167** Looking to TAHE's future, it was concerning to hear that a key focus of TAHE moving forward is to develop land surrounding transport infrastructure to advance its revenue stream. It is also concerning to see this objective embedded in TAHE's enabling legislation, which as noted in Chapter 1, is given equal importance to all other objectives. It is clear from the evidence of TAHE's board and the Chief Executive Officer that TAHE's primary role moving forward is that of a property developer, who happens to own rail infrastructure. This is an extremely dangerous focus for TAHE given it holds some of the state's most critical transport infrastructure and should be focused on the rail system.

Finding 3

That it is inappropriate for the Transport Asset Holding Entity to have property development as its primary business focus, given it holds some of the state's most critical transport infrastructure and should be focused on the rail system.

- 2.168** The government's policy to establish TAHE has been nothing but an absolute shambles. As the Auditor-General's report highlights, there are still uncertainties moving forward surrounding TAHE's accounting treatment, the impact to the state budget and TAHE's independence. Given the NSW Government's track record on TAHE so far, the committee has no confidence that the NSW Government will adequately address these uncertainties in a timely manner.
- 2.169** In fact, it is clear from the Auditor-General's report that TAHE will lead to significant further financial impacts on the General Government Sector Budget, including over the forward estimates, due to the funding required for licence and access fees. There is also serious doubt about TAHE's ability to credibly make a commercial return. For this reason, we believe that TAHE must be unwound.

Recommendation 1

That the NSW Government unwind the Transport Asset Holding Entity, due to the further negative financial impacts it will cause to the General Government Sector budget and its inability to credibly make a commercial return.

- 2.170** Consistent with previous reports from this committee, this inquiry has shown again the vital role the Audit Office plays in providing government transparency and accountability, including over the state's finances. The state audit for 2021 confirmed a number of the concerns raised in this inquiry and provided much needed credible answers that other stakeholders were less forthcoming about. The committee fully supports the Auditor-General's work, findings and recommendations in her most recent audit. The work conducted for the last financial year shows how essential it is that the Audit Office, a function of government accountability, is adequately and independently funded.

Recommendation 2

That the NSW Government ensure that the Audit Office is adequately and independently funded.

Chapter 3 Safety, maintenance and risk management

In addition to accounting concerns, safety issues emerged as another key concern in the establishment of the Transport Asset Holding Entity (TAHE). This chapter provides an overview of TAHE's safety framework before moving on to explore whether there was a tension between safety concerns and TAHE's fiscal objectives. The chapter ends with a discussion on TAHE's risks and contingent liabilities.

The safety framework

- 3.1** Stakeholders from TAHE and Transport for NSW emphasised that the TAHE model maintains safety outcomes. These stakeholders asserted that safety is the number one priority for all participants in the transport system including TAHE, and that decisions about asset maintenance and delivery are subject to the same 'rigorous' safety standards and regimes that existed prior to the establishment of TAHE.¹⁷⁷
- 3.2** Stakeholders outlined several safety measures that exist as part of TAHE's model.
- Safety is TAHE's leading 'non-financial performance indicator' and one of its 'principal legislative objectives'.¹⁷⁸
 - In accordance with its operating licence, TAHE must not carry out railway operations, operate a transport service or carry out maintenance of transport assets. While TAHE is the asset owner of the rail network and rolling stock, Transport for NSW and the rail operators are responsible for day to day operations and maintenance.¹⁷⁹
 - The statement of ministerial expectations issued by the Portfolio Minister requires that the TAHE board has assurance that an effective safety environment and asset management is place, meeting all standards and reporting annually to the Minister.¹⁸⁰
 - The Portfolio Minister can issue a binding direction to the TAHE board to take action if it is in the public interest.¹⁸¹
 - TAHE plays a role in safety oversight as authorised by the *Transport Administration Act* and has set up an Asset, Safety and Environment Sub-committee of the board to help ensure

¹⁷⁷ See, Supplementary submission 5a, Transport Asset Holding Entity (TAHE), p 1; Evidence, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, 1 October 2021, p 2; Evidence, Mr Rob Sharp, Secretary, Transport for NSW, 16 December 2021, p 5; Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 16 December 2021, p 5; Evidence, Ms Trudi Mares, Deputy Secretary, Corporate Services, Transport for NSW, 1 October 2021, p 21.

¹⁷⁸ Supplementary submission 5a, Transport Asset Holding Entity (TAHE), p 1. See also, Evidence, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, 1 October 2021, p 2; Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 16 December 2021, p 5.

¹⁷⁹ See, Supplementary submission 5a, Transport Asset Holding Entity (TAHE), p 1; Evidence, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, 1 October 2021, p 2; Evidence, Mr Rob Sharp, Secretary, Transport for NSW, 16 December 2021, pp 4-5; Evidence, Ms Trudi Mares, Deputy Secretary, Corporate Services, Transport for NSW, 1 October 2021, p 21.

¹⁸⁰ Evidence, Ms Trudi Mares, Deputy Secretary, Corporate Services, Transport for NSW, 1 October 2021, p 21.

¹⁸¹ Evidence, Ms Trudi Mares, Deputy Secretary, Corporate Services, Transport for NSW, 1 October 2021, p 21.

due diligence obligations and accountabilities. The sub-committee has appointed an independent member with expertise in heavy rail asset management and safety leadership to oversee that TAHE assets are safe and reliable under the maintenance and operation of third parties. An independent auditor has also been appointed to carry out an internal asset safety and environment audit plan.¹⁸²

- Transport for NSW is obligated to provide to TAHE an annual attestation that an asset management plan is in place.¹⁸³
- The Secretary of Transport for NSW retains directional powers over Sydney Trains and NSW Trains and has a seat on the TAHE board.¹⁸⁴
- Sydney Trains, NSW Trains and the third party operator for Country Regional Network, must maintain transport assets under their access and licence agreements in accordance with statutes and regulations including the *Work Health and Safety Act 2011* (NSW), *Work Health and Safety Regulation 2017* (NSW) and the Rail Safety National Law, as well as Transport for NSW technical standards and all other relevant Australian standards.¹⁸⁵
- The Office of the National Rail Safety Regulator continues to have oversight over the regulatory arrangements for heavy rail assets.¹⁸⁶

3.3 TAHE argued that 'the creation of TAHE actually strengthens the transport safety arrangements of an already heavily regulated environment, due to legislated obligations on TAHE to ensure that the assets are safe, reliable and fit for purpose'.¹⁸⁷

3.4 As noted in Chapter 2, witnesses appearing on behalf of Transport for NSW asserted that the establishment of TAHE created a third line of safety assurance, which they contended is a benefit for the people of New South Wales. Mr John Hardwick, Executive Director, Asset Management, Safety, Environment and Regulation, stated:

I think the key for me in the safety space is around the establishment of the third line of assurance from the asset owner with that true independence from the activities of the day-to-day activities of the business and it has really given us an ability to look at the risk exposures from that independent view. They are reviewing the work that I do and the work of Sydney Trains, NSW Trains and the private operators through that independent lens, which gives you a higher level of confidence that the things that are being done within Transport, the operators and the maintainers has that due diligence piece put across it.¹⁸⁸

¹⁸² Submission 5, Transport Asset Holding Entity, p 12. See also, Evidence, Mr Trevor Bourne, Non-Executive Director, Transport Asset Holding Entity, 8 November 2021, p 53.

¹⁸³ Evidence, Ms Trudi Mares, Deputy Secretary, Corporate Services, Transport for NSW, 1 October 2021, p 21.

¹⁸⁴ Evidence, Ms Trudi Mares, Deputy Secretary, Corporate Services, Transport for NSW, 1 October 2021, p 21.

¹⁸⁵ Submission 6, NSW Government, p 13.

¹⁸⁶ Submission 6, NSW Government, p 13; Submission 5, Transport Asset Holding Entity, p 11.

¹⁸⁷ Supplementary submission 5a, Transport Asset Holding Entity, p 1. See also, Evidence, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, 1 October 2021, p 2; Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 16 December 2021, p 5.

¹⁸⁸ Evidence, Mr John Hardwick, Executive Director, Asset Management, Safety, Environment and Regulation, Transport for NSW, 1 October 2021, p 29.

- 3.5** When asked how this structure varies from the 1996 structure which ultimately resulted in safety issues, Mr Hardwick responded that he 'cannot comment around the items of 1996', but highlighted a number of measures which have been put in place since 1996 to ensure safety:

... the things that have been put in place since 1996 are the things like the Rail Safety National Law, the Office of the National Rail Safety Regulator (ONRSR) and their responsibilities and the way in which they discharge it. We have also implemented a number of ways in which that occurs, and obviously the rail transport operators themselves holding that true accountability for the fully assured delivery of services and outcomes at that operational level is really important.¹⁸⁹

- 3.6** From the perspective of a rail operator, Mr Matt Longland, Chief Executive, Sydney Trains, reinforced Mr Hardwick's view that TAHE's establishment has had 'no adverse impact on the operational rail safety'. He added that Sydney Trains has 'defined systems in place' with regard to their safety management system and an internationally accredited asset management process. Mr Longland also noted that Sydney Trains works with Transport for NSW to develop asset management plans.¹⁹⁰
- 3.7** The committee explored with members of the TAHE board whether they were troubled by the report following the Glenbrook tragedy which stipulated that one of the reasons for the disaster was the division between asset holder and operator responsibilities. Non-Executive Director, Mr Trevor Bourne responded that we was 'not troubled at all' because 'the responsibility for the operation, maintenance and the good management rests with Transport for NSW'.¹⁹¹
- 3.8** When asked how he could be sure that a rail operator would not cut corners on maintenance in the event that they are under commercial pressures from paying an access fee to TAHE, Mr Bourne responded: 'They are the ones with the absolute responsibility and we will expect that they will spend what needs to be spent to meet that responsibility'.¹⁹²
- 3.9** The committee sought to clarify a number of elements relating to TAHE's safety framework. On the maintenance of assets, Ms Benedicte Colin, Chief Executive Officer, TAHE, explained that Sydney Trains and Transport for NSW 'are responsible for developing their asset management plans, the maintenance requirements and funding requirements over maintenance'. In addition, Ms Colin highlighted that for funding, Sydney Trains and NSW Trains would approach Transport for NSW who 'is responsible for seeking the appropriate funding' for the assets. She clarified that TAHE does not pay for maintenance of assets 'that are the subject of operation of the networks' but that it does pay for other maintenance of its property portfolio.¹⁹³

¹⁸⁹ Evidence, Mr John Hardwick, Executive Director, Asset Management, Safety, Environment and Regulation, Transport for NSW, 1 October 2021, p 29.

¹⁹⁰ Evidence, Mr Matt Longland, Chief Executive, Sydney Trains, 1 October 2021, p 29.

¹⁹¹ Evidence, Mr Trevor Bourne, Non-Executive Director, Transport Asset Holding Entity, 8 November 2021, p 51.

¹⁹² Evidence, Mr Trevor Bourne, Non-Executive Director, Transport Asset Holding Entity, 8 November 2021, p 51.

¹⁹³ Evidence, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, 1 October 2022, p 18.

- 3.10** Mr Bourne highlighted that all costs of maintenance are incurred by Transport for NSW and the rail operators, and that there is no cost recovery from TAHE.¹⁹⁴ When asked whether TAHE can order the rail operators to cease or undertake an activity, Mr Bourne responded that TAHE cannot, reiterating that TAHE has an oversight role while accountability for day to day operations and maintenance lies with Transport for NSW.¹⁹⁵
- 3.11** In the event an incident was to occur on the rail network, Mr Bourne confirmed with the committee that 'strict legal responsibility sits with Transport for NSW', again noting that TAHE plays an oversight role.¹⁹⁶

The tension between safety and fiscal objectives

- 3.12** The committee heard evidence about the tension between maintaining safety in the transport sector and achieving TAHE's fiscal objectives. While stakeholders from TAHE and Transport for NSW maintained that safety was a key priority for TAHE, Mr Rodd Staples, the former Secretary of Transport for NSW, shared with the committee the safety concerns he held when implementing TAHE.
- 3.13** Mr Staples confirmed he had concerns relating to safety, control and accountability. For Mr Staples, while these concerns were mitigated in the short term, a conflict emerged between TAHE's accounting structure and the ability to operate the rail network safely in the medium to long term.¹⁹⁷
- 3.14** In Mr Staples' view, there was a conflict between TAHE's structure and the government's current policy of integration and connection in the transport system. Mr Staples explained his position by highlighting the historical context of the government's transport policy:

If you went back 10 years ago it probably would not have looked as out of kilter, but from 2011 ... the government's overarching policy around transport has been one of integration, one of connection, one of customer journey. The terminology used in those early years was breaking down the silos and there were quite a few entities, some of which were commercial in nature, in 2011 and 2012 that were disbanded with a view of much more integrated decision-making and joined-up decision-making and removing some of those barriers. To a large extent, that policy has continued throughout ... TAHE does sit at odds, to a large extent, with that broader policy direction in terms of injecting into that arrangement a commercial entity with a very modal-specific commercial driver, without a doubt.¹⁹⁸

- 3.15** The key concern for Mr Staples was around who would be in control of decision-making regarding maintenance and who would be in control of decision-making regarding future

¹⁹⁴ Evidence, Mr Trevor Bourne, Non-Executive Director, Transport Asset Holding Entity, 8 November 2021, p 53.

¹⁹⁵ Evidence, Mr Trevor Bourne, Non-Executive Director, Transport Asset Holding Entity, 8 November 2021, p 50.

¹⁹⁶ Evidence, Mr Trevor Bourne, Non-Executive Director, Transport Asset Holding Entity, 8 November 2021, p 50.

¹⁹⁷ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, pp 26 and 23-34.

¹⁹⁸ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, pp 30-31.

investment. The basis for Mr Staples' concern was that these issues could have potential safety and customer service ramifications. Mr Staples highlighted that the role of frontline maintenance workforce is to work with the resource pool they are given. Ultimately, Mr Staples asserted that whoever is in control of maintenance 'has a significant influence on the quality of what they can do' and whoever has decision-making control over how money will be invested has 'a profound impact on the safety and the customer service as well'.¹⁹⁹

3.16 Mr Staples elaborated on the concerns he had for the long term safety of the rail network. First, he questioned how 'influential TAHE would become in the long run in determining what the annual quantum' of maintenance would be overall. Second, Mr Staples questioned how TAHE would decide to spend its earnings when it is faced with the objective of providing rail assets to the state but also 'an imperative around commercial return'.²⁰⁰

3.17 Mr Staples emphasised that these issues are medium to long term concerns. Reflecting on the issues that emerged in the Glenbrook and Waterfall tragedies he stated:

If you reflect back on some of the issues that emerged through Glenbrook and Waterfall, it was not the initial governance necessarily but it was the passage of time; new people come in, the understanding of what the intent was shifts a little bit and you are working within a legal framework. There was just a foreshadowing that that could go in a direction where the drivers sitting within that organisation become disconnected with the drivers in Transport.²⁰¹

3.18 When the decision was made to establish TAHE in July 2020, Mr Staples outlined that there was concern within Transport about 'TAHE's readiness to take on the role of the asset custodian at that point in time'. To mitigate these concerns, TAHE's operating licence for the first year retained 'a sort of business-as-usual approach with Transport and Sydney Trains taking the heavy lifting on who would make decisions around what amount of money and where that money would go'. Mr Staples explained that the operating licence was put in place for a year with the view that these accountabilities would be resolved over that year.²⁰²

3.19 The committee questioned Mr Staples whether, despite the safety concerns raised by Transport for NSW, the NSW Government decided to commence TAHE's operations in July 2020 in order to show that progress had been made on TAHE and thus survive the audit for that year. Mr Staples responded: 'There is no question that a critical time driver for establishing on 1 July [2020] was that we needed to basically be able to continue to bank the fiscal benefits of TAHE'. Mr Staples explained that TAHE could not commence on 1 July 2019 as originally planned as it was not ready and not enough work had been completed. Moving into 2020, Mr Staples outlined that 'everyone knew that it needed to show a progressive step forward to the Auditor-General and to the ABS [Australian Bureau of Statistics] that substantive progress was being made to stand up the entity'.²⁰³

3.20 When asked whether he believed the TAHE structure was proposed and embedded in policy before a viable structure had been developed, Mr Staples reflected on two things that happened

¹⁹⁹ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 31.

²⁰⁰ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 32.

²⁰¹ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 33.

²⁰² Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 31.

²⁰³ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 32.

when TAHE was established that he felt 'in hindsight maybe made things very difficult'. First, the concept was agreed to and the 'accounting benefit was booked immediately', which created 'an immediate necessity to basically work within that constraint'. Second, he believed that there was no assurance process with independent oversight about how the risks were being tracked and managed.²⁰⁴

- 3.21** Discussing this point further, Mr Staples highlighted how the government has generally 'done a very good job in establishing a gateway process for major projects', however, with TAHE there was not the same independent oversight:

My contrast on both of those points would be that the government has done a very good job in establishing a gateway process for major projects, of which I have gone through more times than I care to describe, but the need to do a rigorous business case, to put that through an independent panel that sits outside of the agencies and then to go through various gates after that to test on how we are tracking against that delivery—I would say deciding to bank the benefit and not having an ability for some of these issues to be resolved with some independent oversight are two things that probably have made the journey of implementation incredibly difficult.²⁰⁵

- 3.22** The committee also sought to clarify whether Mr Staples believed that the government banked the benefit of TAHE's structure and recognised it in the budget before knowing that a viable structure existed. Mr Staples responded: 'I cannot speak for where the decision-makers were at at the time and what their thinking was on what was viable and was not. I can only assume that they thought that this was a viable structure and it was just a matter of getting it put in place'.²⁰⁶

- 3.23** When further pressed about whether there was a viable structure that would address safety and finance concerns during his time as Secretary, Mr Staples stated: 'When I started working on it, we were working through those issues. I did not have in my mind that we would not find solutions to them. I thought we would work our way through and find solutions but it got very hard'.²⁰⁷

- 3.24** By the time Mr Staples was removed from his role as Secretary of Transport for NSW in February 2021, he was satisfied that the short term risks to rail safety were mitigated due to the operating licence put in place for the first year but was 'very uncomfortable' that the long term risks were yet to be resolved. He noted that there were still questions as to the controls around maintenance and capital investment and whether there was enough independence, which he acknowledged were not resolved during his time as Secretary.²⁰⁸

- 3.25** Ultimately, Mr Staples' concerns about safety and TAHE's accounting treatment were so significant that he had discussions not only with Mr Michael Pratt and Mr Tim Reardon, the then Secretaries of NSW Treasury and the Department of Premier and Cabinet, as discussed in Chapter 2, but also with the then Minister for Transport and Roads, the then Premier and the Auditor-General.²⁰⁹

²⁰⁴ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, pp 33-35.

²⁰⁵ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 34.

²⁰⁶ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 34.

²⁰⁷ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 34.

²⁰⁸ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, pp 34-35.

²⁰⁹ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, pp 45-48.

- 3.26** Another concern held by Mr Staples regarding safety was the membership of the TAHE board. In a discussion with Mr Pratt, Mr Staples suggested a number of people with ground transport regulatory safety expertise for the board, as NSW Treasury was leading the Cabinet process for determining board membership.²¹⁰
- 3.27** While Mr Staples believed that the members who were ultimately appointed to the board 'were all very good choices', he was 'very disappointed' that there was not a 'broader cross-section of skills', particularly someone other than himself with rail or safety expertise.²¹¹
- 3.28** Following the establishment of TAHE in July 2020, Mr Staples shared with Mr Reardon doubts he began to hold about whether he could continue to be effective in his role as Secretary of Transport for NSW given the significance of his concerns. Mr Staples stated that Mr Reardon 'was sympathetic to the position, but also understood that the government's policy was that we were implementing TAHE'.²¹²
- 3.29** In addition to concerns expressed by Mr Staples, the committee also received evidence on this issue from Mr Brendan Lyon, former KPMG Partner. As highlighted in Chapter 2, in 2020, KPMG was commissioned to identify risks and develop an operating model that would achieve TAHE's financial outcomes. Mr Lyon's first report raised safety considerations relating to TAHE's operating model.²¹³
- 3.30** Mr Lyon's report highlighted case studies of previous rail disasters including Waterfall and Glenbrook, as well as a case study from the UK. Mr Lyon commented that 'in each case financially motivated structural reform was found to be a major contributing factor to the loss of lives in those rail accidents'.²¹⁴
- 3.31** Mr Lyon gave evidence that senior KPMG Partner Mr James Hunter called him to let him know that Mr Pratt expressed 'extreme anger at the inclusion of case studies around safety' in the report.²¹⁵ As discussed in Chapter 2, Mr Pratt was also dissatisfied with the inclusion of Treasury's modelling in Mr Lyon's report. Further detail about NSW Treasury's involvement in Mr Lyon's report is considered in Chapter 4.
- 3.32** Mr Lyon argued that NSW Treasury focused on the fiscal presentation of the budget ahead of other important considerations for public rail system such as safety:

I think where Treasury were at in April, May and June last year was highly dangerous. I think they had lost sight of what matters with the public rail system and it was all to do with the net fiscal presentation of the budget.²¹⁶

²¹⁰ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 42.

²¹¹ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 42.

²¹² Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 45.

²¹³ See, Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 9.

²¹⁴ Tabled document, Documents produced by Mr Brendan Lyon, former Partner, KPMG Australia – Part 4, 8 November 2021, p 294.

²¹⁵ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 9.

²¹⁶ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 9.

- 3.33** In Mr Lyon's opinion, if TAHE works for the accounting rules, 'then it definitely does not work for safety'.²¹⁷ Mr Lyon elaborated:
- When you give it to a bunch of people however well intentioned, who are not driving the trains, not operating the track—indeed, one of the bigger problems is not even from the rail sector, in large part; you have a misalignment and you have a misalignment of drivers because the corporation is going to be asked about how it has performed and how it has made its returns and all of the rest, and in making those decisions the experience is the assets get hollowed out, accountabilities get broken down.²¹⁸
- 3.34** The committee questioned TAHE board members as to whether it provided a response to the concerns raised in Mr Lyon's report. TAHE Chair, Mr Bruce Morgan responded: 'I have not, but the management team of TAHE provided input along the way, including a written response'.²¹⁹
- 3.35** The committee also asked whether the board received advice from management about the conclusions set out in Mr Lyon's report. Mr Morgan stated: 'I do not recall that we sought any advice'.²²⁰
- 3.36** Mr Trevor Bourne, Non-Executive Director at TAHE believed that the model considered in Mr Lyon's report had TAHE take a 'hands-on operating role', but that when TAHE was established on 1 July 2020 issues of maintenance were reverted back to the responsibility of Transport for NSW which he considered was 'a significant move from what had been the original intent'.²²¹
- 3.37** In response to questioning on whether TAHE management reported to the board that contracting out maintenance responsibilities would address the safety concerns raised in Mr Lyon's report, Mr Bourne stated: 'I looked into that personally and my view was that the way it was structured was sound'.²²²
- 3.38** It is important to note that KPMG submitted that Mr Lyon's report (or any of KPMG's reports on TAHE) did not include scope to 'provide advice around the safety of the TAHE operating model'. KPMG held that 'safety assessments are clearly the responsibility of the appropriate regulators, highlighting that the engagement teams for KPMG's reports did not include qualified rail safety experts and that therefore KPMG did not hold a view regarding the safety of the TAHE operating model. KPMG concluded by stating that 'any claims regarding safety from Mr Lyon do not reflect advice that KPMG was authorised or credentialed to provide under the engagement parameters at the time'.²²³

²¹⁷ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 21.

²¹⁸ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 21.

²¹⁹ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 60.

²²⁰ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 60.

²²¹ Evidence, Mr Trevor Bourne, Non-Executive Director, Transport Asset Holding Entity, 8 November 2021, p 60.

²²² Evidence, Mr Trevor Bourne, Non-Executive Director, Transport Asset Holding Entity, 8 November 2021, p 60.

²²³ Submission 8, KPMG, p 4.

- 3.39** In addition to Mr Staples and Mr Lyon, the Auditor-General raised similar concerns in her 2020 Transport audit about the conflict between the objectives of a commercial return and maintenance and safety considerations.²²⁴ The committee questioned TAHE as to whether this had been addressed.
- 3.40** Mr Peter Crimp, Executive General Manager at TAHE, outlined that TAHE had taken steps to address the recommendations from the Auditor-General and 'from our perspective, met the needs and the requirements of those recommendations'.²²⁵
- 3.41** In a supplementary submission following Mr Staples' evidence, TAHE submitted that 'the issues raised by Mr Staples were legitimate and important considerations to put forward as the framework around TAHE was being developed'.²²⁶
- 3.42** TAHE highlighted that the issues raised by Mr Staples and other parties 'substantially strengthened and clarified the ultimate safety management framework developed to reflect the creation of TAHE'.²²⁷
- 3.43** TAHE highlighted that the safety framework continued to develop after Mr Staples' departure and is now different to the framework that Mr Staples spoke to during his evidence. Below are the developments that TAHE outlined in its supplementary submission.
- The latest operating licence which came into effect on 1 July 2021 'specifically precludes TAHE from undertaking railway operations and maintenance of transport assets'.
 - The new TAHE operating agreements which also came into effect on 1 July 2021 'clearly articulate the roles and responsibilities of all the transport cluster parties'.
 - In the 'unlikely event of any conflict between TAHE and the rail operators on an investment relating to safety there is a clear conflict resolution procedure in place'. Under this procedure, 'if the operator requires resources for assets that have a safety impact, the operator is empowered to take the appropriate steps required to make sure the assets remain safe and reliable under their remit'.²²⁸
- 3.44** The Office of Transport Safety Investigations (OTSI) also conducted a review into whether the mitigation control and supporting TAHE governance arrangements in place were sufficient to manage potential conflicts between TAHE's commercial objectives and the safe management of rail assets.²²⁹

²²⁴ Submission 4, Auditor-General of New South Wales, p 3.

²²⁵ Evidence, Mr Peter Crimp, Executive General Manager, Transport Asset Holding Entity, 1 October 2021, p 18.

²²⁶ Supplementary submission 5a, Transport Asset Holding Entity (TAHE), p 1.

²²⁷ Supplementary submission 5a, Transport Asset Holding Entity (TAHE), p 1.

²²⁸ Supplementary submission 5a, Transport Asset Holding Entity (TAHE), pp 1-2.

²²⁹ Supplementary submission 5a, Transport Asset Holding Entity (TAHE), p 2.

- 3.45** The OTSI report was released following the appearance of Mr Morgan and Mr Bourne before the committee on 8 November 2021. Given TAHE had only recently been established at the time of this report, OTSI indicated that its findings were preliminary in nature.²³⁰
- 3.46** TAHE submitted that the report's preliminary broad finding was 'that the proposed mitigations and safety governance arrangements are fit for purpose, and should achieve the objective of clarity and focus around safety roles'. TAHE highlighted that comments were made in the report about TAHE's operating licence which 'serves to constrain the organisation's role and responsibilities and removes commercial imperatives from Transport operating rail assets'.²³¹
- 3.47** TAHE also noted that the review identified a number of areas for further consideration and agreed with the 'recommendation these considerations are monitored and addressed as appropriate'. Finally, TAHE expressed full support for OTSI's recommendation to review the framework with the renewal of TAHE's operating licence to ensure it continues to operate as intended.²³²
- 3.48** The OTSI report said in part that it is not clear whether TAHE's operating licence and other arrangements 'will stand up to scrutiny in the event of a major incident'. The report also stated that the 'review demonstrates that more time is needed to implement and test the framework' and that 'questions remain as to what happens if conflicts arise between TAHE and [Transport for NSW], or TAHE and transport operators and how they will be managed'.²³³
- 3.49** Referencing the outcomes of the OTSI report, Secretary for NSW Treasury, Mr Pratt, commented on the assertions made about safety implications throughout the inquiry:

There has been a false narrative that TAHE will compromise safety. That ... is wrong. The truth is TAHE does not compromise on safety, as the recent independent OTSI report shows.²³⁴

Disclosure of risks and contingent liabilities

- 3.50** The committee also explored whether TAHE had disclosed its risk and contingent liabilities as required under its statement of corporate intent.
- 3.51** Mr Crimp advised that TAHE discloses contingent liabilities in their annual reports. When asked to identify these contingent liabilities, Ms Colin and Mr Crimp referred to contamination, COVID-19 and TAHE's narrow customer base as key risks. When pressed further, Ms Colin advised that TAHE was in the process of adopting a risk assurance framework which would identify 'in much more granularity the risks that the company might be exposed to'. As at her

²³⁰ Office of Transport Safety Investigations, *Review of Transport Asset Holding Entity of New South Wales (TAHE) mitigations and governance arrangements to manage potential conflicts of interest for operating rail assets*, p 9.

²³¹ Supplementary submission 5a, Transport Asset Holding Entity (TAHE), p 2.

²³² Supplementary submission 5a, Transport Asset Holding Entity (TAHE), p 2.

²³³ Office of Transport Safety Investigations, *Review of Transport Asset Holding Entity of New South Wales (TAHE) mitigations and governance arrangements to manage potential conflicts of interest for operating rail assets*, p 9.

²³⁴ Evidence, Mr Michael Pratt, Secretary, NSW Treasury, 16 December 2021, p 2.

appearance on 1 October 2021, Ms Colin noted that it would be premature for her to speak about the risk assurance framework given it was 'not yet completely approved and developed'.²³⁵

- 3.52** The committee revisited the issue of risks and contingent liabilities at its hearing on 8 November 2021. Mr Morgan explained that TAHE sought legal advice on its safety and asset management responsibilities as well as its risk management. With respect to asset management and safety, Mr Morgan stated that 'fundamentally nothing has changed' with 'Transport for NSW acting as TAHE's agent to monitor asset management and safety, ensure that the rail operators spend the right amount on asset management and safety and report back to TAHE. On risk management, Mr Morgan also stated that TAHE was in the process of developing its own risk framework noting that 'we have had the fundamentals in place for quite some time'.²³⁶
- 3.53** The committee sought to clarify whether TAHE had disclosed its risks and contingent liabilities for the last financial year. Mr Morgan stated: 'To the extent that any need to be quantified, they will be in financial statements'.²³⁷
- 3.54** In answers to questions on notice, TAHE provided detail on its risk management framework, advising that 'an Enterprise Risk Management Framework has been developed to support TAHE to make better risk-based decisions in pursuit of its strategic objectives'. TAHE explained that the framework comprises four key components on risk governance, risk elements, risk ownership and risk capability and awareness.²³⁸
- 3.55** TAHE added that the framework forms part of TAHE's internal control and corporate governance arrangements, applies to 'all operational and strategic risks across the business, supporting the identification, management and reporting of all risks' and 'provides a framework for the reporting and escalation of financial related risks'.²³⁹
- 3.56** Under the risk framework, TAHE identified six material risk categories that may impact the organisation's ability to achieve its strategic objectives, including safety, strategic, operational, financial, compliance and projects. TAHE advised that 'risks within these categories must be assessed, monitored and reported on no less than annually'.²⁴⁰

Committee comment

- 3.57** The safety of commuters must be paramount in any transport system. The committee was therefore extremely concerned to receive evidence about tensions between the Transport Asset Holding Entity's (TAHE) fiscal objective to improve the budget position and safety considerations.
- 3.58** While TAHE and Transport for NSW stakeholders maintained that safety remains the key priority in the public rail system, the committee is not convinced that the NSW Government

²³⁵ Evidence, Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity, 1 October 2021, p 18.

²³⁶ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 54.

²³⁷ Evidence, Mr Bruce Morgan, Chair, Transport Asset Holding Entity, 8 November 2021, p 55.

²³⁸ Answers to questions on notice, TAHE, received 10 January 2022, p 11.

²³⁹ Answers to questions on notice, TAHE, received 10 January 2022, p 11.

²⁴⁰ Answers to questions on notice, TAHE, received 10 January 2022, p 11.

demonstrated its commitment to this priority in the establishment of TAHE. In our view, safety considerations, as raised by former Secretary of Transport for NSW Mr Rodd Staples, were inadequately resolved before TAHE was established.

- 3.59** Numerous factors have made it clear to us that the NSW Government was not ready to establish TAHE on 1 July 2020. These include the need to incorporate transitional safety measures in its first year of operation to mitigate short term risks and the lack of a risk assurance framework which was only developed in its second year of operation. Further, and perhaps most importantly, Mr Staples, who has significant expertise in rail safety and management, had begun to hold doubts about his capacity to lead as Secretary of Transport for NSW, given the fundamental tension unfolding between safety considerations and the need for TAHE to deliver fiscal benefits.
- 3.60** In light of our finding in Chapter 2 that the NSW Government failed to give proper consideration to the accounting treatment for TAHE before setting it up, a clear pattern has emerged that suggests the NSW Government was committed to establishing TAHE at any cost, with inadequate consideration of matters significant to TAHE's operations, and risks to safety, along with its accounting treatment.
- 3.61** It is clear that the NSW Government prioritised the fiscal benefit of establishing TAHE, rushing to realise this benefit before giving proper consideration to other significant matters such as safety, accountability and risk mitigation. This is baffling considering the findings from the Waterfall and Glenbrook accidents which showed that the separation of asset ownership and rail operation played a significant role in these tragedies.

Finding 4

That the NSW Government failed to give proper consideration to safety, accountability and risk mitigation matters before implementing its policy decision of creating the Transport Asset Holding Entity.

- 3.62** The committee therefore reiterates its recommendation in Chapter 2 that TAHE be unwound. In addition to the financial impacts on Transport for NSW and the rail operators over the forward estimates and the difficulty TAHE is likely to have in achieving a credible return, it is clear there are significant safety issues presented by this type of structural reform.

Chapter 4 The conduct of NSW Treasury officials in the establishment of the Transport Asset Holding Entity

Throughout this inquiry, the committee heard evidence about the conduct of senior NSW Treasury officials and consultants throughout the process of establishing TAHE. The final chapter of this report considers three key issues. Firstly, it considers the engagement of KPMG by both NSW Treasury and Transport for NSW and how conflicts between the two engagements were managed. Secondly, it discusses more generally whether there was an over reliance on external consultants in the establishment of TAHE. Thirdly, it discusses NSW Treasury's conduct in the recent audit process conducted by the Auditor-General's office.

KPMG engagements

- 4.1** As discussed in Chapter 2, both NSW Treasury and Transport for NSW separately engaged consultants from KPMG in the process of establishing TAHE. NSW Treasury engaged Ms Heather Watson in April 2020, as a continuation of work that began in February 2020, to consider whether NSW Treasury's financial assumptions were reasonable under the relevant accounting standards. Transport for NSW engaged Mr Brendan Lyon in April 2020 to consider an operating and financial model.²⁴¹
- 4.2** This section explores the conflicts that emerged throughout these two engagements, including NSW Treasury's involvement in Mr Lyon's work and questions as to whether a conflict of interest emerged as a result of KPMG accepting both engagements. The section concludes with a discussion as to whether there was an over-reliance on consultants in establishing TAHE.

Criticisms of a KPMG report

- 4.3** As discussed in Chapter 2, Mr Brendan Lyon, former KPMG Partner, produced two reports for Transport for NSW. The first, focusing on an initial high level assessment of operational models, found 'problems with Treasury's modeling of TAHE's costs and benefits and a range of safety risks'. The second report, focusing on a more detailed assessment for a long-term financial and operating model, found that 'NSW Treasury's numbers used for the budget were wrong seeing 'the budget some \$10 billion or more worse off than Treasury has claimed'.²⁴²
- 4.4** Mr Lyon asserted that he was subjected to bullying and unprofessional behaviour from senior NSW Treasury officials while he was working on his reports for Transport for NSW, particularly in the process of his second report. Ultimately, the committee heard that these conflicts emerged as a result of NSW Treasury's dissatisfaction with the work Mr Lyon produced for Transport for NSW, particularly in relation to the inclusion of safety matters in the report and financial modelling.

²⁴¹ See, Submission 8, KPMG, p 2.

²⁴² Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 2.

4.5 By contrast, Ms Watson's report, which reviewed NSW Treasury's assumptions against the requirements of applicable financial and budgetary reporting frameworks, found the assumptions used by NSW Treasury were reasonable and prepared in accordance with the relevant requirements.²⁴³

4.6 Mr Lyon told the committee that Mr Michael Pratt, former Secretary, Mr San Midha, Deputy Deputy Secretary Policy and Budget and Ms Cassandra Wilkinson, Executive Director were dissatisfied with his work:

The Treasury secretary, Mike Pratt; deputy secretary, San Midha; and executive director Cassandra Wilkinson were understandably very unhappy with my work. This was expressed through very unprofessional, ongoing personal attacks on me and my team and repeated complaints to senior partners at KPMG. I finalised my report despite the pressure to change or remove the results. And when this saw continuing pressure from Mike Pratt, and when I asked him directly to stop bullying me—and you will see the email in my papers—he called for me to be sacked, and also asked that KPMG prohibit me from doing any further work for the New South Wales Government, to which I was advised the firm's CEO, Andrew Yates, agreed.²⁴⁴

4.7 Mr Lyon alleged that Mr Pratt, Mr Midha and Ms Wilkinson had influence over KPMG senior partners, leading to what he described as 'vexatious internal disciplinary processes' at KPMG after his work was completed. These issues culminated in Mr Lyon leaving the firm, with him stating:

.... It was made untenable for me to stay, with the repeated attempts to discredit me personally and to discredit me professionally because I had exposed the failures of those senior Treasury personnel. I left KPMG with my team and most of my clients...²⁴⁵

4.8 Mr Lyon tendered emails, text messages and documents to the committee to demonstrate that he was subject to unprofessional behaviour from NSW Treasury officials.²⁴⁶

4.9 At a hearing, Mr Lyon told the committee (and produced emails as evidence) to show that he received correspondence from Mr Midha, on Thursday 19 November 2020 'instructing that the financial modelling results be removed from the report'. Soon after, Mr Lyon received an email from Mr Pratt, copying in senior partners at KPMG, stating:

This needs your urgent attention. You either correct the errors or remove all references to Treasury's model which is not for you to comment upon. Please revert ASAP as this matter needs urgent resolution.²⁴⁷

²⁴³ Evidence, Ms Heather Watson, Partner, KPMG Australia, p 9.

²⁴⁴ Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 2.

²⁴⁵ Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 2.

²⁴⁶ Mr Lyon produced emails and documents in accordance with a summons issued to him. See, Tabled document, Documents produced by Mr Brendan Lyon, former Partner, KPMG Australia – Part 3, 8 November 2021; Tabled document, Documents produced by Mr Brendan Lyon, former Partner, KPMG Australia – Part 4, 8 November 2021.

²⁴⁷ Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 4. See also, Documents produced by Mr Brendan Lyon, former Partner, KPMG Australia – Part 4, 8 November 2021, p 265.

4.10 Mr Lyon then responded as follows: 'Mike – I am sick of being bullied by you. Grow up [and] tell the truth. Up to you'.²⁴⁸

4.11 Mr Lyon also highlighted an email he received on the same day from Mr Pratt in which he alleged Mr Pratt called for his termination. The email stated:

To the senior partners on this email, you obviously have a partner who refuses to take counsel and is out of control. As you are aware, we engaged KPMG (Heather Watson) earlier this year to provide fiscal and accounting that has now concluded in support of the TAHE work. That work provides the basis for Treasury advice. I expect you to take action.²⁴⁹

4.12 Mr Lyon took from this email that Mr Pratt was asking for him to be terminated.²⁵⁰ When asked whether there was any explicit wording to support the assertion that Mr Pratt sought his termination, Mr Lyon responded:

There was certainly a statement made to me by David Heathcote, the head of the DTL [Deals, Tax and Legal] division, in December that Mr Yates [KPMG CEO] had agreed to a request by Mr Pratt that I be prohibited from doing further work, which certainly suggested to me that I should withdraw my email requesting that Mr Pratt stop bullying me improperly to change the results of a finalised report...²⁵¹

4.13 Mr Lyon emphasised to the committee that this conduct occurred in the context of NSW Treasury not being his client. He reflected on the behavior he witnessed from NSW Treasury, stating: 'I have never seen the behaviours I saw from Mr Pratt, Mr Midha or Ms Wilkinson ever before in the public sector'.²⁵²

4.14 Mr Lyon further advised that his client, Transport for NSW, did not instruct him to make any changes to the section in his report on fiscal impacts. He also stated that Transport for NSW accepted the work in full agreement:

[Transport for NSW] not only accepted the work, was very impressed by the technical complexity. There was full agreement. ... the financial model that Treasury keeps saying had errors in it, the only errors that were in it, from their point of view, was the answer.²⁵³

4.15 The committee explored NSW Treasury's involvement in this matter with Mr Rodd Staples, former Secretary of Transport for NSW. When asked whether he was aware of Treasury's interest in Mr Lyon's report, Mr Staples responded that while Transport for NSW engaged, funded and set the terms for this KPMG report, he encouraged involvement from NSW Treasury. Mr Staples spoke to the intention 'to do something that was quite integrated across

²⁴⁸ Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 3. See also, Documents produced by Mr Brendan Lyon, former Partner, KPMG Australia – Part 4, 8 November 2021, p 265.

²⁴⁹ Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 3. See also, Documents produced by Mr Brendan Lyon, former Partner, KPMG Australia – Part 4, 8 November 2021, p 266.

²⁵⁰ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 3.

²⁵¹ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 3.

²⁵² Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 10.

²⁵³ Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 17.

the different agencies' and the importance of the two departments being on the same page and giving advice to government.²⁵⁴

- 4.16** Nonetheless, Mr Staples agreed with the proposition that this was different from having NSW Treasury direct the outcome of the report.²⁵⁵
- 4.17** Mr Staples confirmed that he received correspondence from Mr Pratt on Wednesday 11 November 2020 requesting that the report be amended. Mr Staples explained that he then sought advice from KPMG, and KPMG's view was that 'both reports could be reconciled'.²⁵⁶
- 4.18** Mr Staples explained that if KPMG had felt that there was a case to change the report on the basis of Mr Pratt's correspondence, Transport for NSW 'would have been open-minded to it'. He highlighted that 'there may have been a breakdown in protocol of Mr Pratt writing directly, but if the issues were of substance ... then the expectation was that KPMG' would address those issues.²⁵⁷
- 4.19** When asked whether it was appropriate for Mr Pratt to write directly to Mr Lyon with instructions to change the report without telling him first, Mr Staples responded: 'I was very surprised that he did that'. When asked again whether it was appropriate, Mr Staples replied: 'No, it was not'.²⁵⁸
- 4.20** With regard to Mr Lyon's allegations that he was subject to unprofessional behaviour from NSW Treasury staff during meetings, Mr Staples confirmed that he received feedback from his staff that 'the nature of the meetings were quite aggressive and not as constructive as we would have liked them to be', adding that there was concern about how the tone of the meetings 'might affect the outcome of trying to get a collective view'.²⁵⁹
- 4.21** When asked about whether he had called Mr Lyon in September 2020 to warn him that TAHE and NSW Treasury were starting to 'play the man', Mr Staples stated: 'I do not remember the very specific conversation or the date, but there is no doubt in my that I would have had a conversation like that with Brendan'. He acknowledged that when discussions become 'more about the people and their capability and their ideology, you know that the decision-making is starting to breakdown'. Mr Staples was concerned because the 'stakes were very high in relation to resolving the operating model as well as getting confident on the fiscal'.²⁶⁰
- 4.22** Based on what his team had relayed to him, Mr Staples reached a conclusion that there was a departure from focusing on substantive issues. In his view, this was not just an issue for Mr Lyon but 'for the entire engagement and the capacity to get a good outcome from that piece of work which we were spending a lot of money on'.²⁶¹

²⁵⁴ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 40.

²⁵⁵ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 40.

²⁵⁶ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 42.

²⁵⁷ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 42.

²⁵⁸ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 42.

²⁵⁹ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 40.

²⁶⁰ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 41.

²⁶¹ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 41.

- 4.23** In the midst of the ongoing conflict regarding Mr Lyon's report, Mr Staples was terminated from his role as Secretary of Transport for NSW. Mr Staples gave evidence that he was notified verbally on Friday 6 November 2020 by Mr Tim Reardon, former Secretary of the Department of Premier and Cabinet, that his contract would be terminated 'for no reason'. Later that week, Mr Staples received written correspondence to this effect.²⁶²
- 4.24** Although the committee tried to ascertain whether the termination was related to TAHE disputes, Mr Staples reflected on his conversation with Mr Reardon who advised that 'the Minister had decided that he wanted a new direction with a new Secretary and he wanted to start a process on that before the end of the year'. Mr Staples reinforced his advice from Mr Reardon which was that it was a 'termination for no reason'.²⁶³
- 4.25** Following Mr Lyon's evidence, the committee wrote to NSW Treasury and KPMG providing an opportunity to respond to Mr Lyon's allegations.
- 4.26** Mr Michael Pratt, appearing then in his capacity as Secretary of NSW Treasury, refuted allegations about bullying and unprofessional behaviour from himself, Mr Midha and Ms Wilkinson:
- There has been a false narrative made under parliamentary privilege about my behaviour and the behaviour of two Treasury executives [Mr Midha and Ms Wilkinson] who are present here today. That is wrong. The truth is Treasury executives have behaved with professionalism and integrity, and I fully support them.²⁶⁴
- 4.27** In correspondence to the committee, Mr Pratt, Mr Midha and Ms Wilkinson referred to the email thread between Mr Lyon and NSW Treasury regarding Treasury's requests for amendments to Mr Lyon's report. In particular, NSW Treasury explained that Mr Pratt's email to Mr Lyon copying in senior KPMG staff was a response to Mr Lyon's email which itself had copied in those senior staff. NSW Treasury also stated that the comment about taking action was 'to correct the errors or remove all references to Treasury's model as per Treasury's prior correspondence and which other KPMG staff had also identified'.²⁶⁵
- 4.28** In addition to maintaining that Treasury officials did not engage in unprofessional behaviour, Mr Pratt, Mr Midha and Ms Wilkinson also alleged that it was Mr Lyon who engaged in unprofessional behaviour towards Mr Pratt. Following the email in which Mr Pratt called for KPMG 'to take action', NSW Treasury officials advised that Mr Lyon 'directly called Mr Pratt on his mobile phone and spoke at the Secretary at such a volume and aggression that the Secretary's executive assistant outside his office could hear the nature of the call'.²⁶⁶

²⁶² Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 44.

²⁶³ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 44.

²⁶⁴ Evidence, Mr Michael Pratt, Secretary, NSW Treasury, 16 December 2021, p 4.

²⁶⁵ Correspondence, Mr Michael Pratt, Mr San Midha and Ms Cassandra Wilkinson, NSW Treasury to the Chair, received 30 November 2021, pp 3-4. Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 3. See also, Documents produced by Mr Brendan Lyon, former Partner, KPMG Australia – Part 4, 8 November 2021, p 265.

²⁶⁶ Correspondence, Mr Michael Pratt, Mr San Midha and Ms Cassandra Wilkinson, NSW Treasury to the Chair, received 30 November 2021, pp 3-4.

- 4.29** The NSW Treasury officials then referred to emails subsequent to the phone call in which Mr Lyon apologised for this behaviour to Mr Pratt:

I am writing to apologise for my email and phone conversation yesterday. The tone was not appropriate or professional...²⁶⁷

- 4.30** NSW Treasury also stated that 'at no time did the Secretary or any other Treasury official ask KPMG for Mr Lyon to be sacked or to prohibit Mr Lyon from doing any further work for the NSW Government'.²⁶⁸

- 4.31** Senior officials from NSW Treasury also disagreed that it was inappropriate for NSW Treasury to intervene with Mr Lyon's work, referring to the responsibility of NSW Treasury to Cabinet and to the joint nature of the work of NSW Treasury and Transport for NSW on TAHE. Mr Pratt highlighted his responsibility to Cabinet:

... the Premier rightly held Treasury responsible for advice on the accounting and other matters relating to that ... Mr Lyon's report, which ... was apparently indicating a \$10 billion hole. That was wrong. There was a whole set of assumptions ... that were wrong. I am responsible for advice to Cabinet and to ERC [Expenditure Review Committee] through Treasury and it is my responsibility to make sure they get the right advice, so I had every right to call that out.²⁶⁹

- 4.32** Ms Wilkinson also argued that she did not instruct Mr Lyon to change his opinions, only requesting that mistakes be corrected. Ms Wilkinson highlighted that Cabinet jointly requested that NSW Treasury and Transport for NSW work together on matters related to TAHE, including having a joint steering committee with representation from both departments. Given this relationship, Ms Wilkinson stated that 'it is absolutely appropriate for Treasury to review any products that were part of the work being done by Transport, just as it was available to Transport to look at the work that we were doing, which they did'.²⁷⁰

- 4.33** Ms Wilkinson reflected that in the joint meetings, NSW Treasury officials asked Mr Lyon to correct 'his misunderstandings and his misrepresentations'. She asserted that this was 'not about a dispute between Transport and Treasury' but rather 'about Mr Lyon's misunderstanding of material that he was working with and putting errors into it'.²⁷¹

- 4.34** Separate to this, the committee notes that Mr Pratt was terminated from his role as Secretary of NSW Treasury in January 2022. The committee questioned Mr Pratt as to the reasons for his termination, to determine whether it was related to TAHE matters. Mr Pratt advised that he intended to resign by the end of the year but that the 'Treasurer found a new Secretary earlier

²⁶⁷ Correspondence, Mr Michael Pratt, Mr San Midha and Ms Cassandra Wilkinson, NSW Treasury to the Chair, received 30 November 2021, pp 3-4. Evidence, Mr Brendan Lyon, Principal, Project Partner, 8 November 2021, p 3. See also, Documents produced by Mr Brendan Lyon, former Partner, KPMG Australia – Part 4, 8 November 2021, p 268.

²⁶⁸ Correspondence, Mr Michael Pratt, Mr San Midha and Ms Cassandra Wilkinson, NSW Treasury to the Chair, received 30 November 2021, p 5.

²⁶⁹ Evidence, Mr Michael Pratt, Secretary, NSW Treasury, 16 December 2021, p 17.

²⁷⁰ Evidence, Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury, 16 December 2021, p 17.

²⁷¹ Evidence, Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury, 16 December 2021, p 17.

than planned, so we came to an agreement'. When asked whether his termination had anything to do with TAHE, Mr Pratt said: 'Not at all. There is no connection between my departure and TAHE'.²⁷² Mr Pratt also advised that in his conversations with the Secretary of the Department of Premier and Cabinet about his termination, there were no issues raised in relation to any of the bullying allegations.²⁷³

4.35 In addition to allegations about the conduct of NSW Treasury officials, Mr Lyon also alleged that he was subject to bullying and unprofessional conduct within his own firm, KPMG, and that there were vexatious complaints against him.²⁷⁴

4.36 On these matters, KPMG stated that it takes 'matters relating to bullying and harassment seriously' and 'proactively encourages its people and partners to call out any instances of inappropriate conduct and poor behaviour so any such matters can be addressed immediately'.²⁷⁵

4.37 KPMG noted their disappointment to hear that Mr Lyon felt that he was treated poorly at KPMG, outlining that Mr Lyon had been invited to discuss his concerns:

We are deeply disappointed and concerned to learn that anyone feels they were treated poorly at KPMG. Whilst he was at KPMG, Mr Lyon was invited to provide the detail of his concerns through our established channels, including anonymous or third-party processes.²⁷⁶

4.38 KPMG also asserted that a 'formal investigation of a bullying complaint made against Mr Lyon' was not related to the conclusions of his work for Transport for NSW or retaliation for any other matters.²⁷⁷

Conflicting engagements

4.39 The disputes concerning Mr Lyon's work and the allegations of bullying and unprofessional behaviour raised further questions as to whether the two engagements of KPMG in the establishment of TAHE gave rise to an actual or perceived conflict of interest, and if so, whether this was adequately managed by all parties.

4.40 Mr Lyon, in particular, expressed concerns that both engagements were an actual conflict. He argued that KPMG accepted conflicting engagements 'knowingly ... and did it because it had made commitments at a senior level that it was going to be able to produce things that other accounting firms said would not be able to be produced'.²⁷⁸

²⁷² Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, p 4.

²⁷³ Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, pp 5-6.

²⁷⁴ See, Answers to questions on notice, Mr Brendan Lyon, Former Partner, KPMG, received 19 January 2022, pp 3 and 155.

²⁷⁵ Submission 8, KPMG, p 4.

²⁷⁶ Correspondence from Mr Andrew Yates, Chief Executive Officer, KPMG to the Chair, received 28 February 2022, p 5.

²⁷⁷ Correspondence from Mr Andrew Yates, Chief Executive Officer, KPMG to the Chair, received 28 February 2022, p 5.

²⁷⁸ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 8.

- 4.41** Mr Lyon explained that he received assurances from both KPMG and Ms Watson that there was no conflict. Mr Lyon asserted that testimony before this committee has shown 'the absolute fallacy of those assertions' which showed to him that 'it was very clear that KPMG were 100 per cent committed to the success of TAHE because they have bet their reputations on this working'.²⁷⁹
- 4.42** Mr Lyon contended that conflicts emerged from the very beginning because he was not told that KPMG had 'already promised an answer', with the prior work from KPMG not being disclosed to him. He told the committee that he felt he was in an 'unwinnable position' and chose to leave KPMG accordingly:
- The battle started from the start ... because no-one told me that KPMG had already promised an answer, as it turned out, at the most senior levels. ... and it was extraordinary that a whole range of prior works that KPMG had done were not disclosed. We discovered them as we went through but it became very clear to me that I was in an unwinnable position. ... I had to choose between my own professional ethics and my partnership at KPMG, and I chose accordingly.²⁸⁰
- 4.43** KPMG 'strongly rejected the allegations of wrongdoing' made by Mr Lyon in relation to there being a conflict between the two engagements. The firm submitted that it 'has well-established processes in place to manage any potential conflicts' and has acted at all times 'in an appropriate and ethical manner in providing independent advice to our clients'. KPMG further advised that 'there was a mistaken belief' that the preliminary views in Mr Lyon and Ms Watson's report were contradictory.²⁸¹
- 4.44** KPMG clarified that Ms Watson's report 'expressly' did not include long term considerations as to TAHE's operating model and commerciality 'to avoid overlap' with Mr Lyon's report. Rather Ms Watson's report 'considered existing facts and contemporary data against the relevant requirements of the relevant financial and budgetary reporting frameworks and standards'.²⁸²
- 4.45** KPMG highlighted the following measures put in place in 2020 and 2021 to ensure it was providing independent and ethical advice to its clients.
- **May 2020:** KPMG established a Conflicts Oversight and Governance Committee led by three partners with the 'express aim to effectively and proactively manage the risk of real or perceived conflicts which may emerge through work undertaken by one or more KPMG teams working with different NSW Government agencies on the creation and commercialisation of TAHE'.
 - **November 2020:** Three partners not working on the TAHE reports conducted a 'rapid review' which determined that 'the engagements had different scopes, were for different purposes and were not in conflict with each other'.
 - **May 2021:** KPMG conducted an 'internal client acceptance, conflicts and relation review' which 'examined the effectiveness of conflict checking procedures and the rationale for

²⁷⁹ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 7.

²⁸⁰ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 12.

²⁸¹ Submission 8, KPMG, p 3.

²⁸² Submission 8, KPMG, p 3.

acceptance of each engagement, and held that 'internal risk management processes were completed and no deficiencies were found'.²⁸³

4.46 KPMG explained that while the November 2020 and May 2021 reviews found that there was no conflict, they showed that KPMG had a 'mindset that the two departments within the same state government represented a single client'. KPMG noted that it had addressed this mindset and has delivered training on effective management of interagency relationships.²⁸⁴

4.47 Mr Lyon was critical of the controls, in particular the Conflict Oversight and Governance Committee put in place by KPMG to address the conflicts between the two engagements:

The fact that the most conflicted partner in the firm, James Hunter, the one who had sold this to Treasury, established himself as the overseer of a conflict management group, really shows that from the get-go this was not properly structured. It was an improper state of affairs and I think it reflects incredibly poorly on KPMG's internal controls. I think it reflects incredibly poorly on their HR department and its leadership and, particularly, on its ethics and risk division. I mean, this is really embarrassing for KPMG. It is humiliating for Treasury because they have got it so wrong. But it is embarrassing for KPMG because they did not have the moral strength to say no to one or the other.²⁸⁵

4.48 Mr Lyon highlighted that the oversight committee was 'not something that is regularly done' and that it was set up due to a complaint by Mr Pratt. Mr Lyon alleged that the committee was set up and chaired by senior Partner, Mr James Hunter without declaring that he had previously worked on accounting advice regarding TAHE for NSW Treasury. Mr Lyon further alleged that Mr Hunter had a relationship with Mr Pratt that extended beyond professional engagements and that Mr Hunter told him that he regularly goes to Mr Pratt's house.²⁸⁶

4.49 In response, KPMG asserted that the Conflict Oversight and Governance Committee 'did not have a Chair as was alleged in evidence provide to the committee by Mr Lyon'.²⁸⁷ In addition, with regard to the statement that Mr Hunter regularly goes to Mr Pratt's house, NSW Treasury responded that it 'cannot comment on what Mr Hunter allegedly said but the Secretary can confirm that the statement is completely incorrect'.²⁸⁸

4.50 Mr Staples also reflected on the conflict that emerged as a result of the KPMG engagements. On 3 July 2020, Mr Staples sent an email to KPMG seeking to understand how the issue regarding the two reports came about and questioning why there were two parts of the firm giving advice.²⁸⁹

4.51 When asked whether he had a concern that NSW Treasury would influence the work being conducted for Transport for NSW, Mr Staples responded that his 'concern was just

²⁸³ Submission 8, KPMG, p 4.

²⁸⁴ Submission 8, KPMG, p 4.

²⁸⁵ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 12.

²⁸⁶ Evidence, Mr Brendan Lyon, Principal, Project Partners, 8 November 2021, p 5 and 19.

²⁸⁷ Submission 8, KPMG, p 4.

²⁸⁸ Correspondence, Mr Michael Pratt, Mr San Midha and Ms Cassandra Wilkinson, NSW Treasury to the Chair, received 30 November 2021, p 6.

²⁸⁹ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 39.

transparency'.²⁹⁰ At that time, he had accepted KPMG's advice that they had internal protocols in place to manage the conflict. However, noting that conflicts can be real or perceived, Mr Staples highlighted that his 'perception was that there was an ongoing conflict that they had not fully resolved'.²⁹¹

- 4.52** Mr Staples' concerns were reflected in an email from Mr David Linke, KPMG's National Executive Committee Member to Ms Louise Capon, KPMG General Counsel, stating:

The final point is a serious conflict issue for the firm. A financial model has been prepared based on a sustainable view of the TAHE operating model. The model shows certain consequences. The CFOA advice is now being used to defer the financial hit to the state budget. It is difficult to see how both pieces of advice can stand since this aspect is difficult to reconcile.²⁹²

An over-reliance on external consultants

- 4.53** On the topic of consultants, the Auditor-General commented in her recent audit of the state's finances that external consultants were 'used extensively to advise government agencies on matters related to TAHE'.²⁹³ The Auditor-General's report noted that NSW Treasury's annual report for 2020-2021 outlined spending of \$975,239 on one consultant in that year for TAHE related work. In addition, the annual report 'disclosed 15 consulting engagements over \$50,000 amounting to \$14.9 million just in relation to finance, accounting and tax matters'.²⁹⁴
- 4.54** The Auditor-General's report highlighted that the use of extensive consultants can lead to the risk that:
- agencies 'shop for opinions' from multiple consultants to receive advice that match a desired outcome
 - so much reliance is placed on the consultant that the agency cannot 'appropriately challenge' the consultant or discuss the issue at hand without the consultant being present
 - issues raised, assumptions used or limitations expressed in consultant reports 'are not appropriately challenged or closed out by the engaging agency'.²⁹⁵
- 4.55** The Auditor-General therefore recommended that NSW Treasury 'should consider whether there is sufficient competent oversight of its use of consultants and assess the risk of an over dependence on consultants at the cost of internal capability'. The Auditor-General also included the reliance on external consultants as a high risk finding in a letter to NSW Treasury management.²⁹⁶

²⁹⁰ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 39.

²⁹¹ Evidence, Mr Rodd Staples, Former Secretary, Transport for NSW, 15 November 2021, p 39.

²⁹² Answers to questions on notice, Mr Brendan Lyon, Former Partner, KPMG, received 19 January 2022, p 139.

²⁹³ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 23.

²⁹⁴ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 23.

²⁹⁵ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 23.

²⁹⁶ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 23.

- 4.56** The committee sought to clarify whether in the Auditor-General's opinion, NSW Treasury 'shopped' for opinions from multiple experts to receive advice to match the outcome it had sought in relation to establishing TAHE:

I think that the reliance on one consultant on this matter over a period of time did raise risks because, having formed or provided advice, that advice was not likely to ever be changed or contradicted if you go to the same firm, the same person. It is in their interest to continue to present arguments that support their original position. So I think looking for a diverse range of opinions is a good thing.²⁹⁷

- 4.57** When asked for her comment on whether it is fair to infer that NSW Treasury relied too heavily on the KPMG accounting advice, the Auditor-General said: 'I think there is a risk always if you just go to one firm on one matter that you are not going to get a diversity of views and you are not necessarily going to be open to different opinions. That is what we experienced in the conduct of this audit'.²⁹⁸

- 4.58** The committee then questioned whether NSW Treasury could be characterised as 'doctor shopping' after receiving advice from PwC that TAHE's accounting treatment would not work and then going to KPMG. The Auditor-General reflected on evidence that while it is not unusual to seek advice, there is a need to be open to alternatives:

I think evidence has already been presented to the Committee that there was a government policy position here that officers were asked to implement. Certainly it is not unusual to get advice—seek advice that would assist you to deliver the outcome you are trying to deliver. I think just when it became such an argument or disagreement between us and Treasury, it just would have been good for people to be slightly more open to alternatives.²⁹⁹

- 4.59** Mr Goodwin, however, clarified that the models explored by PwC and KPMG were in fact different:

The model I think that PwC was looking at for TAHE did evolve, so the final model that we looked at is a little bit different to the initial model PwC did. There are some nuances that would have led to some differences.³⁰⁰

- 4.60** At a hearing following the release of the Auditor-General report, the committee put the Auditor-General's critique on the use of external consultants to NSW Treasury. Ms Wilkinson stated:

Treasury sought advice from relevant experts on different topics. We certainly did not seek to have competing views on the same technical areas. I think some confusion has arisen because advice that was procured by other departments contained observations we did not agree with, but that has been canvassed in previous discussions at these hearings.³⁰¹

²⁹⁷ Evidence, Ms Margaret Crawford, Auditor-General of New South Wales, 10 February 2022, p 50

²⁹⁸ Evidence, Ms Margaret Crawford, Auditor-General of New South Wales, 10 February 2022, p 50

²⁹⁹ Evidence, Ms Margaret Crawford, Auditor-General of New South Wales, 10 February 2022, p 50

³⁰⁰ Evidence, Mr Ian Goodwin, Deputy Auditor-General, Audit Office of New South Wales, 10 February 2022, p 50.

³⁰¹ Evidence, Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury, 10 February 2022, p 7.

- 4.61** When asked whether he stood by NSW Treasury's use of consultants in the establishment of TAHE, Mr Pratt responded:

I do. Because it is, frankly, damned if you do damned if you don't ... if I then go off and find I do like advice and then I go and shop around and find another consulting firm to give me the answer I want, I am then accused of shopping around.³⁰²

NSW Treasury's engagement with the Audit Office

- 4.62** As noted in Chapter 2, the 2021 state audit was tabled on 9 February 2022 after significant delay arising from disagreements between NSW Treasury and the Audit Office over accounting issues with regard to TAHE. In her report, the Auditor-General highlighted that the accounting issues were 'further frustrated by the fact that information was withheld and not shared ... on a timely basis'.³⁰³ This section considers NSW Treasury's conduct in this regard, and whether NSW Treasury sought to mislead the Audit Office.
- 4.63** The Auditor-General's report detailed the efforts of the Audit Office in requesting information from NSW Treasury about TAHE.
- From 'at least July 2020', the Audit Office sent requests for information about TAHE for the financial year 2020-2021.
 - In June 2021, the Audit Office sent correspondence to the NSW Treasury Secretary, Transport for NSW Secretary and Acting Chief Executive Officer of TAHE outlining that requested documents had not been received and that not receiving those documents by 30 June 2021 'would put reporting timetables at risk'.
 - In September 2021, the Audit Office then followed up the June 2020 letter with a further letter from the Auditor-General to the NSW Treasury Secretary 'stating that all key information had still not been received'.³⁰⁴
- 4.64** Ultimately, the Audit Office received the requested information progressively up to 5 October 2021.³⁰⁵ In evidence, the Auditor-General described the audit process as 'extraordinary and unusual' in her experience of over almost six years, highlighting that the audit process 'tested the relationships and resilience' of Audit Office and NSW Treasury staff.³⁰⁶
- 4.65** The Auditor-General's report asserted that 'not sharing key information with the independent external audit on a timely basis delays discussions and resolution of issues'. As an example, the Auditor-General pointed to the 2017 KPMG report referenced at a hearing of this committee on 15 November 2021 which had not been provided to the Audit Office until late 2021 after repeated information requests. This report provided financial modelling which was based on the assumption, among other things, that the significant write down in asset values did not need to be factored into when calculating the required rate of return on the government's investment.

³⁰² Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, p 25.

³⁰³ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 1.

³⁰⁴ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 22.

³⁰⁵ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 22.

³⁰⁶ Evidence, Ms Margaret Crawford, Auditor-General, Audit Office of New South Wales, 10 February 2022, p 40.

The Auditor-General's report held that 'had this information been shared with [the Audit Office] earlier, discussion on the General Government Sector's intent to earn a sufficient rate of return would have been held and resolved earlier'.³⁰⁷

- 4.66** As part of the audit process, it is standard practice that the Audit Office seeks a representation letter from the audited agency confirming that all key documents have been provided to the Audit Office. The Auditor-General's report also described this process as 'unnecessarily obstructive and difficult', highlighting that during this process just prior to the completion of the state audit, further reports were identified. Before NSW Treasury management signed the representation letter, NSW Treasury provided the Audit Office with 'at least a further 34 megabytes of data or 23 reports (1,023 pages) ... around midnight, the morning of audit signing'.³⁰⁸
- 4.67** In evidence, Deputy Auditor-General, Mr Ian Goodwin, explained that the representation letter 'became an issue for NSW Treasury leading into the night of 23 December 2020', where they sought to modify the representation. While not necessarily unusual, Mr Goodwin argued that this 'removed the absolute clarity that all documentation has been provided while seeking to make it relevant to the material ... they have relied upon'.³⁰⁹
- 4.68** Mr Goodwin highlighted that no other agency had tried to do anything similar. The Audit Office explained to Mr Pratt that the request made to NSW Treasury 'was no different to the requests' made of other public sector agencies and that 'if all information had been provided ..., there should be no trouble in signing that representation'.³¹⁰
- 4.69** Ultimately, the Auditor-General recommended that NSW Treasury 'significantly improve its processes to ensure information is identified and shared with the Audit Office on a timely basis'. This was included as a high risk finding in a letter from the Audit Office to NSW Treasury management.³¹¹
- 4.70** At a hearing following the release of the Auditor-General's report, the committee sought to understand the actions of NSW Treasury officials throughout the audit process, questioning whether there was an attempt to cover up or mislead the Auditor-General.
- 4.71** When asked whether NSW Treasury explained why they did not provide the 2017 KPMG report despite having the report for four years, Mr Ian Goodwin, Deputy Auditor-General stated: 'I do not have a clear explanation as to why that was not provided to us'. Mr Goodwin explained that he accepted that the former NSW Treasury Secretary said that he was unaware of the report, but expressed the view that 'certainly his deputy secretary would have been aware of the report because he was at the meeting, according to the minutes, that considered the report'.³¹²

³⁰⁷ Evidence, Ms Margaret Crawford, Auditor-General, Audit Office of New South Wales, 10 February 2022, p 40.

³⁰⁸ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 23.

³⁰⁹ Evidence, Mr Ian Goodwin, Deputy Auditor-General, Audit Office of New South Wales, 10 February 2022, p 49.

³¹⁰ Evidence, Mr Ian Goodwin, Deputy Auditor-General, Audit Office of New South Wales, 10 February 2022, p 49.

³¹¹ Audit Office of New South Wales, *State Finances 2021*, 9 February 2022, p 23.

³¹² Evidence, Mr Ian Goodwin, Deputy Auditor-General, Audit Office of New South Wales, 10 February 2022, p 48.

- 4.72** The committee put to the Audit Office the proposition that NSW Treasury's conduct shows a pattern of them providing evidence to support their position but delaying the provision of any evidence to the contrary. The Auditor-General responded: 'The report documents all of these matters very clearly and sets that all out. So I do not know that we should try to characterise it beyond the facts that are in the report'.³¹³
- 4.73** The committee questioned whether the Audit Office would know the difference between a standard error and a situation that may be a cover up. Mr Goodwin reflected that it is difficult to provide an answer to that issue, given the role of the Audit Office is to conduct a financial audit not an inquiry on code of conduct.³¹⁴
- 4.74** As to when the Auditor-General began to question the trust in NSW Treasury, she noted that listening to NSW Treasury's testimony as part of this inquiry, along with various media articles, raised questions for the Audit Office, given these were matters they had not previously been made aware of. The Auditor-General stated that this 'encouraged us to press Treasury more firmly on receiving the documentation that we required to complete our audit'.³¹⁵
- 4.75** With regard to the tension that arose between NSW Treasury and the Audit Office, Mr Goodwin stated that this was not necessarily unusual but that 'professional people normally work through that'. However, he also described the issue regarding documentation as 'a little bit surprising', highlighting that while the Audit Office is 'very thorough', the audit process 'does require a degree of trust' from the audited agency.³¹⁶
- 4.76** In response to the Auditor-General's report, Dr Paul Grimes, newly appointed Secretary of NSW Treasury who replaced Mr Pratt in early February 2022, believed that 'it is appropriate to be initiating with the department an appropriate independent assessment of the processes adopted by Treasury in the preparation of the audit of the state financial statements'. He advised that such an assessment would allow the department to identify key lessons to help improve processes to ensure that the department assists the Auditor-General in the conduct of audits 'effectively and efficient'.³¹⁷
- 4.77** Dr Grimes noted that the assessment would be conducted by 'a very experienced and respected individual who has deep experience in government finance and auditing practices' and that it would be complete 'at the earliest possible opportunity'.³¹⁸

³¹³ Evidence, Ms Margaret Crawford, Auditor-General, Audit Office of New South Wales, 10 February 2022, p 48.

³¹⁴ Evidence, Ms Margaret Crawford, Auditor-General, Audit Office of New South Wales, 10 February 2022, p 52.

³¹⁵ Evidence, Ms Margaret Crawford, Auditor-General, Audit Office of New South Wales, 10 February 2022, p 48.

³¹⁶ Evidence, Ms Margaret Crawford, Auditor-General, Audit Office of New South Wales, 10 February 2022, p 52.

³¹⁷ Evidence, Dr Paul Grimes, Secretary, NSW Treasury, 10 February 2022, p 4.

³¹⁸ Evidence, Dr Paul Grimes, Secretary, NSW Treasury, 10 February 2022, pp 2 and 4.

4.78 In response to questioning as to whether the assessment will have the power or authority to inquire into the conduct of the Treasurer or Premier, the Secretary confirmed that the scope of the assessment would be NSW Treasury's engagement with the audit process.³¹⁹

4.79 The committee questioned Dr Grimes as to whether any single NSW Treasury official would be held accountable. Dr Grimes reiterated that it is important to have a proper process in place before drawing any conclusions:

... it is very, very important to ensure that there is proper process here on two levels. One is a proper process to identify the key actions that we need to take to provide assurance around our processes for engagement into the future. And I think it is important we do the work to support the identification of actions that we might need to build into our program of work. The second that you are raising some serious questions around the conduct of individuals, I think it is much more appropriate to have properly understood the circumstances before we start to draw very strong conclusions. I do not believe that would be appropriate. There needs to be proper process.³²⁰

4.80 When further pressed on the reason for a further independent assessment when the Auditor-General's report is an independent report, Dr Grimes highlighted that 'the Auditor-General has not made conduct findings', emphasising his view that the Auditor-General has raised concerns and that the appropriate process is to consider these concerns through an independent assessment process.³²¹

4.81 With regard to the time it took to provide the Auditor-General with requested documents, Mr Stewart Walters, Chief Finance and Operation Officer, NSW Treasury, asserted that all documents NSW Treasury believed to be relevant were provided to the Auditor-General on a timely basis and that all documents requested from the Auditor-General were provided as well:

... we have provided the documents that we believed were relevant to the audit from State accounts and TAHE on a timely basis. We have also provided to the Audit Office all the documents that they have requested. But ... the Auditor-General right at the end of the audit asked for the provision of a number of other documents. We did not believe they were relevant, but we take the request of the Audit Office extremely seriously, so we located all the relevant documents and the quote of 20-something documents immediately—in the immediate six or eight hours—and provided them to the Audit Office for completeness to ensure that they were able to consider everything that they believed appropriate. They received those documents. I believe they reviewed them and were comfortable that there was nothing that required them to either change their opinion or delay the issuing of an unmodified opinion. That was their right and we were respectful of that, but they asked us to make sure that we had provided everything we thought they needed. They identified some stuff that we had not considered necessary. It did not matter. We provided it to them as quickly as we could [disorder].³²²

4.82 Mr Pratt expressed surprise at the Auditor-General's finding about NSW Treasury's co-operation with the Audit Office and rejected the findings on process:

³¹⁹ Evidence, Dr Paul Grimes, Secretary, NSW Treasury, 10 February 2022, pp 2 and 4.

³²⁰ Evidence, Dr Paul Grimes, Secretary, NSW Treasury, 10 February 2022, p 3. See also, p 6.

³²¹ Evidence, Dr Paul Grimes, Secretary, NSW Treasury, 10 February 2022, p 3.

³²² Evidence, Mr Stewart Walters, Chief Finance and Operations Officer, 10 February 2022, p 5. Please note, [disorder] is used in a Hansard transcript when members or witnesses speak over one another.

Firstly, I would say this is a financial audit report. The basis of this report is to certify the accuracy of the state's accounts, which the Auditor-General has done. ... the best way I would describe what has occurred here with the report is that it is almost like the Auditor-General had to certify the accounts as unqualified and on the way out the door threw a hand grenade in the room and closed the door. This is not a process audit report; this is a financial audit report. The accounts are unqualified. I found the report very poorly structured. The comments on process are disturbing and clearly unacceptable, but there is no evidence of some of them. There is no clarity of what occurred through that process; it is purely the Auditor-General's view of what occurred. ... it is actually what is not there rather than what is there that is reported in the report.³²³

- 4.83** Mr Pratt added that he felt that the working relationship between himself and the Auditor-General was constructive.³²⁴
- 4.84** Mr Pratt also expressed a different view to the Auditor-General on the issue relating to the representation letter and the provision of documents the day before sign-off. Mr Pratt explained that in the representation letter, there are words 'to the effect of material and relevant'. Mr Pratt asserted that all documents that were material and relevant were provided to the Audit Office, however late afternoon, the day before sign-off in the late afternoon, the Auditor-General requested that 'the clause be changed from "material and relevant" to, basically, "all" TAHE documents'.³²⁵
- 4.85** Following the change, Mr Pratt advised Mr Walters that he needed to be 'comfortable' that NSW Treasury delivered all documents, otherwise he could not sign the letter. Subsequently, NSW Treasury officials searched databases to ensure all documents were provided. Mr Pratt asserted that the provision of the 1,023 pages worth of reports was at the request of the Auditor-General, not NSW Treasury.³²⁶
- 4.86** When asked about the significant delay in providing information to the Audit Office, Mr Pratt clarified that a 'key aspect' of the delay was that the Auditor-General wanted to see cabinet-in-confidence documents and that NSW Treasury had to go through a process with the Department of Premier and Cabinet to have those documents released.³²⁷
- 4.87** The committee questioned why the 2017 KPMG report was not provided to the Audit Office for three years of audited accounts. Mr Pratt advised that he was not aware of the document and only became aware of it through a discussion with the Assistant Auditor-General 'very late in the piece' in mid-December.³²⁸
- 4.88** Moving forward, Mr Pratt reflected that if he was still the Secretary of NSW Treasury, he would 'constructively put forward ... a jointly sponsored process review' with all parties included in the process including the Audit Office, NSW Treasury, Transport for NSW, TAHE and the Department of Premier and Cabinet. He advised that he would suggest that the Auditor-General and the Secretary of NSW Treasury jointly sponsor the review and therefore would each be

³²³ Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, p 6.

³²⁴ Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, pp 12 and 22.

³²⁵ Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, p 9.

³²⁶ Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, p 9.

³²⁷ Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, pp 26-27.

³²⁸ Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, p 28.

accountable to the findings. Mr Pratt added that 'if you buried down into Treasury at the worker level with the Audit Office, I am sure they would have a lot to say about negative interactions with the Audit Office'.³²⁹

Committee comment

- 4.89** Not only has the establishment of the Transport Asset Holding Entity (TAHE) been the subject of accounting and safety concerns, it has also raised a number of important conduct issues, particularly related to NSW Treasury. Frankly, we were alarmed to hear how Mr Lyon was treated by Treasury and the inappropriateness of Treasury's involvement in Mr Lyon's work.
- 4.90** Mr Lyon gave us frank testimony highlighting the extent of his mistreatment. It was obvious to the committee that the way he was treated was connected to the outcomes and issues raised in his reports, which undoubtedly did not support the government's plans or approach to TAHE. Even if we were to accept Treasury's view that some information in these reports was incorrect or outside scope, one has to question why Treasury were directly dealing with Mr Lyon at all, given Transport for NSW was his client. We reject Treasury's characterisation of these issues, noting that Mr Lyon's reports were well received by Transport for NSW.
- 4.91** Indeed, it is clear to the committee that the KPMG engagements were rife with conflict both internally in KPMG and externally with NSW Treasury and Transport for NSW. Mr Lyon's allegations were bolstered by Mr Staples' evidence that there were concerns about the tone of joint meetings for TAHE, involving NSW Treasury, Transport for NSW and KPMG, particularly towards Mr Lyon's work. NSW Treasury not only instructed Mr Lyon to change his report but did so in a way that was clearly unprofessional, placing unjustified pressure on Mr Lyon.
- 4.92** In our view, it was highly inappropriate for Mr Pratt and other NSW Treasury officials to instruct Mr Lyon to amend his report when Transport for NSW, not NSW Treasury, was Mr Lyon's client. In addition, it is extraordinary that NSW Treasury would do so without first approaching the Secretary of Transport for NSW. In this regard we also note that KPMG stood by Mr Lyon's report alleging that it could be reconciled with the findings made in Ms Watson's report.

Finding 5

That it was highly inappropriate for NSW Treasury to instruct Mr Brendan Lyon, former Partner, KPMG Australia, to amend his report, given the report was provided pursuant to KPMG's engagement with Transport for NSW.

- 4.93** Noting that we cannot make recommendations or findings directed to private sector organisations, the committee also acknowledges Mr Lyon's evidence that he experienced bullying and unprofessional behaviour within KPMG itself, leading to his decision to leave the firm. We also note KPMG's evidence in response to Mr Lyon's allegations, and the complaints made against him which Mr Lyon described as 'vexatious'.

³²⁹ Evidence, Mr Michael Pratt, Former Secretary, NSW Treasury, 21 February 2022, p 22.

- 4.94** The committee is grateful for the assistance provided by Mr Lyon. His evidence was direct, straightforward and credible, and came at significant personal and professional cost.
- 4.95** With regard to how the conflicts emerged, it is clear that they were a direct result of KPMG accepting separate engagements from different government departments with disparate interests on the same policy issue, all within similar time frames. This issue was particularly compounded by the fact one department, in this case NSW Treasury, was committed to a specific outcome.
- 4.96** While the responsibility ultimately lies with consultancy firms to fully declare and manage conflicting engagements, there is a role for the government to play in preventing and managing such conflicts when they are the client, or in this case, clients.
- 4.97** On this, the committee agrees with the Auditor-General's comments about the undue reliance on external consultants. While there is nothing inherently wrong with engaging external consultants to provide advice on complex and technical matters such as TAHE, it is important that the government does not use consultants to prove or implement an outcome it is already set on. Controls also need to be put in place to avoid being in a situation where two government agencies with disparate interests engage the same external consultancy firm to conduct work on a similar policy area.
-

Recommendation 3

That the NSW Government, when engaging consultants, urgently implement:

- controls to ensure consultants are chosen to provide genuine independent advice rather than to deliver desired outcomes
 - measures to ensure agencies share information with each other, to avoid the same consultancy firm being used to provide advice in instances where agencies may have disparate interests in the same policy area
 - measures to prevent conflicts of interest when engaging consultants from more than one agency.
-

- 4.98** Turning now to the audit process, the committee finds that not only did NSW Treasury present inaccurate accounts (as detailed in Chapter 2), it also failed to provide information to the Audit Office in a timely fashion, resulting in the significant delay in the Auditor-General's report. The fact that Audit Office only became aware of key information through media articles and evidence provided at this inquiry is deeply concerning. Not only does this highlight the importance of accountability measures like this inquiry, it also significantly highlights NSW Treasury's failure to adequately co-operate with the Audit Office.
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Finding 6

That NSW Treasury failed to adequately co-operate with the Audit Office in the Audit of the State Finances 2021.

- 4.99** A key example highlighted by the Auditor-General was the 2017 KPMG report that the Audit Office only learned about during the course of our inquiry. This report foreshadowed key issues that would emerge in TAHE's accounting treatment. Had this report been provided earlier in the audit process, a number of accounting issues could have been discussed and resolved much earlier.
- 4.100** At worst, it appears that NSW Treasury sought to mislead the Audit Office by providing documentation that suited their position, delaying the provision of information that did not. At best, it is a case of poor administration bordering on incompetence. In either case, it is imperative for NSW Treasury to take action, including holding senior NSW Treasury officials to account.
- 4.101** The committee acknowledges that NSW Treasury intends to conduct an independent assessment on issues of process that emerged through the state audit. In this regard, we note that the new Secretary of NSW Treasury, Dr Paul Grimes told the committee that he takes the findings and observations made by the Auditor-General seriously. We recommend that NSW Treasury conduct the independent assessment as a matter of priority.

Recommendation 4

That NSW Treasury address its engagement with the Audit Office in the Audit of the State Finances 2021 by:

- accepting the critique of their performance regarding the audit of the Transport Asset Holding Entity
 - conducting an independent assessment as a matter of priority
 - ensuring that the assessment includes a detailed evaluations of the actions of senior NSW Treasury officials involved
 - taking appropriate action to hold any individuals to account and improve NSW Treasury's processes in the future
 - publishing the findings of its assessment.
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Appendix 1 Submissions

No.	Author
1	Mr Tony Harris
2	Mr John Austen
2a	Mr John Austen
3	Confidential
4	Auditor-General of New South Wales
5	Transport Asset Holding Entity of NSW (TAHE)
5a	Transport Asset Holding Entity of NSW (TAHE)
6	NSW Government
7	Independent Pricing and Regulatory Tribunal NSW
8	KPMG
9	NSW Treasury and Transport for NSW

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Friday 1 October 2021 Via videoconference	Ms Benedicte Colin	Chief Executive Officer, Transport Asset Holding Entity
	Mr Peter Crimp	Executive General Manager, Finance and Business Performance, Transport Asset Holding Entity
	Ms Trudi Mares	Deputy Secretary, Corporate Services, Transport for NSW
	Mr John Hardwick	Executive Director, Asset Management, Safety Environment & Regulation, Transport for NSW
	Mr Matt Longland	Chief Executive, Sydney Trains
	Mr San Midha	Deputy Secretary Policy and Budget, NSW Treasury
	Ms Cassandra Wilkinson	Executive Director Transport and Planning/Industry, NSW Treasury
Monday 8 November 2021 Macquarie Room Parliament House	Mr Brendan Lyon	Former Partner, KPMG
	Mr Bruce Morgan	Chair, Transport Asset Holding Entity
	Mr Trevor Bourne	Board Director, Transport Asset Holding Entity
Monday 15 November 2021 Macquarie Room Parliament House	Ms Heather Watson	Partner, KPMG
	Mr Paul Low (<i>via videoconference</i>)	Partner, KPMG
	Mr Rodd Staples	Private citizen, former Secretary, Transport for NSW
Thursday 16 December 2021 Jubilee Room Parliament House	Mr Michael Pratt	Secretary, NSW Treasury
	Mr San Midha	Deputy Secretary Policy and Budget, NSW Treasury
	Ms Cassandra Wilkinson	Executive Director Transport and Planning/Industry, NSW Treasury
	Mr Stewart Walters	Chief Finance and Operations Officer, NSW Treasury

Date	Name	Position and Organisation
	Mr Rob Sharp	Secretary, Transport for NSW
	Mr Bruce Morgan (<i>via videoconference</i>)	Chair, Transport Asset Holding Entity
Thursday 10 February 2022	Dr Paul Grimes	Secretary, NSW Treasury
Via videoconference	Mr Sean Osborn	Director, Accounting Policy, NSW Treasury
	Mr San Midha	Deputy Secretary Policy and Budget, NSW Treasury
	Ms Cassandra Wilkinson	Executive Director Transport and Planning/Industry, NSW Treasury
	Mr Stewart Walters	Chief Finance and Operations Officer, NSW Treasury
	Mr Rob Sharp	Secretary, Transport for NSW
	Mr Bruce Morgan	Chair, Transport Asset Holding Entity
	Ms Benedicte Colin	Chief Executive Officer, Transport Asset Holding Entity
	Ms Margaret Crawford	Auditor-General, Audit Office of NSW
	Mr Ian Goodwin	Deputy Auditor-General, Audit Office of NSW
	Mr Scott Stanton	Assistant Auditor-General, Audit Office of NSW
Monday 21 February 2022	Mr Michael Pratt	Former Secretary, NSW Treasury
Macquarie Room		
Parliament House		

Appendix 3 Minutes

Minutes no. 50

Monday 5 July 2021

Public Accountability Committee

Via videoconference at 11.07 am

1. Members present

Mr Shoebridge, *Chair*

Mr Farlow

Mr Graham

Mrs Houssos

Mr Khan

Mr Poulos

2. Apologies

Mr Borsak, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 49 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 3 May 2021 – Letter from Ms Colleen Dreis, General Counsel, Department of Customer Service, to the Chair, in response to the request for certain documents relating to Core Integrity bushfire grants
- 4 May 2021 – Letter from Lida Kaban, General Counsel, Department of Family and Community Services, to the Chair, in response to the request for certain documents relating to Core Integrity bushfire grants
- 11 May 2021 – Letter from Ms Damon Rees, Chief Executive Officer, Service NSW, to the chair, providing further information relating to Core Integrity and bushfire grant fraud
- 21 May 2021 – Letter from Mr Jonathan Wheaton, Executive Director, Regional Programs Unit, Public Works Advisory & Regional Development, Department of Regional NSW, to the chair, providing clarifications to evidence given on 26 April 2021
- 9 June 2021 – Email from Mr Darren Murphy, Chief Executive Officer, Core Integrity, to the secretariat, advising he is not available on 16 June 2021 to appear as a witness at the hearing
- 16 June 2021 - Email from Mr Darren Murphy, Chief Executive Officer, Core Integrity, to the secretariat, advising requesting more information in order to appear at the hearing on 3 August
- 24 June 2021 - Email from Mr Darren Murphy, Chief Executive Officer, Core Integrity, to the secretariat, advising he is actioning the committee's request that he appear
- 27 June 2021 - Email from Mr Darren Murphy, Chief Executive Officer, Core Integrity regarding his appearance at a witness at the hearing on 3 August 2021.

Sent

- 27 April 2021 – Letter from the Chair to Mr Michael Coutts-Trotter, Secretary, Department of Communities and Justice, requesting certain documents relating to Core Integrity bushfire grants be provided by 4 May 2021
- 27 April 2021 – Letter from the Chair to Ms Emma Hogan, Secretary, Department of Customer Service, requesting certain documents relating to Core Integrity bushfire grants be provided by 4 May 2021

- 17 June 2021 – Email from the secretariat to Mr Darren Murphy, Chief Executive Officer, Core Integrity, in response to his request for additional information.

5. Inquiry into the Transport Asset Holding Entity

5.1 Terms of reference

The committee noted the following terms of reference referred by the House on Wednesday 23 June 2021:

1. That the Public Accountability Committee inquire into and report on the Transport Asset Holding Entity, including:
 - (a) its establishment and operation, and
 - (b) any other related matter.

5.2 Inquiry timeline

Resolved, on the motion of Mrs Houssos: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions close: Thursday 16 September 2021
- Hearings: October/November 2021 (One hearing and one reserve date)
- Reporting: February 2022.

5.3 Stakeholder list

Resolved, on the motion of Mr Graham: That the following stakeholders be invited to make a submission, with members to forward any additional stakeholders to the secretariat by 10.00 am Monday 12 July 2021:

- Transport Asset Holding Entity
- Transport for NSW
- NSW Treasury
- Australian Bureau of Statistics
- NSW Auditor-General
- Former NSW Auditor-General, Tony Harris
- KPMG.

5.4 Advertising

All inquiries are advertised via Twitter, Facebook, stakeholder emails and a media release distributed to all media outlets in New South Wales.

It is no longer standard practice to advertise in the print media. The committee should pass a resolution if it wishes to do so.

6. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs

6.1 Answers to questions on notice and additional information

The following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Mr Matthew Hyde, Snowy Valleys Council, received on 11 May 2021
- Ms Leanne Barnes OAM and Mr Anthony McMahon, Bega Valley Shire Council, received on 19 May 2021
- Dr Brett Stevenson and Ms Bernie O'Neal, A Better Eurobodalla, received from, on 19 May 2021
- Dr Rosemary Dillon, Blue Mountains City Council, received on 20 May 2021
- Mr Jonathan Wheaton and Mr Chris Hanger, Department of Regional NSW, received on 21 May 2021
- Ms Marg Prendergast PSM and Mr Chris Presland, Resilience NSW, received on 21 May 2021.

6.2 Transcript clarification

The committee noted the following item of correspondence previously published by the committee clerk as agreed to via email:

- 21 May 2021 – Letter from Mr Jonathan Wheaton, Executive Director, Regional Programs Unit, Public Works Advisory & Regional Development, Department of Regional NSW, to the chair, providing clarifications to evidence given on 26 April 2021.

Resolved, on the motion of Mr Farlow: That the committee authorise the insertion of footnotes at the relevant points in the transcript indicating a transcript clarification letter has been received and hyperlinking to the published letter.

6.3 Extension of reporting date

Resolved, on the motion of Mrs Houssos: That the committee amend the terms of reference to extend the inquiry reporting date to on or before 29 October 2021 and that the Chair inform the House of this amendment to the terms of reference.

6.4 Future inquiry activity

The committee noted it has previously agreed to hold a hearing on Tuesday 3 August 2021 and invite the following witnesses to appear at this hearing:

- Core Integrity, including a former Core Integrity employee (1.5 hours)
- NSW Government panel (2 hours):
 - Department of Customer Service
 - Service NSW
 - Resilience NSW.

Resolved, on the motion of Mr Graham: That the Audit Office of New South Wales be invited to appear as a witness at the hearing on 3 August 2021 for 30 minutes.

6.5 Attendance of Mr Darren Murphy on 3 August 2021

Resolved, on the motion of Mr Graham:

- That the committee issue a summons to Mr Darren Murphy, Chief Executive Officer of Core Integrity, to attend and give evidence on 3 August 2021.
- That the evidence of Mr Darren Murphy, Chief Executive Officer of Core Integrity be taken in public.
- That the committee:
 - reserves the right to hear certain evidence from Mr Murphy in camera if it is likely to prejudice future fraud control measures, and
 - will hear all other evidence from Mr Murphy in public, including evidence regarding actions not taken by Service NSW or generic fraud control measures.

7. Adjournment

The committee adjourned at 11.20 am until Tuesday 3 August 2021, Macquarie Room, Parliament House (public hearing – government grants).

Shaza Barbar and Monica Loftus

Committee Clerks

Minutes no. 58

Thursday 23 September 2021

Public Accountability Committee

via WebEx at 11:17 am

1. Members

Mr Shoebridge, *Chair*

Mr Borsak, *Deputy Chair*

Ms Boyd (participating) (until 12.58 pm)

Ms Faehrmann (participating) (from 3.35 pm)

Mr Farlow
Mr Graham
Mrs Houssos
Mr Khan
Mr Mookhey (participating) (until 12.58 pm, from 4.19 pm)
Mr Poulos
Ms Sharpe (participating) (from 11.30 am)

2. Draft minutes

Resolved, on the motion of Mr Farlow: That draft minutes no. 57 be confirmed.

3. Correspondence

The committee noted the following correspondence:

Received:

- 13 September 2021 – Email from Mr Darren Murphy, Chief Executive Officer, Core Integrity, to secretariat, declining the invitation to appear at the hearing for the Grants inquiry on 30 September 2021 without a summons
- 20 September 2021 – Email from Mr Ian Misfeld, former Director of Strategic Investigations Unit, Core Integrity, to secretariat, declining the invitation to appear at the hearing for the Grants inquiry on 30 September 2021
- 17 September 2021 – Letter from Hon Don Harwin MLC, Leader of the Government in the Legislative Council, to Mr David Blunt, Clerk of the Parliaments, providing the government's response to the first report of the Grants inquiry
- 20 September 2021 – Email from Ms Amal Etri, Policy Officer, NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), to secretariat, requesting STARTTS be considered as a witness for the 23 September hearing
- 21 September 2021 – Email from Ms Dominika Rajewski, Senior Business Partner – Parliament and Cabinet, Executive and Ministerial Services, NSW Health, to the secretariat, advising that NSW Health declines the committee's invitation to nominate witnesses to the 23 September hearing
- 21 September 2021 – Email from Office of Ms Abigail Boyd MLC, to secretariat, advising that Ms Boyd will be a participating member for the 23 September hearing
- 22 September 2021 – Email from Office of Hon Mark Buttigieg MLC, Opposition Whip, to secretariat, advising that the Hon Daniel Mookhey MLC will be a participating member for part of the 23 September hearing.

Sent:

- 8 September 2021 – Email from secretariat, to Mr Darren Murphy, Chief Executive Officer, Core Integrity, advising that the hearing will be going ahead for the Grants inquiry on 30 September 2021 and asking whether he would be willing to appear virtually without a summons
- 21 September 2021 – Email from secretariat, to Mr Ian Misfeld, former Director of Strategic Investigations Unit, Core Integrity, requesting reasons for declining the invitation to appear at the hearing for the Grants inquiry on 30 September 2021
- 21 September 2021 – Email from secretariat, to Ms Dominika Rajewski, Senior Business Partner – Parliament and Cabinet, Executive and Ministerial Services, NSW Health, inviting the Chief Health Officer and other Health representatives to give evidence on 30 September instead.

4. Briefing by the Auditor-General

The committee noted that on Wednesday 22 September 2021, the committee attended a virtual private briefing conducted by the Auditor-General on their 2021-2022 Annual Work Program.

5. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs

5.1 Core Integrity witnesses

The committee noted the reasons from Mr Ian Misfeld, former Director of Strategic Investigations Unit, Core Integrity, for declining the invitation to attend the hearing on 30 September 2021.

Resolved, on the motion of Mrs Houssos: That the Chair continue to work with the secretariat to identify an appropriate witness from Core Integrity to invite to the hearing on 30 September 2021.

5.2 Government response to the first report

The committee noted the response from the Hon Don Harwin MLC, Leader of the Government in the Legislative Council, regarding the committee's first report. The committee also noted standing order 233, as amended by sessional order.

Mr Graham moved: That the Chair, on behalf of the committee:

- write to the President of the Legislative Council advising that the government response does not fulfil the requirements of standing order 233, and that the President inform the House on the next sitting day
- respond to the Hon Don Harwin MLC, Leader of the Government in the Legislative Council, advising that the government response does not fulfil the requirements of standing order 233, and that the committee will be requesting that the President inform the House on the next sitting day.

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Farlow, Mr Khan, Mr Poulos.

Question resolved in the affirmative.

6. Inquiry into the Transport Asset Holding Entity

6.1 Witness list

Resolved, on the motion of Mrs Houssos: That the committee invite the following witnesses to give evidence for 1 hour 20 minutes each at the hearing on Friday 1 October 2021:

- TAHE CEO and management
- Transport for NSW
- NSW Treasury.

7. Inquiry into the NSW Government's management of the COVID-19 pandemic

7.1 Allocation of questioning

Resolved, on the motion of Mr Graham: That the sequence of questioning at the hearing be divided between opposition and crossbench members for 20 minutes each, with 10 minutes reserved for government questions at the end of the session.

7.2 Public hearing

The committee proceeded to take evidence in public.

Witnesses were admitted via video link.

The Chair made an opening statement regarding the broadcasting of proceedings, virtual hearing etiquette and other matters.

The Chair reminded the following witnesses that they did not need to be sworn, as they had been sworn at an earlier hearing for the same inquiry:

- Ms Joann Wilkie, Deputy Secretary, Economic Strategy and Productivity, NSW Treasury

- Mr Stephen Walters, Chief Economist, NSW Treasury.

The following witnesses were sworn:

- Ms Natasha Luschwitz, Acting Deputy Secretary, Transformation Group, Department of Premier and Cabinet
- Ms Fiona Dewar, Deputy Secretary, Strategy, Delivery & Performance, Department of Regional NSW.

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

Witnesses were admitted via video link.

The Chair reminded the following witnesses that they did not need to be sworn, as they had been sworn at an earlier hearing for the same inquiry:

- Ms Georgina Harrison, Secretary, Department of Education
- Ms Ruth Owen, A/Group Deputy Secretary, School Improvement and Education Reform Group, Department of Education
- Mr Murat Dizdar, Deputy Secretary, School Performance – South, Department of Education
- Mr Paul Martin, Chief Executive Officer, NSW Education Standards Authority.

The following witnesses were sworn:

- Ms Yvette Cachia, Chief People Officer, Department of Education
- Mr Anthony Manning, Chief Executive Officer, School Infrastructure NSW, Department of Education.

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The following witness was admitted via video link, sworn and examined:

- Prof Jodie McVernon, Professor and Director of Doherty Epidemiology, Doherty Institute.

The evidence concluded and the witness withdrew.

The public hearing concluded at 4.25 pm.

7.3 Hearing – 30 September 2021

The committee noted that NSW Health declined to nominate witnesses for its upcoming hearing on Thursday 23 September but that following agreement from the committee, the secretariat had sent another invitation to NSW Health, requesting Dr Kerry Chant PSM and other nominated Health representatives to give evidence to the committee from 2.00 to 3.45 pm on Thursday 30 September 2021. A response had been requested by 4.00 pm, Thursday 23 September but it had not been received by the time of the committee meeting.

Chair to keep the committee updated.

8. Inquiry into the Transport Asset Holding Entity

8.1 Invitation to make a submission

Resolved, on the motion of Mrs Houssos: That the Chair, on behalf of the committee, write to the following and invite them to provide a submission and any documents they consider relevant to the terms of reference of the inquiry:

- Independent Pricing and Regulatory Tribunal (IPART)
- Auditor-General of NSW
- Australian Bureau of Statistics

- National Rail Safety Regulator
- Chair of Transport Asset Holding Entity (TAHE), as representative of the TAHE board
- Andrew Alam – Former Company Secretary, TAHE
- David Jurd – Former interim CEO, TAHE
- Anna Hayes – Former interim CEO, TAHE
- Rodd Staples, Former Secretary, Transport for NSW
- KPMG – addressed to CEO
- PWC – addressed to CEO
- Heather Watson, Partner, KPMG
- Brendan Lyons, Former Partner, KPMG.

9. Adjournment

The committee adjourned at 4.31 pm, until Thursday 30 September 2021 (virtual hearings for Grants and Pandemic inquiries).

Sarah Dunn and Helen Hong
Committee Clerks

Minutes no. 61

Friday 1 October 2021

Public Accountability Committee

Via videoconference at 9.17 am

1. Members present

Mr Shoebridge, *Chair* (until 1.30 pm)

Mr Farlow

Mr Graham

Mrs Houssos

Mr Khan

Mr Poulos

Ms Boyd (participating for the duration of the inquiry into the Transport Asset Holding Entity, and substituting for Mr Shoebridge from 1.30 pm)

Mr Mookhey (participating for the duration of the inquiry into the Transport Asset Holding Entity)

2. Apologies

Mr Borsak, *Deputy Chair*

3. Correspondence

The committee noted the following items of correspondence:

Received

- 29 September 2021 – Email from Mr Brendan Lyon, Principal, Project Partners and Former Partner, KPMG to the Chair, declining the Chair's invitation to make a submission or provide relevant documents to the TAHE inquiry due to binding legal agreements with KPMG
- 29 September 2021 – Email from Ms Kathy Buck, Assistant Director, Parliamentary, Australian Bureau of Statistics to the Chair, advising that the Australian Bureau Statistics will not be making a submission to the TAHE inquiry.

4. Inquiry into the Transport Asset Holding Entity

4.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1, 2, 4-6.

4.2 Confidential submissions

Resolved, on the motion of Mr Khan: That the committee keep submission no. 3 confidential as per the request of the author.

4.3 Provision of documents to participating members

Resolved, on the motion of Mr Graham: That Mr Mookhey and Ms Boyd, who have advised the committee that they intend to participate for the duration of the inquiry into the Transport Asset Holding Entity, be provided with copies of all inquiry related documents.

4.4 Allocation of questioning

Resolved, on the motion of Mrs Houssos: That the timing of questioning be left in the hands of the Chair.

4.5 Public hearing

Witnesses were admitted via videoconference.

The Chair made an opening statement regarding the broadcasting of proceeds and other matters.

The following witnesses were sworn and examined:

- Ms Benedicte Colin Chief Executive Officer, Transport Asset Holding Entity
- Mr Peter Crimp Executive General Manager, Finance and Business Performance, Transport Asset Holding Entity.

Mr Mookhey tabled the following documents:

- TAHE Tender 001 – Brief, Treasury and Minister Tudehope, Remuneration of the Acting Chief Executive Officer of TAHE
- TAHE Tender 002 – Brief, Treasurer, Commercial Policy and Governance Frameworks of the Transport Asset Holding Entity (TAHE)
- TAHE Tender 003 – KPMG, *TAHE: Long-term operating model assessment*, 8 November 2020
- TAHE Tender 004 – Emails between former TAHE CEO Anne Hayes, and former TAHE Company Secretary, Andrew Alam.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Trudi Mares Deputy Secretary, Corporate Services, Transport for NSW
- Mr John Hardwick Executive Director, Asset Management, Safety Environment & Regulation, Transport for NSW
- Mr Matt Longland Chief Executive, Sydney Trains.

Mr Mookhey tabled the following documents:

- Transport Tender 001 – Joining briefing to Minister for Transport and Treasurer, Public Transport Asset Holding Corporation (AssetCo) Establishment
- Transport Tender 002 – Cabinet submission, Establishment of a Transport Asset Holding Entity, May 2016
- Transport Tender 003 – KPMG, *TAHE: Long-term operating model assessment*, 8 November 2020.

The evidence concluded and the witnesses withdrew.

4.6 Change of hearing time

Resolved, on the motion of Mr Graham: That the time for hearing evidence from NSW Treasury witnesses be moved back 30 minutes.

4.7 Public hearing

Mr Shoebridge left the meeting.

In the absence of the Chair, Mrs Houssos took the Chair for the purposes of the meeting.

The following witnesses were sworn and examined:

- Mr San Midha Deputy Secretary Policy and Budget, NSW Treasury
- Ms Cassandra Wilkinson Executive Director Transport and Planning/Industry, NSW Treasury.

Mr Mookhey tabled the following documents:

- Treasury Tender 001 – Transport Asset Holding Entity ('TAHE'), Treasury update
- Treasury Tender 002 – Public Transport Asset Holding Corporation (AssetCo) Establishment, Joint Briefing to Minister for Transport and Treasurer, 29 September 2014
- Treasury Tender 003 – Cabinet submission, Establishment of a Transport Asset Holding Entity, May 2016
- Treasury Tender 004 – KPMG, *TAHE: Long-term operating model assessment*, 8 November 2020.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.50 pm.

4.8 Tabled documents

Resolved, on the motion of Mr Graham: That the committee accept and publish the following document(s) tendered by Mr Mookhey during the public hearing:

- TAHE Tender 001 – Brief, Treasury and Minister Tudehope, Remuneration of the Acting Chief Executive Officer of TAHE
- TAHE Tender 002 – Brief, Treasurer, Commercial Policy and Governance Frameworks of the Transport Asset Holding Entity (TAHE)
- TAHE Tender 003 – KPMG, *TAHE: Long-term operating model assessment*, 8 November 2020
- TAHE Tender 004 – Emails between former TAHE CEO Anne Hayes, and former TAHE Company Secretary, Andrew Alam
- Transport Tender 001 – Joining briefing to Minister for Transport and Treasurer, Public Transport Asset Holding Corporation (AssetCo) Establishment
- Transport Tender 002 – Cabinet submission, Establishment of a Transport Asset Holding Entity, May 2016
- Transport Tender 003 – KPMG, *TAHE: Long-term operating model assessment*, 8 November 2020
- Treasury Tender 001 – Transport Asset Holding Entity ('TAHE'), Treasury update
- Treasury Tender 002 – Public Transport Asset Holding Corporation (AssetCo) Establishment, Joint Briefing to Minister for Transport and Treasurer, 29 September 2014
- Treasury Tender 003 – Cabinet submission, Establishment of a Transport Asset Holding Entity, May 2016
- Treasury Tender 004 – KPMG, *TAHE: Long-term operating model assessment*, 8 November 2020.

4.9 Invitation to make a submission

Resolved, on the motion of Mr Graham: That the Chair, on behalf of the committee, write to Ms Fiona Trussell, Former Deputy Secretary, Transport for NSW, and invite her to provide a submission and any documents she considered relevant to the terms of reference to the inquiry.

5. Adjournment

The committee adjourned at 2.55 pm, until Monday 11 October 2021 via videoconference (public hearing – building standards).

Shaza Barbar
Committee Clerk

Minutes no. 63

Wednesday 3 November 2021

Public Accountability Committee

Via videoconference at 1.04 pm

1. Members present

Mr Shoebridge, *Chair*

Mr Farlow

Mr Graham

Mrs Houssos

Mr Khan

Mr Poulos

Ms Boyd (participating for the duration of the inquiry into the Transport Asset Holding Entity)

Mr Mookhey (participating for the duration of the inquiry into the Transport Asset Holding Entity)

2. Apologies

Mr Borsak, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mr Poulos: That draft minutes no. 61 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 7 October 2021 – Email from Caedyn Stinson, Private citizen, to the committee, regarding the situation faced by Australians abroad (pandemic inquiry)
- 8 October 2021 – Email from Ms Anju Sharma, A/Manager, Government Services Office of the Secretary to the secretariat, advising that Ms Fiona Trussell, former Deputy Secretary, Transport for NSW, will not be making a submission to the inquiry into the Transport Asset Holding Entity
- 15 October 2021 – Email from Mr Rodd Staples, former Secretary, Transport for NSW to the Chair, advising that he will not be making a submission to the inquiry into the Transport Asset Holding Entity
- 18 October 2021 – Email from Mr Bruce Morgan, Chair, Transport Asset Holding Entity, Advising that he will not be making a separate submission to the inquiry into the Transport Asset Holding Entity
- 19 October 2021 – Email from Mr James Copsey, Director, Government & Regulatory Affairs, KPMG Australia to the Chair advising that Mr Andrew Yates, CEO, KPMG and Ms Heather Watson, Partner, KPMG will not be making a submission to the inquiry into the Transport Asset Holding Entity
- 22 October 2021 – Letter from Mr Michael Coutts-Trotter, Secretary, Department of Premier and Cabinet, requesting that the committee delete cabinet documents from the inquiry's website (TAHE inquiry)
- 29 October 2021 – Email from Ms Leanne Grant, Executive General Manager, Corporate Services, Transport Asset Holding Entity, requesting an extension on answers to questions on notice
- 29 October 2021 – Email from Mr Brendan Lyon, former KPMG partner, to the secretariat, declining the invitation to give evidence at the hearing for the inquiry into the Transport Asset Holding Entity on Monday 8 November 2021
- 1 November 2021 – Email from Mr James Copsey, Director, Government & Regulatory Affairs, KPMG Australia, to the secretariat, advising that Ms Heather Watson, Partner, KPMG declines the invitation to give evidence at the hearing for the inquiry into the Transport Asset Holding Entity on Monday 15 November 2021
- 2 November 2021 – Email from Mr Rodd Staples, to the secretariat, declining the invitation to give evidence at the hearing for the inquiry into the Transport Asset Holding Entity on Monday 15 November 2021.

Sent

- 27 October 2021 – Letter from the Chair, to Mr Michael Coutts-Trotter, Secretary, Department of Premier and Cabinet, requesting that the department provide a written submission with more information on their request to delete cabinet documents from the website.

5. Inquiry into the Transport Asset Holding Entity**5.1 Public submission**

The committee noted that the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 7.

5.2 Answers to questions on notice

Resolved, on the motion of Mrs Houssos: That the committee authorise the publication of answers to questions on notice from Transport for NSW received 1 November 2021.

5.3 Extension request

The committee considered correspondence from the Transport Asset Holding Entity, requesting an extension for the return of their answers to questions on notice until 14 or 15 November 2021.

Mrs Houssos moved: That the committee approve an extension for the return of answers to questions on notice from the Transport Asset Holding Entity until 4.00 pm Friday 5 November 2021.

Mr Khan moved: That the motion of Mrs Houssos be amended by omitting 4.00 pm Friday 5 November 2021 and inserting instead 9.00 am Monday 8 November 2021.

Amendment of Mr Khan put.

The committee divided.

Ayes: Mr Farlow, Mr Khan, Mr Poulos.

Noes: Mr Graham, Mrs Houssos, Mr Shoebridge.

There being an equality of votes, amendment of Mr Khan resolved in the negative on the casting vote of the Chair.

Original question of Mrs Houssos put and passed.

5.4 Attendance of Mr Brendan Lyon, former Partner, KPMG Australia at the hearing on 8 November 2021

Mrs Houssos moved: That:

- the committee re-issue the committee's invitation to Mr Brendan Lyon to attend and give evidence before the committee on Monday 8 November 2021, noting the committee's power to issue a summons
- in the event that Mr Lyon declines the second invitation, the committee issue a summons to Mr Lyon, under the authority of s 4(2) of the *Parliamentary Evidence Act 1901*, to attend and give evidence before the committee on Monday 8 November 2021 at 10.00 am.

Question put.

The committee divided.

Ayes: Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Farlow, Mr Khan, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

5.5 Attendance of Ms Heather Watson, KPMG Australia at the hearing on 15 November 2021

Mrs Houssos moved: That:

- the committee re-issue the committee's invitation to Ms Heather Watson to attend and give evidence before the committee on Monday 15 November 2021, noting the committee's power to issue a summons

- in the event that Ms Watson declines the second invitation, the committee issue a summons to Ms Watson, under the authority of s 4(2) of the *Parliamentary Evidence Act 1901*, to attend and give evidence before the committee on Monday 8 November 2021 at 9.30 am.

Question put.

The committee divided.

Ayes: Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Farlow, Mr Khan, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

5.6 Attendance of Mr Rodd Staples, former Secretary, Transport for NSW at the hearing on 15 November 2021

Mrs Houssos moved: That:

- the committee re-issue the committee's invitation to Mr Rodd Staples to attend and give evidence before the committee on Monday 15 November 2021, noting the committee's power to issue a summons
- in the event that Mr Staples declines the second invitation, the committee issue a summons to Mr Staples, under the authority of s 4(2) of the *Parliamentary Evidence Act 1901*, to attend and give evidence before the committee on Monday 15 November 2021 at 11.15 am.

Question put.

The committee divided.

Ayes: Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Farlow, Mr Khan, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

6. Adjournment

The committee adjourned at 1.19 pm until Monday 8 November 2021, 9.45 am, Macquarie Room, Parliament House (public hearing – TAHE)

Shaza Barbar
Committee Clerk

Minutes no. 64

Monday 8 November 2021

Public Accountability Committee

Macquarie Room, Parliament House, Sydney at 9.32 am

1. Members present

Mr Shoebridge, *Chair*

Mr Farlow

Mr Graham (until 1.56 pm)

Mr Khan

Mr Mookhey (substituting for Mrs Houssos)

Mr Moselmane (substitution for Mr Graham from 1.56 pm)

Mr Poulos

Ms Boyd (participating for the duration of the inquiry into the Transport Asset Holding Entity) (via videoconference)

2. Apologies

Mr Borsak, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 63 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 1 November 2021 – Email from Ms Louise Warren, Executive Officer to Damon Rees, Chief Executive Officer, Service NSW, to secretariat, advising on the confidentiality of answers to questions on notice and supplementary questions following the hearing on 30 September 2021 (Grants inquiry)
- 2 November 2021 – Email from Ms Louise Warren, Executive Officer to Damon Rees, Chief Executive Officer, Service NSW, to secretariat, identifying the answers to questions on notice and supplementary questions for which confidentiality is requested (Grants inquiry)
- 3 November 2021 – Letter from Mr Michael Coutts-Trotter, Secretary, Department of Premier and Cabinet, to Chair, in relation to their request that certain Cabinet documents be removed from the website and not used or disclosed as part of the inquiry (TAHE inquiry)
- 3 November 2021 – Email from Mr James Copsey, Director, Government & Regulatory Affairs KPMG Australia to the secretariat, advising that Ms Heather Watson, Partner, KPMG Australia will be accepting the further invitation to appear before the committee (TAHE inquiry)
- 4 November 2021 – Email from Mr Brendan Lyon, former Partner, KPMG Australia, to secretariat, declining the further invitation to appear before the committee (TAHE inquiry).

Sent

- 3 November 2021 – Letter from the Chair to Mr Brendan Lyon, former Partner, KPMG Australia, reissuing the invitation to appear before the committee noting that the committee has resolved to issue a summons should he decline again (TAHE inquiry)
- 3 November 2021 – Letter from the Chair to Ms Heather Watson, Partner, National IGH Lead, CFO Advisory, KPMG Australia, reissuing the invitation to appear before the committee noting that the committee has resolved to issue a summons should she decline again (TAHE inquiry)
- 3 November 2021 – Letter from the Chair to Mr Rodd Staples, former Secretary, Transport for NSW, reissuing the invitation to appear before the committee noting that the committee has resolved to issue a summons should he decline again (TAHE inquiry)
- 4 November 2021 – Letter from the Chair to Mr Frank Yi, Parliamentary Accountant, Department of Parliamentary Services, authorising a cheque to be issued to Mr Brendan Lyon who is being summoned to appear before the committee on Monday 8 November 2021 (TAHE inquiry)
- 5 November 2021 – Summons from the Chair to Mr Brendan Lyon, former Partner, KPMG Australia, ordering Mr Lyon to attend and give evidence at a hearing on Monday 8 November 2021 (TAHE inquiry).

5. Inquiry into the integrity, efficacy and value for money for NSW Government grant programs**5.1 Extension of reporting date**

Resolved, on the motion of Mr Mookhey: That the committee amend the terms of reference to extend the inquiry reporting date to 28 February 2022 and that the Chair inform the House of this amendment to the terms of reference.

5.2 Core Integrity witnesses

Resolved, on the motion of Mr Graham: That the committee invite Mr Dylan Bohnen, Senior Manager, Core Integrity, to attend the hearing on 9 December 2021.

5.3 Answers to questions on notice

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of answers to questions on notice from Service NSW, received 30 October 2021, with the exception of answers to question 1 (questions on notice) and questions 2-6 (supplementary questions), which are to remain confidential, as per the request of the author.

6. Inquiry into the Transport Asset Holding Entity**6.1 Attendance of Mr Brendan Lyon at hearing on Monday 8 November 2021**

Resolved, on the motion of Mr Mookhey: That:

- the committee, under the authority of s 4(2) of the *Parliamentary Evidence Act 1901*, issue a summons to Mr Brendan Lyon to attend and give evidence before the committee on Monday 8 November 2021 at 9.45 am and to produce any document in relation to the establishment and operation of the Transport Asset Holding Entity
- the committee reserve the first 15 minutes of Mr Lyon's appearance time to be held in camera.

6.2 Answers to questions on notice

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of answers to questions on notice from NSW Treasury, received 1 November 2021.

6.3 Clarification of evidence

Resolved, on the motion of Mr Farlow: That the committee authorise:

- the publication of NSW Treasury's clarification of evidence dated 5 November 2021
- the insertion of a footnote in the hearing transcript for 1 October 2021, linked to NSW Treasury's correspondence.

6.4 Submission from the Department of Premier and Cabinet

The committee received a submission from the Department of Premier and Cabinet in relation to their request to remove the following cabinet documents from the committee's website and not use or disclose the documents as part of the inquiry:

- draft Cabinet submission entitled 'Establishment of Transport Asset Holding Entity' dated May 2016
- Treasury presentation entitled 'Transport Asset Holding Entity ("TAHE") – Treasury update'
- KPMG report entitled 'TAHE: Long-term operating model assessment' dated 8 November 2020.

The Clerk provided advice to the committee.

Mr Khan moved: That the committee:

- remove relevant documents from the committee's website
- refer the matter to the Privileges Committee to report back to the committee by the end of the calendar year.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Khan, Mr Poulos.

Noes: Mr Graham, Mr Mookhey, Mr Shoebridge.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Graham: That the committee:

- respond to Mr Michael Coutts-Trotter, Secretary, Department of Premier and Cabinet noting the request to remove the documents from the committee's website
- prepare a special report to the House, recommending that the matter be referred to the Privileges Committee for inquiry and report as to the right or otherwise of committees of the Legislative Council to examine, publish and use cabinet documents as part of an inquiry.

6.5 Election of acting Deputy Chair

The Chair noted the absence of the Deputy Chair for the meeting.

Mr Mookhey moved: That Mr Graham be elected acting Deputy Chair of the committee.

There being no further nominations, the Chair declared Mr Graham acting Deputy Chair.

6.6 Request to take photos at the hearing

Resolved, on the motion of Mr Mookhey: That Ms Kate Geraty, a photographer with the Herald, by authorised to take photo's during the public hearing, subject to her signing the broadcasting guidelines.

6.7 *In camera* hearing

The committee proceeded to take *in camera* evidence.

Persons present other than the committee Tina Higgins, Shaza Barbar, Kate Bogatova, Mr Lyon's wife and Hansard Reporters (via videoconference).

The following witness was sworn and examined:

- Mr Brendan Lyon, Former Partner, KPMG.

In accordance with a summons to produce documents, Mr Lyon produced a folder of documents in relation to the establishment and operation of the Transport Asset Holding Entity, numbered 1 to 301.

6.8 Public hearing

The public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was examined on his former oath:

- Mr Brendan Lyon, Former Partner, KPMG.

Mr Lyon tendered his opening statement.

Mr Mookhey tabled the following documents:

- Letter from Mr Rodd Staples, Former Secretary Transport for NSW, to Mr Michael Pratt, Secretary, NSW Treasury.
- Letter from the Hon Andrew Constance MP, Minister for Transport and Infrastructure to Mr David Jurd, A/Chief Executive Officer, Transport Asset Holding Entity, Statement of expectation, dated 9 June 2021.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Bruce Morgan, Chair, Transport Asset Holding Entity
- Mr Trevor Bourne, Board Director, Transport Asset Holding Entity.

The evidence concluded and the witnesses withdrew.

The hearing concluded at 2.31 pm.

6.9 Tabled documents

Resolved, on the motion of Mr Mookhey: That:

- the committee publish the following documents tendered by Mr Lyon with the exception of identifying information: 49, 131, 132, 140, 142, 143, 145, 146, 147, 191, 246, 247, 250, 251, 252, 253, 254, 255, 256, 257, 263, 264, 265, 266
- the secretariat review the rest of the documents tendered by Mr Lyon and provide a recommendation to the committee on their publication status

- in accordance with the procedural fairness resolution, the secretariat review the documents tendered by Mr Lyon and circulate to the committee a list of names and any suggestions in relation to allowing any individual/organisation to provide a written response to potential adverse mention.

Resolved, on the motion of Mr Mookhey: That the committee accept and publish the following documents tendered by Mr Mookhey during the public hearing:

- Letter from Mr Rodd Staples, Former Secretary Transport for NSW to Mr Michael Pratt, Secretary, NSW Treasury
- Letter from the Hon Andrew Constance MP, Minister for Transport and Infrastructure to Mr David Jurd, A/Chief Executive Officer, Transport Asset Holding Entity, Statement of expectation, dated 9 June 2021.

7. Adjournment

The committee adjourned at 2.45 pm until Monday 15 November 2021, Macquarie Room, Parliament House, Sydney (public hearing – TAHE inquiry).

Shaza Barbar

Committee Clerk

Minutes no. 65

Friday 12 November 2021

Public Accountability Committee

Members' Lounge, Parliament House, Sydney at 1.34 pm.

1. Members present

Mr Shoebridge, *Chair*

Mr Farlow

Mr Graham

Mr Khan

Mr Mookhey (substituting for Mrs Houssos)

Mr Poulos

Ms Boyd (participating for the duration of the inquiry into the Transport Asset Holding Entity)

2. Apologies

Mr Borsak, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mr Farlow: That draft minutes no. 64 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Sent

- 10 November 2021 – Letter from the Chair to Ms Margaret Crawford, NSW Auditor-General, providing documents produced by Mr Lyon at the TAHE hearing (TAHE inquiry)
- 10 November 2021 – Letter from the Chair to Mr Michael Coutts-Trotter, Secretary, Department of Premier and Cabinet, advising that the committee notes the request to remove certain documents from the committee's website and has resolved to prepare a Special Report to the House on the matter (TAHE inquiry).

5. Inquiry into the Transport Asset Holding Entity

5.1 Letter to the Auditor-General

Mr Mookhey moved: That the committee authorise the publication of the letter dated 10 November 2021 from the Chair to Ms Margaret Crawford, NSW Auditor-General, providing documents produced by Mr Lyon at the TAHE hearing on Monday 8 November 2021.

Question put.

The committee divided.

Ayes: Mr Graham, Mr Mookhey, Mr Shoebridge

Noes: Mr Farlow, Mr Khan, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

5.2 Request from the Department of Premier and Cabinet

Resolved, on the motion of Mr Graham: That the committee authorise the publication of correspondence between Mr Michael Coutts-Trotter, Secretary, Department of Premier and Cabinet and the Chair in relation to the request to remove certain documents from the committee's website.

5.3 Publication of recordings of hearings

Resolved, on the motion Mr Farlow: That the committee upload the recordings of any hearings for the inquiry into the Transport Asset Holding Entity on the NSW Parliament's YouTube page and publish a link to the recordings on the inquiry webpage as soon as practicable after hearings subject to any comments or concerns from the secretariat or the committee after the hearings.

5.4 Consideration of the Chair's draft Special Report to the House

The Chair submitted his draft report entitled *Special report on the right or otherwise of committees of the Legislative Council to examine, publish and use cabinet documents as part of an inquiry (arising from the inquiry into the Transport Asset Holding Entity)*.

Resolved, on the motion of Mr Mookhey: That the following new paragraph be inserted after paragraph 1.4:

'The committee notes that the balance of the documents referred to in paragraph 1.2, other than those referred to in paragraph 1.4, were published on Monday 28 July 2021 as part of a return to order to the House.'

Resolved, on the motion of Mr Mookhey: That recommendation 1 be amended by omitting at the end: 'the right or otherwise of committees of the Legislative Council to examine, publish and use cabinet documents as part of an inquiry' and inserting instead 'the examination, publication and use of cabinet documents by Legislative Council committees as part of an inquiry.'

Resolved, on the motion of Mr Farlow that:

- the draft report, as amended, be the report of the committee and that the committee present the report to the House;
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- dissenting statements be provided to the secretariat by 3.30 pm Friday 12 November 2021;
- the report be tabled by 5.00 pm Friday 12 November 2021.

5.5 KPMG submission

Resolved, on the motion of Mr Graham: That:

- the committee authorise the publication of submission no. 8 at 9.00 am on Monday 15 November 2021.
- Mr Brendan Lyon, Former Partner, KPMG Australia and Mr Rodd Staples, Former Secretary, Transport for NSW be provided with a confidential copy of the submission and requested to provide any comments on it by 9.00 am Monday 15 November 2021, at which point it will also become public.

6. Adjournment

The committee adjourned at 1.54 pm until Monday 15 November 2021, 9.15 am, Macquarie Room (public hearing – TAHE inquiry).

Stephen Frappell
Committee Clerk

Minutes no. 66

Monday 15 November 2021
Public Accountability Committee
Macquarie Room, Parliament House, Sydney at 9.23 am

1. Members present

Mr Shoebridge, *Chair*
Mr Farlow
Mr Graham
Mrs Houssos
Mr Khan
Mr Mookhey (substituting for Mrs Houssos)
Mr Poulos
Ms Boyd (participating for the duration of the inquiry into the Transport Asset Holding Entity)

2. Apologies

Mr Borsak, *Deputy Chair*

3. Correspondence

The committee noted the following items of correspondence:

Received

- 8 November 2021 – Email from Mr James Copsey to the secretariat, requesting that Mr Paul Low, Lead Partner, Planning & Infrastructure Economics, KPMG attend and give evidence alongside Ms Heather Watson at the hearing on Monday 15 November 2021 (TAHE inquiry)
- 8 November 2021 – Email from Mr Darren Murphy, Chief Executive Officer, Core Integrity, to secretariat, confirming his and Mr Dylan Bohnen's attendance at the hearing on 9 December 2021 and requesting that they both be issued with a summons (Grants inquiry)
- 9 November 2021 – Email from Ms Lan Nguyen, Business and Procurement Manager, Corporate Services, Transport Asset Holding Entity to the secretariat, requesting that the attachment to answers to questions on notice be kept confidential on the basis it is commercial in confidence.

Sent

- 5 November 2021 – Letter from the secretariat to Mr Frank Yi, Parliamentary Accountant, Department of Parliamentary Services, authorising a cheque to be issued to Mr Rodd Staples who is being summoned to appear before the committee on Monday 15 November 2021 (TAHE inquiry)
- 8 November 2021 – Summons from the Chair to Mr Brendan Lyon, former Partner, KPMG Australia, ordering Mr Lyon to attend and give evidence at a hearing on Monday 8 November 2021 and to produce documents in relation to the establishment and operation of the Transport Asset Holding Entity (TAHE inquiry)
- 8 November 2021 – Summons from the Chair to Mr Rodd Staples, former Secretary, Transport for NSW, ordering Mr Staples to attend and give evidence at a hearing on Monday 15 November 2021 (TAHE inquiry)
- 12 November 2021 – Letter from the Hon Mark Latham MLC to the Chair, concerning isolation requirements (Pandemic inquiry).

4. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs

4.1 Summoning Core Integrity witnesses

Resolved, on the motion of Mr Mookhey: That, under the authority of s 4(2) of the *Parliamentary Evidence Act 1901*, the committee issue a summons to the following witnesses to attend and give evidence before the committee on Thursday 9 December 2021 at 10.15 am to 11.45 am:

- Mr Darren Murphy, Chief Executive Officer, Core Integrity
- Mr Dylan Bohnen, Senior Manager, Core Integrity.

4.2 Meeting with the Productivity Commission

Resolved, on the motion of Mr Graham: That a meeting be arranged with the NSW Productivity Commissioner, Mr Peter Achterstraat, on a date to be determined in consultation with the Chair and committee.

5. Inquiry into the NSW Government's management of the COVID-19 pandemic

5.1 Correspondence from the Hon Mark Latham MLC

Resolved, on the motion of Mr Graham: That the Chair write to the Minister for Health and Medical Research, enclosing Mr Latham's correspondence concerning the application of isolation requirements and request a response.

6. Inquiry into the Transport Asset Holding Entity

6.1 Election of acting Deputy Chair

The Chair noted the absence of the Deputy Chair for the meeting.

Mr Mookhey moved: That Mr Graham be elected acting Deputy Chair of the committee for the duration of the inquiry into the Transport Asset Holding Entity.

There being no further nominations, the Chair declared Mr Graham acting Deputy Chair.

6.2 Answers to questions on notice

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of answers to questions on notice from the Transport Asset Holding Entity, received 8 November 2021, with the exception of the attachment to question three which is to be kept confidential, at the request of the Transport Asset Holding Entity.

6.3 Documents produced by Mr Lyon at 8 November hearing

The following documents were published at the meeting on 8 November 2021: 246- 247, 250-257, 263-266.

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of the following documents provided by Mr Brendan Lyon, Former Partner, KPMG Australia, at the hearing on 8 November, with the exception of identifying and sensitive information which are to remain confidential, as per the recommendation of the secretariat: 153 – 262, 267-271, 283-301.

6.4 Further document produced by Mr Lyon

Mr Mookhey moved: That the committee authorise the publication of the following document produced by Mr Brendan Lyon, Former Partner, KPMG Australia, in accordance with his summons: KPMG, *Transport Asset Holding Entity: Initial assessment of options*, 21 July 2021.

Question put.

The committee divided.

Ayes: Mr Graham, Mr Mookhey, Mr Shoebridge

Noes: Mr Farlow, Mr Khan, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

6.5 Procedural fairness opportunity

Resolved, on the motion of Mr Mookhey: That, in accordance with the Procedural Fairness Resolution, the following individuals/organisations be invited to provide a written response in relation to potential adverse mention contained in evidence of Mr Brendan Lyon, Former Partner, KPMG Australia:

- Mr James Hunter, KPMG
- Mr Matthew Box, KPMG
- Ms Anne Hayes, Former A/CEO, Transport Asset Holding Entity
- NSW Treasury.

6.6 Public hearing

The public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Heather Watson, Partner, KPMG Australia
- Mr Paul Low, Partner, KPMG Australia.

Mr Mookhey tabled the following documents:

- Extracts from documents produced by Mr Brendan Lyon, Former Partner, KPMG Australia at the hearing on 8 November 2021, referred to as: KPMG emails 009 cabinet submissions, KPMG emails 006 maintenance; KPMG emails 003 Audit Office; 010A Treasury; 005 Joint Submission; KPMG emails 003 Staples; KPMG emails 011 conflicts.
- PWC, TfNSW Structure Considerations - 'TAHE' Business Model Assessment, Transport for NSW, December 2019
- KPMG, *Transport Asset Holding Entity (TAHE): Assessment of assumptions used for accounting estimates*, 3 November 2020.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Rodd Staples, private citizen, former Secretary, Transport for NSW.

Mr Mookhey tabled the following documents:

- Extracts from documents produced by Mr Brendan Lyon, Former Partner, KPMG Australia at the hearing on 8 November 2021, referred to as: KPMG emails 009 cabinet submissions, KPMG emails 006 maintenance; KPMG emails 003 Audit Office; 010A Treasury; 005 Joint Submission; KPMG emails 003 Staples; KPMG emails 011 conflicts.
- PWC, TfNSW Structure Considerations - 'TAHE' Business Model Assessment, Transport for NSW, December 2019
- KPMG, *Transport Asset Holding Entity (TAHE): Assessment of assumptions used for accounting estimates*, 3 November 2020
- Correspondence relating to Mr Staples' termination.

The evidence concluded and the witness withdrew.

The hearing concluded at 1.36 pm.

6.7 Tabled documents

Mr Mookhey moved: That:

- the committee publish the following documents tabled by Mr Mookhey:
 - Extracts from documents produced by Mr Brendan Lyon, Former Partner, KPMG Australia at the hearing on 8 November 2021, with the exception of identifying information

(referred to as KPMG emails 009 cabinet submissions; KPMG emails 006; 010A Treasury; KPMG emails 003 Staples).

- PWC, *TfNSW Structure Considerations - 'TAHE' Business Model Assessment*, Transport for NSW, December 2019
- KPMG, *Transport Asset Holding Entity (TAHE): Assessment of assumptions used for accounting estimates*, 3 November 2020.
- the Chair write to the Privileges Committee to alert it to the publication of two additional Cabinet documents, as part of the inquiry into the examination, publication and use of cabinet documents by Legislative Council committees as part of an inquiry: PWC, *TfNSW Structure Considerations - 'TAHE' Business Model Assessment*, Transport for NSW, December 2019 and KPMG, *Transport Asset Holding Entity (TAHE): Assessment of assumptions used for accounting estimates*, 3 November 2020.

Mr Khan moved: That the motion of Mr Mookhey be amended by omitting the 'PWC, *TfNSW Structure Considerations - 'TAHE' Business Model Assessment*, Transport for NSW, December 2019 and KPMG, *Transport Asset Holding Entity (TAHE): Assessment of assumptions used for accounting estimates*, 3 November 2020' in the first bullet point.

Amendment of Mr Khan put.

The committee divided.

Ayes: Mr Farlow, Mr Khan, Mr Poulos.

Noes: Mr Graham, Mrs Houssos, Mr Shoebridge.

There being an equality of votes, amendment of Mr Khan resolved in the negative on the casting vote of the Chair.

Original question of Mr Mookhey put.

The committee divided.

Ayes: Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Farlow, Mr Khan, Mr Poulos.

There being an equality of votes, the original motion of Mr Mookhey resolved in the affirmative on the casting vote of the Chair.

7. Adjournment

The committee adjourned at 1.44 pm until Monday 22 November 2021, Macquarie Room, Parliament House (public hearing – Building standards inquiry)

Shaza Barbar
Committee Clerk

Minutes no. 67

Monday 22 November 2021

Public Accountability Committee

Macquarie Room, Parliament House, Sydney at 9.31am

1. Members present

Mr Shoebridge, Chair

Mr D'Adam

Mr Farlow

Mrs Houssos

Mr Khan

Ms Cusack (substituting for Mr Poulos) (via videoconference)

2. Apologies

Mr Borsak, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mr Farlow: That draft minutes no. 62 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 15 November 2021 – Email from Ms Rose Webb, Deputy Secretary, Commissioner for NSW, Fair Trading to the secretariat, indicating that Mr John Tansey, Executive Director, Policy and Strategy, Better Regulation Division, Department of Customer Service will give evidence at the 22 November 2021 hearing (building standards inquiry)
- 16 November 2021 – Email from Ms Leza Turnbull, Personal Assistant to Mr Darren Greenfield, NSW State Secretary, Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), to secretariat, declining the invitation to appear before the committee (building standards inquiry)
- 18 November 2021 – Email from Ms Connie Vartuli, Executive Assistant to Mr Mark Morey, Secretary Unions NSW, to secretariat, declining the invitation to appear before the committee (building standards inquiry)
- 18 November 2021 – Letter from the Hon Brad Hazzard MP, Minister for Health and Medical Research, to the Chair, responding to Chair's letter inviting a response to a letter from Hon Mark Latham MLC to the Chair, received 11 November 2021 regarding isolation requirements (pandemic inquiry).

Sent:

- 16 November 2021 – Letter from Chair, to Hon Brad Hazzard MP, Minister for Health and Medical Research, enclosing Mr Latham's correspondence received 11 November 2021 regarding isolation requirements and inviting the Minister's response (pandemic inquiry).

Resolved, on the motion of Mr Farlow: That the committee note Mr Hazzard's response to the correspondence from Mr Latham, invited by the Chair and received 18 November 2021, and that the committee defer further discussion until its next meeting.

5. Inquiry into the Transport Asset Holding Entity**5.1 Documents produced by Mr Lyon**

The following documents were published at the meeting on 8 November 2021: 246-247, 250-257, 263-266.

The following documents were published at the meeting on 15 November 2021: 153-262, 267-271, 283-301.

Resolved, on the motion of Mrs Houssos: That the committee authorise the publication of the following documents produced by Mr Brendan Lyon, Former Partner, KPMG Australia, at the hearing on 8 November, with the exception of identifying and sensitive information which are to remain confidential, as per the recommendation of the secretariat: 1-152.

5.2 Reporting date

The committee discussed extending the reporting date from the end of February 2022, due to the following factors:

- committee office workload and staffing constraints
- Hansard delays for the 8 and 15 November hearing transcripts, which impact the secretariat's capacity to draft components of the report this year
- the additional hearings scheduled for December and February.

6. Further inquiry into the regulation of building standards

6.1 Publication of 11 October 2021 transcript

The committee noted that it agreed via email to the publication of the unsubedited transcript of the 11 October 2021 hearing.

6.2 Allocation of questioning

Resolved, on the motion of Mr D'Adam: That the timing of questioning be left in the hands of the Chair.

6.3 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Chris Duggan, Strata Community Association NSW
- Mr Stephen Brell, Strata Community Association NSW
- Ms Karen Stiles, Owners Corporation Network
- Mr Banjo Stanton, Owners Corporation Network.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Lisa King, Australian Institute of Architects
- Ms Laura Cockburn, Australian Institute of Architects
- Mr Joe Smith, National Fire Industry Association
- Mr Bradley Schott, Design Institute of Australia
- Ms Denise Ryan, Design Institute of Australia (via videoconference)
- Mr Clint Gavin, Network Architectural
- Mr Kim Regler, Network Architectural.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Steve Mann, Urban Development Institute of Australia – NSW Division
- Ms Lauren Conceicao, Property Council of Australia
- Mr Charles Kekovich, Property Council of Australia

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Con Tsiakoulas, Plumbing Trades Employees Union
- Mr Leighton Drury, Fire Brigade Employees Union

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr David Chandler, NSW Building Commissioner
- Mr John Tansey, Executive Director, Policy and Strategy, Better Regulation Division, Department of Customer Service
- Mr Trent Curtin, A/Deputy Commissioner, Field Operations, Fire and Rescue NSW
- Mr Jamie Vistnes, Manager, Fire Safety Policy Unit, Field Operations, Fire and Rescue NSW.

Mr Chandler tendered the following document:

- Undertaking sought but not obtained from Mr David Chandler, NSW Building Commissioner, by the legal representatives of Icon Co (NSW) Pty Ltd, September 2021, titled, 'Icon Co (NSW) PTY Ltd v Secretary of the Department of Customer Service (2021/00228168)'

The evidence concluded and the witnesses withdrew.

The hearing concluded at 4.30 pm.

6.4 Tabled documents

Resolved, on the motion of Mrs Houssos: That the committee accept and publish the following document: during the public hearing:

- Undertaking sought but not obtained from Mr David Chandler, NSW Building Commissioner, by the legal representatives of Icon Co (NSW) Pty Ltd, September 2021, titled, 'Icon Co (NSW) PTY Ltd v Secretary of the Department of Customer Service (2021/00228168)', tendered by Mr Chandler.

7. Inquiry into the NSW Government's management of the COVID-19 pandemic

7.1 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice and supplementary questions from the Hon Sarah Mitchell MLC, Minister for Education and Early Childhood Learning, received 9 September 2021
- answers to questions on notice and supplementary questions from the Hon Brad Hazzard MP, Minister for Health and Medical Research, received 10 September 2021
- answers to supplementary questions from Ms Mary Ronayne, Community and Culture Manager, Wilcannia Safe House, received 23 September 2021
- answers to questions on notice, from NSW Police Force, received 11 October 2021 (13 September hearing)
- answers to questions on notice, from NSW Police, received 11 October 2021 (17 September hearing)
- answers to questions on notice, from NSW Ombudsman, received 11 October 2021
- answers to questions on notice, from Multicultural NSW, received 11 October 2021
- answers to questions on notice, from Corrective Services NSW, received 15 October 2021
- answers to questions on notice, from NSW Health, received on 18 October 2021
- answers to questions on notice, from Department of Premier and Cabinet, received 18 October 2021
- answers to questions on notice, from Justice Health and Forensic Mental Health Network, NSW Health, received 18 October 2021
- answers to questions on notice, from Ms Randa Kattan, Chief Executive Officer, Arab Council Australia, received 19 October 2021
- answers to questions on notice, from Professor Jodie McVernon, Professor and Director of Doherty Epidemiology, Doherty Institute, received 21 October 2021
- answers to questions on notice, from Mr Nathan Bradshaw, Industrial Manager, Public Service Association of NSW, received 22 October 2021
- answers to questions on notice and supplementary questions, from Department of Education, received 22 October 2021
- answers to questions on notice and supplementary questions, from South Western Sydney Local Health District, received 26 October 2021
- answers to supplementary questions, from Cr Charles Lynch, Deputy Chair, NSW Aboriginal Land Council, received 26 October 2021
- answers to question on notice, from NSW Treasury, received 29 October 2021
- answers to questions on notice and supplementary questions, from NSW Health, received 3 November 2021
- answers to questions on notice, from Resilience NSW, received 15 November 2021.

7.2 Clarifications to the transcript

The committee noted that it agreed via email to authorise the publication of the following witnesses' clarifications of evidence and the insertion of a footnote in the respective hearing transcript linked to their correspondence:

- Ms Wendy Hoey, Executive Director, Clinical Operations, Justice Health and Forensic Mental Health Network, NSW Health, dated 19 October 2021

- Hon Sarah Mitchell MLC, Minister for Education and Early Childhood Learning, dated 22 October 2021
- Nathan Bradshaw, Industrial Manager, Public Service Association of NSW, dated 22 October 2021.

8. Inquiry into the Transport Asset Holding Entity

8.1 Documents produced by Mr Lyon

Resolved, on the motion of Mr Farlow: That the following documents produced by Mr Lyon, Former Partner, KPMG Australia, at the hearing on 8 November be kept confidential: 272 – 282, and that the committee further consider the documents at its next TAHE meeting.

9. Adjournment

The committee adjourned at 4.32 pm, until Thursday 9 December 2021 (public hearing for the NSW Government grant programs inquiry).

Donna Glover and Shaza Barbar
Committee Clerks

Minutes no. 70

Thursday 16 December 2021

Public Accountability Committee

Jubilee Room, Parliament House, Sydney, 10.15 am

1. Members present

Mr Shoebridge, *Chair* (via Webex)
Ms Boyd, *Acting Chair* (substituting for Mr Borsak)
Mr Farlow
Mr Graham
Mr Mallard (substituting for Mr Khan)
Mr Mookhey (substituting for Mrs Houssos)
Mr Poulos

2. Previous minutes

Resolved, on the motion of Mr Graham: That draft minutes no. 69 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 5 November 2021 – Correspondence from Ms Jenelle Moore, Usher of the Black Rod to the committee, providing affidavit of service of summons to Mr Brendan Lyon
- 8 November 2021 – Correspondence from Ms Jenelle Moore, Usher of the Black Rod to the committee, providing affidavit of service of summons to Mr Brendan Lyon
- 10 November 2021 – Correspondence from Ms Jenelle Moore, Usher of the Black Rod to the committee, providing affidavit of service of summons to Mr Rodd Staples
- 22 November 2021 – Letter and email from Mr David Chandler, NSW Building Commissioner, to the secretariat, forwarding a cover letter from Minter Ellison, legal representative of Icon (NSW) Pty Ltd and email from Icon (NSW) Pty Ltd to the NSW Department of Customer Service
- 23 November 2021 – Email from Mr Jonathon Russell, General Manager, Policy and Advocacy, Engineers Australia, to the secretariat, seeking to correct evidence provided by Mr David Chandler, NSW Building Commissioner
- 24 November 2021 – Email from Mr James Copsey to the secretariat, advising that Mr James Hunter and Mr Matthew Box will be not be taking the opportunity to respond to evidence provided by Mr Brendan Lyon

- 30 November 2021 – Email from Ms Anne Hayes to the secretariat, advising that she will not be taking the opportunity to respond to evidence provided by Mr Brendan Lyon
- 30 November 2021 – Letter from Mr Michael Pratt, Secretary, Mr San Midha, Deputy Secretary and Ms Cassandra Wilkinson, Executive Director – Transport, Regions, Infrastructure and Planning, NSW Treasury, responding to evidence provided by Mr Brendan Lyon
- 8 December 2021 – Email from Ms Renata Trkulja, NSW Treasury to the secretariat, confirming NW Treasury witnesses to appear at the TAHE hearing on 16 December 2021 and requesting that the committee invite Mr Rob Sharp, Secretary, Transport for NSW and Mr Bruce Morgan, Chair, TAHE to appear alongside the Treasury witnesses
- 15 December 2021 – Email from Ms Renata Trkulja, NSW Treasury to the secretariat, advising that Mr Sean Osborn and Ms Anne Bible can no longer attend the TAHE hearing on 16 December 2021.

Sent

- 17 November 2021 – Letter from the Chair to the Hon Peter Primrose MLC, Chair, Privileges Committee, alerting Privileges Committee to the publication of additional documents marked cabinet-in-confidence
- 23 November 2021 – Letter from the Chair to Ms Anne Hayes, Former A/CEO, Transport Asset Holding Entity, providing an opportunity to respond to evidence provided by Mr Brendan Lyon
- 23 November 2021 – Letter from the Chair to Mr Michael Pratt, Secretary, NSW Treasury, providing an opportunity to respond to evidence provided by Mr Brendan Lyon
- 23 November 2021 – Letter from the Chair to Mr James Hunter, Partner, Management Consulting, KPMG Australia, providing an opportunity to respond to evidence provided by Mr Brendan Lyon
- 23 November 2021 – Letter from the Chair to Mr Matthew Box, Associate Director, KPMG Australia, providing an opportunity to respond to evidence provided by Mr Brendan Lyon
- 15 December 2021 – Letter from the Chair to Hon Greg Donnelly, Chair, Portfolio Committee No. 2 – Health, enclosing correspondence to and from Health Minister regarding his isolation requirements.

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of the correspondence from Mr David Chandler dated 22 November 2021.

4. Further inquiry into the regulation of building standards**4.1 Clarifications to evidence**

Resolved, on the motion of Mr Graham:

- That the committee authorise the publication of the following correspondence: Email from Mr Jonathon Russell, General Manager, Policy and Advocacy, Engineers Australia dated 23 November 2021, correcting evidence provided by Mr David Chandler, NSW Building Commissioner, that Engineers Australia does not have a chartered scheme for fire engineers
- That the committee authorise the addition of a footnote to the evidence of Mr David Chandler, 22 November 2021, reflecting the clarification of evidence.

5. Inquiry into the Transport Asset Holding Entity**5.1 Election of Acting Chair**

As the Chair was attending via Webex, the committee elected an Acting Chair for the purposes of the meeting.

The Chair called for nominations for the Acting Chair.

Mr Mookhey moved: That Ms Boyd be elected Acting Chair of the committee.

There being no further nominations, the Chair declared Ms Boyd elected Acting Chair.

5.2 Public submission

The committee noted that the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 9.

5.3 Hearing dates

The committee noted that it agreed via email to hold additional hearings on Thursday 16 December 2021 and Thursday 10 February 2021.

5.4 Answers to questions on notice

Resolved, on the motion of Mr Farlow: That the committee request that answers to questions on notice following the hearing on Thursday 16 December 2021 be returned by Monday 24 January 2022.

5.5 Reporting date

Resolved, on the motion of Mr Shoebridge: That the committee resolve a new reporting date over email by Tuesday 21 December 2021.

5.6 Documents produced by Mr Lyon

Resolved, on the motion of Mr Farlow: That the following documents produced by Mr Lyon be kept confidential: 272-282.

5.7 Request to take photos at the hearing

Resolved, on the motion of Mr Shoebridge: That Mr Nick Moir, a photographer with the Sydney Morning Herald, be authorised to take photos during the public hearing.

5.8 Allocation of questioning

Resolved, on the motion of Mr Mookhey: That the timing of questioning for today's hearing be as follows: 20 minutes each for Opposition, Crossbench and Government with the remainder to be divided evenly.

5.9 Public hearing

The public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Michael Pratt, Secretary, NSW Treasury
- Mr Stewart Walters, Chief Finance and Operations Officer, NSW Treasury
- Mr Rob Sharp, Secretary, Transport for NSW.

The following witnesses were examined on their former oaths:

- Mr San Midha, Deputy Secretary Policy and Budget, NSW Treasury
- Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury
- Mr Bruce Morgan, Chair, Transport Asset Holding Entity (via videoconference).

The public hearing was adjourned due to technical difficulties.

The witnesses and media withdrew.

The committee re-convened at 12.00 pm to continue the hearing.

The witnesses and media were admitted.

The witnesses were examined.

Mr Mookhey tabled the following document:

- KPMG, Transport Asset Holding Entity (TAHE): Application of financial and budgetary framework to NSW Government funding for heavy rail infrastructure, Draft, August 2021.

The evidence concluded and the witnesses withdrew.

The hearing concluded at 1.02 pm.

5.10 Tabled documents

Resolved, on the motion of Mr Mookhey: That the committee accept and publish the following document tendered by Mr Mookhey: KPMG, Transport Asset Holding Entity (TAHE): Application of financial and budgetary framework to NSW Government funding for heavy rail infrastructure, Draft, August 2021.

5.11 Witnesses for hearing on 10 February 2022

Resolved, on the motion of Mr Shoebridge: That the committee reinstate the witnesses scheduled to appear on 16 December 2021, in addition to the Auditor-General on Thursday 10 February 2022.

6. Adjournment

The committee adjourned at 1.05 pm until Thursday 10 February 2021 (public hearing – TAHE).

Shaza Barbar

Committee Clerk

Minutes no. 71

Tuesday 8 February 2022

Public Accountability Committee

Via videoconference at 12.07 pm

1. Members present

Mr Shoebridge, *Chair*

Mr Amato

Mr Farlow

Mr Graham

2. Apologies

Mr Borsak, *Deputy Chair*

Mrs Houssos

Mr Poulos

3. Inquiry into the Transport Asset Holding Entity

3.1 Further hearing

The secretariat briefed the committee on preparations for the hearing on 10 February 2022.

4. Inquiry into the NSW Government's management of the COVID-19 pandemic

4.1 Further hearing

The committee noted that it resolved via email to conduct a further hearing on 11 February 2022. The secretariat briefed the committee on preparations for the hearing.

5. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs

5.1 Meeting with the NSW Productivity Commissioner

The committee met with Mr Peter Achterstraat AM, NSW Productivity Commissioner, and Ms Geraldine Carter, Director, Productivity Reform, NSW Productivity Commission, to discuss the inquiry and the Commissioner's review of grants administration in New South Wales.

6. Adjournment

The committee adjourned at 1.05 pm, until 9.45 am, Thursday 10 February 2022 (public hearing, Transport Asset Holding Entity inquiry).

Merrin Thompson

Committee Clerk

Minutes no. 72

Thursday 10 February 2022

Public Accountability Committee

Via Webex, 9.47 am

1. Members presentMr Shoebridge, *Chair*

Mr Amato

Mr Farlow

Mr Graham

Mr Mookhey (substituting for Mrs Houssos) (from 9.48 am)

Mr Poulos

Ms Boyd (participating for the duration of the inquiry into the Transport Asset Holding Entity)

2. ApologiesMr Borsak, *Deputy Chair***3. Previous minutes**

Resolved, on the motion of Mr Poulos: That draft minutes no. 70 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 8 February 2022 – Email from Ms Renata Trkulja, NSW Treasury to the secretariat, requesting that Ms Anne Bible, Principal Financial Officer, Accounting Policy, NSW Treasury not attend the TAHE hearing on 10 February 2022 as she is a non-executive staff member
- 8 February 2022 – Email from Ms Renata Trkulja, NSW Treasury to the secretariat, advising that Mr Michael Pratt, Former Secretary, NSW Treasury does not believe he has anything to add to the inquiry and does not consent to providing his contact details for the committee to issue an invitation to attend the TAHE hearing on 10 February 2022.

5. Inquiry into the Transport Asset Holding Entity**5.1 Submission**

The committee noted that the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 2a.

5.2 Answers to questions on notice

The committee noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice and additional information from KPMG, received 21 December 2021
- answers to questions on notice from TAHE, received 10 January 2022
- answers to questions on notice from NSW Treasury, received 25 January 2022.

Mr Graham moved: That:

- the committee authorise the publication of the answer to question on notice from Mr Brendon Lyon, received 19 January 2022, with the exception of identifying information, third party names, information that has previously been redacted and inappropriate language which are to remain confidential, as per the recommendation of the secretariat
- in accordance with the Procedural Fairness Resolution, the committee invite KPMG Australia, NSW Treasury and Mr Michael Pratt, former Secretary, NSW Treasury to provide a written response in relation to potential adverse mention contained in Mr Brendan Lyon's answer to question on notice.

Question put.

Ayes: Mr Graham, Mr Mookhey, Mr Shoebridge.

Noes: Mr Amato, Mr Farlow, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

5.3 Attendance of Mr Michael Pratt, former Secretary, NSW Treasury at a hearing

The committee noted correspondence received 8 February 2022 from Treasury indicating that Mr Pratt, former secretary, Treasury, does not believe he has anything further to add to the inquiry.

Mr Mookhey moved: That:

- the committee re-issue the committee's invitation to Mr Michael Pratt, former Secretary, NSW Treasury to attend and give evidence before the committee on Monday 21 February 2022, noting the committee's power to issue a summons
- in the event that Mr Pratt declines the second invitation, the committee issue a summons to Mr Pratt, under the authority of s 4(2) of the *Parliamentary Evidence Act 1901*, to attend and give evidence before the committee on Monday 21 February 2022 at 10.00 am.

Question put.

Ayes: Mr Graham, Mr Mookhey, Mr Shoebridge.

Noes: Mr Amato, Mr Farlow, Mr Poulos.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

5.4 Allocation of questioning

Resolved, on the motion of Mr Mookhey: That the timing of questioning for today's hearing be as follows: 10 minutes each for Opposition and Crossbench with the Government electing not to ask questions.

5.5 Public hearing

Witnesses were admitted via videoconference.

The Chair made an opening statement regarding the broadcasting of proceeds and other matters.

The following witnesses were sworn and examined:

- Dr Paul Grimes, Secretary, NSW Treasury
- Mr Sean Osborn, Director, Accounting Policy, NSW Treasury.

The following witnesses were examined on their former oaths/affirmations:

- Mr San Midha, Deputy Secretary Policy and Budget, NSW Treasury
- Ms Cassandra Wilkinson, Executive Director Transport and Planning/Industry, NSW Treasury
- Mr Stewart Walters, Chief Finance and Operations Officer, NSW Treasury.

The evidence concluded and the witnesses withdrew.

The following witness was examined on his former oath/affirmation:

- Mr Rob Sharp, Secretary, Transport for NSW.

The evidence concluded and the witness withdrew.

The following witnesses were examined on their former oaths/affirmations:

- Mr Bruce Morgan, Chair, Transport Asset Holding Entity
- Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Entity.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Margaret Crawford, Auditor-General, Audit Office of NSW
- Mr Ian Goodwin, Deputy Auditor-General, Audit Office of NSW
- Mr Scott Stanton, Assistant Auditor-General, Audit Office of NSW.

The evidence concluded and the witness withdrew.

The public hearing concluded at 3.37 pm.

5.6 Reporting date

Resolved, on the motion of Mr Mookhey: That the reporting date be extended to the end of March 2022.

6. Adjournment

The committee adjourned at 3.45 pm until 9.30 am on Friday 11 February 2022 via WebEx (public hearing – PAC pandemic).

Shaza Barbar

Committee Clerk

Minutes no. 74

Monday 21 February 2022

Public Accountability Committee

Macquarie Room, Parliament House, Sydney at 9.50 am

1. Members present

Mr Shoebridge, *Chair*

Mr Amato (via videoconference)

Mr Farlow

Mr Graham (via videoconference)

Mr Mookhey (substituting for Mrs Houssos for the duration of the inquiry into the Transport Asset Holding Entity)

Ms Boyd (from 955 am) (participating for the duration of the inquiry into the Transport Asset Holding Entity)

2. Apologies

Mr Borsak, *Deputy Chair*

Mr Poulos

3. Previous minutes

Resolved, on the motion of Mr Amato: That draft minutes no. 72 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 14 February 2022 – Email from Mr Paul Sadler, CEO of Aged and Community Services Australia, following the government's evidence at the Pandemic hearing on 11 February 2022 (Pandemic inquiry)
- 14 February 2022 – Letter from Ms Louise Capon, General Counsel to the Chair, requesting that the committee remove from its website the answer to question on notice from Mr Brendan Lyon (TAHE inquiry)
- 14 February 2022 – Letter from Dr Paul Grimes, Secretary, NSW Treasury to the Chair, advising that the second invitation to Mr Michael Pratt, former Secretary, NSW Treasury has been forwarded with a recommendation that Mr Pratt respond directly to the committee (TAHE inquiry)

- 16 and 17 February 2022 – Emails between Mr Michael Pratt, Former Secretary, NSW Treasury and the secretariat, regarding the committee's invitation to attend a hearing on Monday 21 February 2022 (TAHE inquiry)
- 18 February 2022 – Email from Mr Michael Pratt, Former Secretary, NSW Treasury to the secretariat, regarding his appearance in person at the TAHE hearing on Monday 21 February 2022 (TAHE inquiry)
- 18 February 2022 – Email from Mr Michael Pratt, Former Secretary, NSW Treasury to the secretariat, advising that he will be bringing a legal advisor to the TAHE hearing on Monday 21 February 2022 (TAHE inquiry)
- 21 February 2022 – Email from the Opposition Whip's office to the secretariat, advising that the Hon Daniel Mookhey MLC will be substituting for the Hon Courtney Houssos for the duration of the inquiry into the Transport Asset Holding Entity (TAHE inquiry).

Sent

- 11 February 2022 – Letter from the Chair to Dr Paul Grimes, Secretary, NSW Treasury, providing an opportunity to respond to Mr Lyon's answer to question on notice (TAHE inquiry)
- 11 February 2022 – Letter from the Chair to Mr Andrew Yates, Chief Executive Officer, KPMG Australia, providing an opportunity to respond to Mr Lyon's answer to question on notice (TAHE inquiry)
- 11 February 2022 – Letter from the Chair to Mr Michael Pratt, former Secretary, NSW Treasury, reissuing the committee's invitation to appear at a hearing, noting the committee's powers to issue a summons and providing an opportunity to respond to Mr Lyon's answer to question on notice (TAHE inquiry)
- 18 February 2022 – Summons from the committee to Mr Michael Pratt, Former Secretary, NSW Treasury, ordering Mr Pratt to attend and give evidence at a hearing on Monday 21 February 2022 (TAHE inquiry).

Resolved, on the motion of Mr Graham: That the committee authorise the publication of the correspondence and annexures from Mr Paul Sadler, CEO of Aged and Community Services Australia.

5. Inquiry into the Transport Asset Holding Entity**5.1 Timeframe for return of answers to questions on notice**

Resolved, on the motion of Mr Mookhey: That the committee request that answers to questions on notice following the hearing on Monday 21 February 2022 be returned within 14 days of the date on which questions are forwarded to the witness by the secretariat.

5.2 Correspondence from KPMG Australia

The committee received correspondence on Monday 14 February 2022 from Ms Louise Capon, General Counsel to the Chair, requesting that the committee remove from its website the answer to question on notice from Mr Brendan Lyon.

The committee noted that it had previously agreed via email to await a detailed response from KPMG Australia in response to the committee's opportunity for a right of reply to determine what, if any, action the committee takes.

Resolved, on the motion of Mr Farlow: That the committee identify any further redactions to the answer to question on notice from Mr Brendan Lyon, former Partner, KPMG Australia by COB Tuesday 22 February 2022.

5.3 Allocation of questioning

Resolved, on the motion of Mr Mookhey: That the timing of questioning for today's hearing be as follows: 10 minutes each for Opposition and Crossbench with 15 minutes reserved at the end for Government questions.

5.4 Attendance of Mr Michael Pratt at hearing with legal advisor

Resolved, on the motion of Mr Mookhey: That:

- the committee allow Mr Pratt to be accompanied by and have reasonable opportunity to consult with a legal advisor during the hearing
- the legal advisor is not to be sworn in or give evidence on behalf of Mr Pratt.

5.5 Public hearing

The witness and legal advisor were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Michael Pratt, Former Secretary, NSW Treasury.

The evidence concluded and the witness withdrew.

The public hearing concluded at 12.02 pm.

5.6 Acknowledgement of secretariat

Resolved, on the motion of Mr Mookhey: That the committee note with gratitude the efforts of the secretariat to alert Mr Michael Pratt, Former Secretary, NSW Treasury of the committee's invitation to attend a hearing for the inquiry into the Transport Asset Holding Entity.

6. Adjournment

The committee adjourned at 12.08 pm until Monday 21 February 2022 at 12.30 pm in the Macquarie Room (report deliberative – building standards).

Shaza Barbar

Committee Clerk

Draft minutes no. 78

Wednesday 6 April 2022

Public Accountability Committee

Room 814/815, Parliament House, Sydney or via Webex, 10.05 am

1. Members present

Mr Shoebridge, *Chair*

Mr Farlow

Mr Mookhey

Mr Poulos

Mr Veitch (substituting for Mr Graham)

2. Apologies

Mr Borsak, *Deputy Chair*

Mr Barrett

3. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes nos. 74, 75, 76 and 77 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 18 February 2022 – Ms Jenelle Moore, Usher of the Black Rod, affidavit of service of summons for the inquiry into the Transport Asset Holding Entity

- 24 February 2022 – Dr Paul Grimes, Secretary, NSW Treasury to the Chair, responding to answers to questions on notice received from Mr Brendan Lyon, former Partner, KPMG Australia, relevant to the inquiry into the Transport Asset Holding Entity
- 28 February 2022 – Mr Andrew Yates, Chief Executive Officer, KPMG Australia to the Chair, responding to answers to questions on notice received from Mr Brendan Lyon, former Partner, KPMG Australia, relevant to the inquiry into the Transport Asset Holding Entity

The committee noted that it agreed via email to publish correspondence received from NSW Treasury on 24 February 2022 and KPMG Australia on 28 February 2022 responding to the answers to questions on notice received from Mr Brendan Lyon, former Partner, KPMG Australia.

Resolved, on the motion of Mr Mookhey: That the committee publish correspondence received from Ms Louise Capon, General Counsel to the Chair, on 14 February 2022 requesting that the committee remove from its website the answer to question on notice from Mr Brendan Lyon, former Partner, KPMG Australia.

5. Inquiry into the Transport Asset Holding Entity

5.1 Answers to questions on notice

The committee noted that The following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Mr Michael Pratt, Former Secretary, NSW Treasury, received 26 February 2022
- answers to questions on notice from Transport for NSW, received 10 March 2022
- answers to questions on notice from the Audit Office, received 10 March 2022
- answers to questions on notice and attachments from TAHE, received 11 March 2022
- answers to questions on notice from NSW Treasury, received 17 March 2022.

Resolved, on the motion of Mr Mookhey: That the committee redact the names of staff from KPMG Australia who are not or have never been Partners at the firm from Mr Brendan Lyon's answer to question on notice, received 19 January 2022.

5.2 Privileges report on the examination, publication and use of cabinet document by Legislative Council committees

Mr Mookhey moved: That:

- the cabinet documents published on the website as part of the inquiry into the Transport Asset Holding Entity remain on the committee's website and continue to be used as part of the inquiry given publication is in the public interest
- the Chair write to Mr Michael Coutts-Trotter, Secretary, Department of Premier and Cabinet advising the committee's final decision.

Question put.

The committee divided.

Ayes: Mr Mookhey, Mr Shoebridge, Mr Veitch.

Noes: Mr Farlow, Mr Poulos.

Question resolved in the affirmative.

5.3 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Transport Asset Holding Entity*, which, having been previously circulated, was taken as being read.

Mr Farlow moved: That paragraph 2 on page xi be amended by omitting 'given difficulties the committee experienced obtaining the co-operation of Mr Pratt to attend and give evidence'.

Question put and negatived.

Resolved, on the motion of Mr Mookhey: That the preamble in Chapter 1 be amended by omitting 'The Transport Asset Holding Entity (TAHE) was established in 2020 as a statutory state owned corporation, responsible for managing the state's rail assets' and inserting instead 'The Transport Asset Holding Entity (TAHE) took responsibility from 1 July 2020 for managing the state's rail's assets'.

Resolved, on the motion of Mr Mookhey: That paragraph 1.1 be amended by omitting 'TAHE was established as a statutory state owned corporation on 1 July 2020, assuming ownership of RailCorp's assets' and inserting instead 'TAHE assumed ownership of RailCorp's assets from 1 July 2020.'

Resolved, on the motion of Mr Mookhey: That any references throughout the report to TAHE's establishment on 1 July 2020 be amended to state that TAHE assumed ownership of RailCorp's assets from 1 July 2020.

Resolved, on the motion of Mr Mookhey: That paragraph 1.11 be amended by omitting 'the General Government Sector or the Non-General Government Sector' and inserting instead 'the General Government Sector and the Non-General Government Sector'.

Resolved on the motion of Mr Mookhey: That paragraph 1.12 be amended by omitting 'Based on the ABS classifications which determine the structure and accounting treatment of agencies, a state owned corporation is considered a public non-financial corporation' and inserting instead 'A state owned corporation is considered a public non-financial corporation if it satisfies the criteria specified in the ABS' Government Finance Statistics Manual'.

Resolved, on the motion of Mr Farlow: That paragraph 1.22 be amended by omitting 'and Small Business' after 'Minister for Finance'.

Mr Farlow moved: That paragraphs 1.25 to 1.29 be omitted, and the following new paragraph be inserted instead:

'The Government has been open and transparent from the outset about the establishment of TAHE, with the Legislation clearly outlining TAHE's primary aims (of equal importance) and functions. TAHE is not dissimilar to other heavy rail entities established and operating in other State and Federal jurisdictions, such as Queensland Rail, VicTrak and ALTRAC. Introducing commerciality results in greater transparency and accountability for taxpayers.'

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Poulos.

Noes: Mr Mookhey, Mr Shoebridge, Mr Veitch.

Question resolved in the negative.

Resolved, on the motion of Mr Mookhey: That paragraph 2.94 be amended by inserting 'described as an equity investment' after '\$2.4 billion transfer'.

Resolved, on the motion of Mr Mookhey: That paragraph 2.108 be amended by omitting 'the current parliamentary inquiry' and inserting instead 'this parliamentary inquiry'.

Mr Farlow moved: That:

- paragraph 2.159 be omitted
- paragraph 2.161 be amended by omitting at the end 'Ultimately, the government has been extremely irresponsible in its establishment of TAHE, especially when billions of taxpayer dollars and rail safety are at stake'
- Findings 1 and 2 be omitted
- paragraph 2.164 be amended by omitting at the end 'However, we also note that the report was issued after a delay of six month with an emphasis of matter, the first of its kind in 11 years. As will be discussed in Chapter 4, the report also provided a scathing account of NSW Treasury's competence and integrity in engaging with the audit process'.

- paragraphs 2.166 and 2.167 be omitted
- Finding 3 be omitted
- paragraphs 2.168 and 2.169 be omitted
- Recommendation 1 be omitted
- paragraph 2.170 and Recommendation 2 be amended by omitting 'and independently' before 'funded'.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Poulos.

Noes: Mr Mookhey, Mr Shoebridge, Mr Veitch.

Question resolved in the negative.

Mr Farlow moved: That the following new finding be inserted after Recommendation 2:

'Finding X

TAHE is in the establishment phase and should be viewed in this context. TAHE has a board of directors and CEO in place, has released its strategic plan and has recruited a team to deliver on this plan.'

Question put.

Ayes: Mr Farlow, Mr Poulos.

Noes: Mr Mookhey, Mr Shoebridge, Mr Veitch.

Question resolved in the negative.

Resolved, on the motion of Mr Mookhey: That paragraph 3.24 be amended by omitting 'left his role as Secretary of Transport for NSW' and inserting instead 'was removed from his role as Secretary of Transport for NSW'.

Resolved, on the motion of Mr Mookhey: That paragraph 3.45 be amended by:

- inserting 'Given TAHE had only recently been established at the time of this report, it indicated that these findings were preliminary in nature' after '8 November 2021'
- inserting at the end 'The report said in part that it is unclear that TAHE's operating licence and other arrangements "will stand up to scrutiny in the event of a major incident". The OTSI report also stated that the "review demonstrates that more time is needed to implement and test the framework" and that "questions remain as to what happens if conflicts arise between TAHE and [Transport for NSW], or TAHE and transport operators and how they will be managed".'

Mr Farlow moved: That:

- paragraph 3.55 be amended by omitting 'The committee was therefore extremely concerned to receive evidence about tensions between the Transport Asset Holding Entity's (TAHE) fiscal objective to improve the budget position and safety considerations' and inserting instead:

The committee has noted evidence from various stakeholders in regards to TAHE's objectives around safety considerations. TAHE's legislative objectives place equal importance on safe reliable operations. It is also noted that TAHE must demonstrate that commercial imperatives are not prioritised or placed ahead of the delivery of safe and reliable rail assets services. As noted in TAHE's operating model and in accordance with its operating license TAHE must not carry out railway operations, operate a transport service or carry out maintenance of transport assets as noted in section 3.2 in this report.

Transport for NSW and the rail operators are responsible for day to day operations and maintenance. As further outlined in this report, TAHE plays a role in safety oversight as authorised by the Transport Administration Act and has set up an asset safety and environment sub-committee of the board to help ensure due diligence obligations and accountabilities.

It should also be noted that Sydney Trains, NSW Trains and the third party operator for the Country Regional Network must maintain transport assets under their access and license agreements in accordance with statutes and regulations, including *Work Health and Safety Act 2011* (NSW), the WHS Regulation 2017 (NSW) the Rail Safety National Law, Transport for NSW technical standards and all other relevant Australian standards.

- paragraphs 3.56 to 3.60 and Finding 4 be omitted.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Poulos.

Noes: Mr Mookhey, Mr Shoebridge, Mr Veitch.

Question resolved in the negative.

Mr Farlow moved: That Chapter 4, with the exception of paragraph 4.100, be omitted.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Poulos.

Noes: Mr Mookhey, Mr Shoebridge, Mr Veitch.

Question resolved in the negative.

Mr Farlow moved: That paragraph 4.8 be omitted, and the following new paragraph be inserted instead:

'Mr Lyon tendered emails, text messages and documents in support of his claims'.

Question put and negatived.

Resolved, on the motion of Mr Farlow: That paragraph 4.8 be amended by inserting 'text messages and documents' after 'Mr Lyon tendered emails'.

Resolved, on the motion of Mr Mookhey: That paragraph 4.15 be amended by omitting 'set the terms for KPMG' and inserting instead 'set the terms for this KPMG report'.

Resolved, on the motion of Mr Mookhey: That the following new paragraph be inserted after paragraph 4.60:

'Mr Staples' concerns were reflected in an email from Mr David Linke, KPMG's National Executive Committee Member to Ms Louise Capon, KPMG General Counsel, stating:

"The final point is a serious conflict issue for the firm. A financial model has been prepared based on a sustainable view of the TAHE operating model. The model shows certain consequences. The CFOA advice is now being used to defer the financial hit to the state budget. It is difficult to see how both pieces of advice can stand since this aspect is difficult to reconcile".

[FOOTNOTE: Answers to questions on notice, Mr Brendan Lyon, Former Partner, KPMG Australia, received 19 January 2022, p 139.]

Mr Farlow moved: That the following new finding be inserted after paragraph 4.100:

'Finding X

The Government has outlined that it takes the findings and observations made by the Auditor General seriously and the Treasurer has initiated an independent review into Treasury's interactions with the Auditor General's office. The State's financial accounts - including the treatment of TAHE - obtained an unqualified opinion from the Auditor General.'

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Poulos.

Noes: Mr Mookhey, Mr Shoebridge, Mr Veitch.

Question resolved in the negative.

Resolved, on the motion of Mr Farlow: That paragraph 4.100 be amended by inserting at the end:

'In this regard, we note that the new Treasury Secretary, Dr Paul Grimes, told the committee that he takes the findings and observations made by the Auditor General seriously'.

Mr Veitch moved: That:

- The draft report as amended be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, answers to questions on notice, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat by 12.00 pm, Thursday 7 April 2022;
- The secretariat is tabling the report on Friday 8 April 2022 before 10.30 am;
- The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

Question put.

The committee divided.

Ayes: Mr Mookhey, Mr Shoebridge, Mr Veitch.

Noes: Mr Farlow, Mr Poulos.

Question resolved in the affirmative.

6. Adjournment

The committee adjourned at 10.57 am, *sine die*.

Shaza Barbar
Committee Clerk

Appendix 4 Dissenting statement

Hon Scott Barrett MLC, Hon Scott Farlow MLC and Hon Peter Poulos MLC, government members

Government members of the Public Accountability Committee reject the report from the Public Accountability Committee into the Transport Asset Holding Entity (TAHE) as failing to take into consideration in its conclusions all of the evidence that was presented to the committee.

Witnesses from Treasury, Transport and TAHE provided a significant amount of supporting information to the committee, which is captured in the report, but not in the findings and recommendations that were reached by the committee's majority.

The government members note the government has been open and transparent from the outset about the establishment of TAHE, with the legislation clearly outlining TAHE's primary aims (of equal importance) and functions. TAHE is not dissimilar to other heavy rail entities established and operating in other state and federal jurisdictions, such as Queensland Rail, VicTrak and ALTRAC. Introducing commerciality results in greater transparency and accountability for taxpayers. Commerciality means having a structure in place that properly accounts for the costs of recurrent services and capital expenditure and provides an identifiable return to the taxpayers on their significant investment.

TAHE is in the establishment phase and should be viewed in this context, however the majority of members of the committee have overlooked this, seemingly determined to present TAHE as a failed or flawed entity from the outset. TAHE has a board of directors and CEO in place, has released its strategic plan and has recruited a team to deliver on this plan. It must be remembered that this organisation has been in operation for less than two years.

With respect to safety, the assertion from the majority that the government 'failed to give proper consideration to safety, accountability and risk mitigation' is misleading. Evidence presented to the committee showed that Cabinet considered the establishment of TAHE over a number of years, with Treasury and Transport for NSW providing a significant amount of advice to the government over this period regarding safety, accountability and risk, much of which has been tabled for the committee. For nearly 200 years the Treasury Department has been supporting the NSW Government on financial and fiscal matters and is the lead agency responsible for financial management of the New South Wales economy. It has dedicated and highly experienced professionals who are properly qualified to provide advice of this nature. State owned corporations have been used in New South Wales since 1989 and are in use to manage transport assets in Victoria, Queensland and the Commonwealth.

Transport for NSW has provided the committee with advice confirming that TAHE operates safely. The current Transport Secretary provided evidence to the committee to support his agency's advice. The importance of safety was enshrined at the outset in TAHE's legislation, TAHE is also subject to oversight from the National Rail safety regulator and must attest to safety integrity through its operating licence (also in the legislation), statement of ministerial expectations and statement of corporate intent. The rail operators, Sydney Trains and NSW Trains, are the accredited safety managers of the rail network. It is worth noting that the Office of Transport Safety Investigations (OTSI) has also provided independent assurance to the government that TAHE's 'proposed mitigations and safety governance arrangements are fit for purpose, and should achieve the objective of clarity and focus around safety roles'. To be clear, TAHE is required to meet, and does meet, all the safety standards imposed by all regulatory authorities.

The government members note that the government takes the findings and observations made by the Auditor-General seriously and the Treasurer has initiated an independent review into Treasury's interactions with the Auditor-General's office. However the committee seems determined to ignore the fact that the state's financial accounts - including the treatment of TAHE - obtained an unqualified opinion from the Auditor-General.

In conclusion, the report of the majority of members of the Public Accountability Committee appears to have been selective in their assessment of the evidence provided to the committee and have made very serious allegations about the government and TAHE to suit a political agenda.

Government members of the Committee contend that the government has used state owned corporations since 1989 and Victoria, Queensland and the Federal Government utilise state owned corporations to manage their heavy rail assets.

It is our assertion that the government is determined to deliver its record infrastructure investment to drive better outcomes and services for the people of NSW, and will always seek to get the best value for taxpayers at every opportunity. TAHE not only brings New South Wales into line with best practice models used in other states and jurisdictions, it will play an important role in delivering New South Wales' record infrastructure pipeline and ensuring taxpayers resources are optimised.

