Select Committee on the Leasing of Electricity Infrastructure

Leasing of Electricity Infrastructure

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Terms of reference

These terms of reference were referred to the Committee by Revd the Hon Fred Nile MLC.

1. That a select committee be established to inquire into and report on the proposed leasing of electricity transmission and distribution businesses and associated infrastructure investment and, and in particular:

   (a) The likely implications of the transactions on electricity network pricing, given experience in other states,

   (b) The likely impact of the transactions on customers, including on access to and exit from the network,

   (c) The responsibilities of any lessee(s) to maintain, improve and replace infrastructure and the ownership of infrastructure that has been upgraded or replaced,

   (d) The regulatory framework for electricity distribution and transmission networks and the proposed Electricity Price Commissioner,

   (e) Likely proceeds of the transactions, including additional Commonwealth incentives and interest revenue,

   (f) Expert reports into the transactions, including reports such as those by UBS, Deloittes and Ernst & Young, and

   (g) Any other relevant matter.

2. That the committee report by 2 June 2015.

Committee membership

Revd the Hon Fred Nile MLC	**Christian Democratic Party**	*Chair*
The Hon David Clarke MLC	Liberal Party	*Deputy Chair*
The Hon Robert Borsak MLC	The Shooters and Fishers Party	
The Hon Catherine Cusack MLC	Liberal Party	
Dr John Kaye MLC	The Greens	
The Hon Trevor Khan MLC	The Nationals	
The Hon Dr Peter Phelps MLC	Liberal Party	
The Hon Peter Primrose MLC	Australian Labor Party	
The Hon Adam Searle MLC	Australian Labor Party	

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Chairman's foreword

The decision whether to lease the state's poles and wires is an important issue for the people of New South Wales. The consequences of this decision will be significant and wide-ranging for the state's financial position, as well as for consumers, electricity workers and the electricity industry more broadly. The chief purpose of this inquiry was to examine the claims made by key stakeholders on both sides of the debate, and to get to the truth as to whether the Government's proposal is in the best interests of the state.

Just days before this committee was due to table its report, the Government introduced into Parliament the *Electricity Network Assets (Authorised Transactions) Bill 2015* and the *Electricity Retained Interest Corporations Bill 2015* – the enabling legislation for the partial leasing of the state's 'poles and wires'. This occurred despite the Premier telling the committee that we would not be provided with a draft of the legislation for the purpose of our deliberations. This denied the committee the opportunity to consider the legislation earlier in formulating our findings and recommendations, and denied the Government the benefit of considering the committee's findings and recommendations before finalising the bills.

A key issue in the debate was the impact of the leasing of the 'poles and wires' on the state's fiscal position. In promoting the benefits of the lease, the Government argued that the associated $20 billion infrastructure investment would result in a forecast $300 billion boost to the state's economy by 2035/36, thereby increasing taxation revenue to the state. This $300 billion boost to the state's economy was forecast in a Government-commissioned report by Deloitte Access Economics. Given how pivotal this forecast is to the Government's case for reform, and in light of concerns about the report and the long-term fiscal impact of the Government's proposal, the committee believes that the Deloitte report should be subject to an additional layer of scrutiny. We have therefore recommended an independent review of the report by a qualified independent authority prior to the enactment of the enabling legislation.

Amidst all the complex economic arguments presented to this committee, it is important to remember that electricity is an essential service. The impact of the Government's proposal on consumers has been at the forefront of the committee's considerations. Our inquiry found that the leasing of electricity infrastructure is unlikely to negatively impact on electricity prices, safety and reliability. In fact, we found that electricity network prices and retail prices are likely to fall, at least in part because of the role the Electricity Price Commissioner will play in reviewing the lease transactions. However, to ensure that consumers continue to be protected in the long term, we have also recommended that the powers of the Electricity Price Commissioner be reviewed within 12 months of the completion of the lease transactions. This is to ensure that the Commissioner's role and powers provide the best model for enforcing the price guarantee.

Another critical issue for this inquiry was the impact of the leasing transaction on workers in the sector. While the electricity industry is facing a challenging time, largely as a result of the Australian Energy Regulator's recent determination and its impact on jobs, it is clear that workers are worried about how they will be affected. We have therefore recommended that the enabling legislation include strong employment protection guarantees, such as: at least five years continued employment with the new employer; transfer of all accrued employee entitlements, including annual, long service and sick leave; and recognition of prior service. We have also recommended that the legislation provide for a sufficient number of apprenticeship opportunities, given the critical role they play in securing the industry's future and avoiding a future skills gap in the workforce.

After examining all the arguments and the evidence, the committee recommended that the Government implement its proposal to lease 100 per cent of Transgrid and 50.4 per cent of each of Ausgrid and Endeavour Energy. The committee believes that the Government's proposal is in the best interest of the state, taking into account the state's fiscal position, the need to maintain a triple-A credit rating and the economic benefits arising from the significant investment in infrastructure.

On behalf of the committee, I would like to acknowledge the valuable contribution made by all inquiry participants to the work of this committee. I would also like to express my thanks to my colleagues on the committee, and to the secretariat staff, Stewart Smith, Tina Higgins, Sharon Ohnesorge and Angeline Chung, for their hard work and professionalism.

Fred Nile

Revd Hon Fred Nile MLC
Chairman

Summary of recommendations

Findings

Chapter 1 Introduction

This chapter provides an overview of the establishment of the committee and the conduct of the inquiry, as well as an outline of the structure of this report.

Establishment of the inquiry

1.1 On 6 May 2015 a motion was moved by the Reverend the Hon Fred Nile MLC and passed by the Legislative Council for the establishment of a select committee to inquire into the leasing of electricity infrastructure.

1.2 The full terms of reference for the inquiry are set out on page iv. The Legislative Council resolved that the committee report by 2 June 2015.

Conduct of the inquiry

Submissions

1.3 The committee wrote to key stakeholders inviting them to make a submission to the inquiry. The closing date for submissions was 14 May 2015, however, the committee continued to accept submissions after this date. A media release announcing the inquiry was sent to all media outlets across the state. In addition, the committee advertised the inquiry on Storify.

1.4 The committee received 37 submissions to this inquiry and 2 supplementary submissions. The full list of submissions is set out in Appendix 1.

Public hearings

1.5 The committee held three public hearings on 11, 15 and 18 May 2015, at which 42 witnesses appeared. A full list of witnesses who appeared at hearings is included in Appendix 2. Transcripts of the hearings that have since been published are available on the committee's website www.parliament.nsw.gov.au/electricityleasing.

1.6 The committee would like to thank inquiry participants for their contribution to the inquiry.

Report structure

1.7 **Chapter 2** provides information about the structure and regulation of the electricity sector, particularly related to network pricing.

1.8 In **Chapter 3** the Government's proposal to lease electricity infrastructure is outlined, including how the proceeds will be used to fund key infrastructure projects across the state.

1.9 **Chapter 4** looks at the impact of the Government's proposal on the budget, including concerns about the loss of revenue provided by the businesses.

1.10 The key theme in **Chapter 5** is the impact the proposal will have on electricity network prices. This chapter considers the experience of other jurisdictions that have privatised electricity businesses, as well factors like efficiency, capital expenditure and operating costs and how these influence pricing.

1.11 **Chapter 6** examines other concerns about the potential impact of the Government's proposal, including job losses, deterioration in reliability, foreign investment and transparency issues.

1.12 **Chapter 7** concludes substantive consideration of the Government's proposal by looking at whether the proposal is ideal, in the context of an evolving industry and also in terms of its actual structure. This chapter also explores whether infrastructure projects should be funded by alternative means.

1.13 In **Chapter 8** a separate but related issue is discussed, relating to the controversy surrounding the alteration of a UBS research note which originally reported that the Government's proposal was 'bad for the budget'.

Chapter 2 The structure and regulation of the electricity sector

Electricity is an essential service in today's society. It is integral in our home life, is critical for businesses to operate effectively and has transformed the ways society operates. This chapter looks at the generation and supply of electricity from power stations to businesses and homes. It also looks at how electricity is traded in the National Electricity Market, before exploring how electricity networks are regulated.

The generation and supply of electricity

2.1 Most electricity is produced in centralised power stations and transported to homes and businesses through transmission and distribution networks. This network is often referred to as 'the grid'. Electricity can also be generated by 'distributed generation' such as rooftop solar photovoltaic panels. These sources of electricity may also export energy to the grid.

2.2 This section looks at each component of the electricity network, and explains how electricity is physically delivered from power stations to consumers.

Transmission and distribution networks

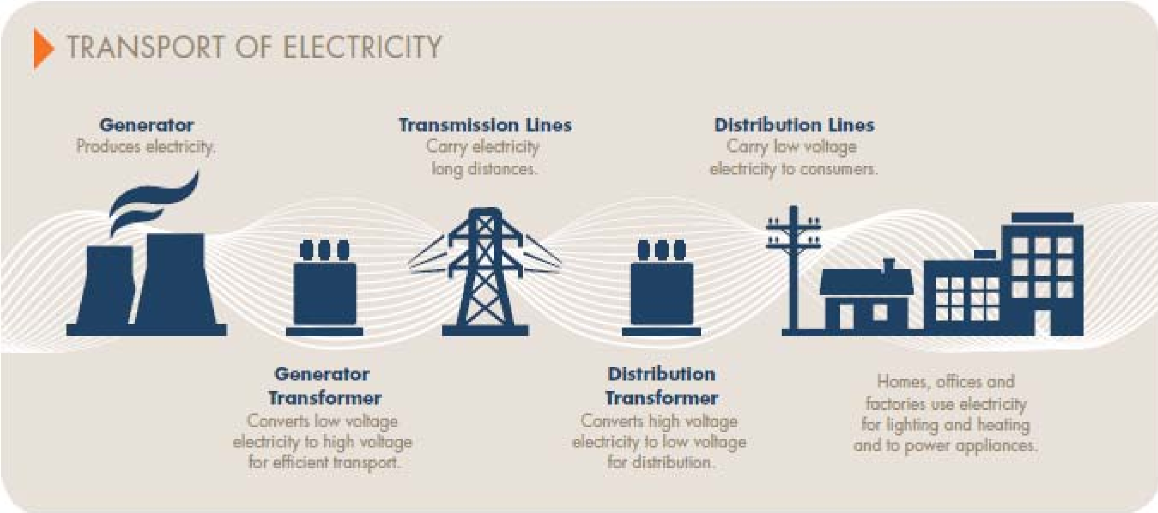
2.3 The transmission and distribution networks in the electricity sector are often referred to as the 'poles and wires'. These components physically transport electricity from power stations to businesses and homes.

2.4 Transmission networks, usually using overhead lines supported by large steel lattice towers (the wires), transport electricity between power stations and distribution networks. The electricity passes through large transformers so as to increase its voltage. This allows it to be sent across long distances.

2.5 Distribution networks then carry electricity to consumers, generally using distribution lines, for example, underground cables or overhead lines on wooden power poles (the poles).[1] As electricity is transmitted at a high voltage, it has to pass through substations to convert it to a lower voltage for distribution and everyday use.

2.6 The diagram below shows how electricity is transported from power stations to homes and businesses.

1 Frontier Economics, *Regulatory arrangements for electricity network pricing: A report prepared for the NSW Department of Premier and Cabinet* (2014), p 1, Attachment D to Submission 10, NSW Government.



Australian Energy Market Operator, Factsheet

2.7 In New South Wales, there are four Government owned companies that transport electricity:

- TransGrid, a transmission network service provider operating throughout New South Wales which transmits the most electricity of any network in Australia
- Essential Energy, a distribution network service provider supplying electricity to about 800,000 households and businesses in rural and regional New South Wales
- Ausgrid, a distribution network service provider supplying electricity to 1.6 million households and businesses in Sydney, the Central Coast and Hunter
- Endeavour Energy, a distribution network service provider supplying electricity to about 900,000 households and businesses in Sydney, the Blue Mountains, the Southern Highlands and Illawarra region.[2]

2.8 On 1 July 2012, the NSW Government placed the leadership of the state's electricity distributors, Essential Energy, Ausgrid and Endeavour Energy, under a common board and Chief Executive in order to deliver cost and efficiency savings. Each company became a shareholder in a new entity, called Networks NSW, which took on the management and co-ordination of all three businesses.[3]

The National Electricity Market

2.9 New South Wales is part of the National Electricity Market, a wholesale electricity market in which electricity is supplied to almost 10 million homes and businesses in Australia.[4]

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2 Frontier Economics, *Regulatory arrangements for electricity network pricing: A report prepared for the NSW Department of Premier and Cabinet* (2014), p 4, Attachment D to Submission 10, NSW Government.

3 Minister for Resources and Energy, *Media release: Electricity network merger to provide benefits to NSW households* (18 March 2012), <http://www.resourcesandenergy.nsw.gov.au/__data/assets/pdf_file/0004/531760/120318-Electricity-network-merger-to-provide-benefits-to-nsw-households.pdf>.

4 Origin Energy, *Electricity Grid – How electricity gets to you* (27 April 2015), <http://www.originenergy.com.au/blog/about-energy/nem-the-national-electricity-market.html>.

2.10 The National Electricity Market spans five interconnected states along Australia's eastern and south-eastern coasts, including Queensland, South Australia, Victoria and Tasmania.[5] It enables electricity to be generated and 'pooled' (although not physically), with retailers buying it to on-sell to consumers.[6]

2.11 The grid, the physical infrastructure for electricity, enables electricity to be transported using transmission and distribution networks, thereby enabling it to move through the system as it is consumed. Electricity retailers, like Integral Energy, Energy Australia and Origin Energy, purchase electricity from the National Electricity Market to on sell to customers, with actual supply occurring via the transmission and distribution networks.

2.12 A retail customer's electricity bill is comprised of a number of costs incurred in the generation and transportation of electricity. Currently, the breakdown of these costs in a typical household electricity bill is as follows:

- transmission network tariffs – 14 per cent
- distribution network tariffs – 47 per cent
- wholesale and retail costs – 34 per cent
- green schemes – 6 per cent.[7]

2.13 This shows that the costs associated with the 'poles and wires' account for over 60 per cent of a customer's retail electricity bill.

Regulation of electricity network pricing

2.14 The prices that electricity transmission and distribution networks can charge the electricity retailers are heavily regulated. This section explains the rationale for regulation and then examines the regulatory framework in detail, focusing on the process and methodology used by the regulator in setting network prices.

Rationale for regulation

2.15 Like water and gas networks, electricity transmission and distribution networks are widely considered to be natural monopolies. Natural monopolies occur where it is economically more efficient for a single supplier to supply goods or services in a particular geographic area.[8] As Frontier Economics explained, in the case of electricity distribution businesses:

5 Due to the distance between networks, Western Australia and the Northern Territory are not connected to the National Electricity Market.

6 Australian Energy Market Operator, *National Electricity Market* (27 April 2015), <http://www.aemo.com.au/About-the-Industry/Energy-Markets/National-Electricity-Market>.

7 Tabled document, Hon Mike Baird MP, NSW Premier, *Rebuilding NSW: Long term lease of the NSW Electricity Networks*, 11 May 2015, p 15.

8 Frontier Economics, *Regulatory arrangements for electricity network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, p 18, Attachment D to Submission 10, NSW Government.

> … the total cost to supply ten customers in a street is not much higher than the cost of supplying one customer because once the business has built its network out to that street, extending the network slightly to supply more customers in the same street does not greatly increase its costs. Therefore, the average per-customer cost of supply tends to fall.[9]

2.16 On the other hand, it would be extremely inefficient to have two sets of poles and wires in the same area. As a consequence, customers have little choice as to which electricity network to use.[10]

2.17 In the absence of competition, natural monopolies like electricity networks cannot be relied upon to set efficient prices for their services; the incentive for them is 'to "gouge" consumers and businesses through excessive prices rises'.[11] In order to manage this risk, the Government regulates the prices these businesses can charge, known as 'economic regulation'.

The regulatory framework

2.18 Electricity network businesses are subject to economic regulation by the Australian Energy Regulator. The regulator is an independent national statutory authority under the National Electricity Law and the National Electricity Rules.[12]

2.19 The National Electricity Law provides the foundation for the regulatory framework governing electricity networks in the National Electricity Market. It sets out the National Electricity Objective, namely:

> … to promote efficient investment in, and efficient operation and use of, electricity services in the long-term interests of consumers of electricity, importantly, with respect to: price, quality, safety, reliability and security of supply of electricity; and the reliability, safety and security of the national electricity system.[13]

2.20 The Australian Energy Regulator must exercise its economic regulatory powers and functions in a manner that will or is likely to contribute to the achievement of the National Electricity Objective.[14]

2.21 The National Electricity Law also provides for the making of the National Electricity Rules by the Australian Energy Market Commission. These rules detail the process and methodology used by the Australian Energy Regulator in setting the revenue that distribution and transmission networks may recover from their customers.

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9 Frontier Economics, *Regulatory arrangements for electricity network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, p 18, Attachment D to Submission 10, NSW Government.

10 Frontier Economics, *Regulatory arrangements for electricity network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, p 18, Attachment D to Submission 10, NSW Government.

11 Submissions 11, Mr Stephen Koukoulas, p 24; Submission 23, The McKell Institute, p 24.

12 Frontier Economics, *Regulatory arrangements for electricity network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, p 11, Attachment D to Submission 10, NSW Government.

13 Evidence, Mr John Pierce, Chairman, Australian Energy Market Commission, 15 May 2015, p 22.

14 *National Electricity (NSW) Law No 20a*, s 16.

Process for setting network prices

2.22 The Australian Energy Regulator determines in advance the revenue that each network can earn over a five year period, known as a regulatory control period. The process of making a determination takes about two years, timed so that a final determination is in place at least two months before the regulatory control period commences.[15] The most recent revenue determinations are outlined at paragraph 2.30.

Methodology for setting network prices

2.23 Consistent with the national electricity objective, the Australian Energy Regulator sets a network's revenue for a regulatory control period at an amount 'equal to the estimated efficient cost of providing the network services for that period'.[16] Put another way, the methodology set out in the National Electricity Rules is designed 'to achieve the prices that would be achieved if network business could be exposed to competition'.[17] This means that the revenue a network may recover is independent of who owns the network.[18]

2.24 The National Electricity Rules outline what is known as a 'building block incentive-based' approach. The purpose of this approach is 'to ensure that business can earn what they need to provide regulated services, and no more'.[19] As the Australian Energy Market Commission explained, incentive-based regulation means that:

> If the business is more efficient and has lower costs than the benchmark, it is rewarded through higher returns for the remainder of the regulatory period. Those efficiency gains can then be shared with consumers through setting lower allowed revenues in future regulatory periods. If the business is less efficient than the benchmark, it will make lower returns.[20]

2.25 The National Electricity Rules allow for the following four costs to be taken into account:

- operational expenditure: the network's operating costs, such as forecast labour costs and maintenance expenses. This typically accounts for about thirty per cent of the network's allowed revenue.
- return on capital: a risk-adjusted commercial rate of return on the assets used by the network to provide the services. This is calculated by multiplying the 'regulatory asset base' of the network by the 'weighted average cost of capital'. Return on capital is the largest cost component, accounting for around half of the allowed revenue.
- return of capital: an amount to compensate the network for depreciation of its assets.

15 Frontier Economics, *Regulatory arrangements for electricity network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, p 22, Attachment D to Submission 10, NSW Government.

16 Submissions 11, Mr Stephen Koukoulas, p 24; Submission 23, The McKell Institute, p 24.

17 Frontier Economics, *Regulatory arrangements for electricity network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, p 17, Attachment D to Submission 10, NSW Government.

18 Submission 25, Australian Energy Market Commission, p 2.

19 Frontier Economics, *Regulatory arrangements for electricity network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, p 19, Attachment D to Submission 10, NSW Government.

20 Submission 25, Australian Energy Market Commission, p 2.

- tax: an amount to reflect the corporate income tax payable by the network.[21]

2.26 As for how total revenues for a regulatory control period are translated into annual network prices for retailers, the Australian Energy Market Commission outlined:

> Each year energy network businesses translate the revenues allowed in the determination stage by the AER into network prices to be charged to retailers. Retailers then package up network prices, wholesale energy prices and their retail costs to set retail prices paid by consumers.
>
> The process of translating the total revenue allowed by the AER into network prices for individual customers is regulated by the AER through a control mechanism …[22]

2.27 Importantly, both the Australian Energy Market Commission and the Australian Energy Regulator highlighted the fact that once annual revenues are set, it is for individual network businesses to determine what costs they actually incur in order to provide their services:

> What we do is measure efficient levels of total input to derive the efficient level of outputs. How those outputs are delivered and what decisions are made internally within a business to ensure that they deliver those outputs most efficiently is a question for management. We rely on an incentive framework. We rely on the fact that there are a range of regulatory obligations around safety and reliability that all of these businesses must meet. We rely on a whole range of frameworks and factors to ensure that these businesses do deliver what they are required in a way that is efficient. But what we measure are the total outputs, not how those individual outputs may be made up on a business by business case.[23]

Regulatory treatment of ownership of a network

2.28 Ms Michelle Groves, Chief Executive Officer of the Australian Energy Regulator, made clear that the regulatory framework described above applies irrespective of whether a network business is privately or publicly owned or operated:

> Whilst there have been questions from time to time about whether the regulatory framework should be different for firms with different types of ownership, this idea has been consistently rejected by policy makers, rule makers and, indeed, by the AER. It is very clear that the same set of rules apply to both privately-owned and government-owned firms and that the outcomes from the applications of those rules will be the same for a particular firm irrespective of their ownership.[24]

2.29 Ms Groves also noted that it was 'not unusual' for network businesses to be sold or leased part way through a regulatory determination, with the change of ownership legislation

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21 Frontier Economics, *Regulatory arrangements for electricity network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, pp 45-46, Attachment D to Submission 10, NSW Government.; Submissions 11, Mr Stephen Koukoulas, p 24; Submission 23, The McKell Institute, p 24; Submission 25, Australian Energy Market Commission, pp 10-13.

22 Submission 25, Australian Energy Market Commission, p 4.

23 Evidence, Ms Michelle Groves, Chief Executive Officer, Australian Energy Regulator, 15 May 2015, p 29.

24 Evidence, Ms Groves, 15 May 2015, p 23.

ensuring that the rights and responsibilities were transferred to the new entity.[25] In such instances, 'the existing determination applied to the new owner of the network for the remainder of the regulatory period'.[26]

Impact of the recent Australian Energy Regulator determinations

2.30 On 30 April 2015, the Australian Energy Regulator released its final determinations on the revenue proposals submitted by NSW electricity distribution and transmission businesses for a four-year regulatory control period starting on 1 July 2015. As shown in Table 1, these determinations represent considerably lower revenue allowances than were proposed by the networks, 'revers[ing] the recent trend of rising network revenue allowances'.[27]

Table 1 Revenue determination 2015-2019

Network business	Business revised proposal	AER final decision	Percentage difference	Expected bill reduction for average household in 2015-16
Ausgrid	$9754 million	$6576 million	-33%	$165 (8%)
Endeavour Energy	$4441 million	$3183 million	-28%	$106 (5.3%)
Essential Energy	$5546 million	$3826 million	-31%	$313 (11.9%)
TransGrid	$2906 million	$2189 million	-25%	$25 (1.1%)

Australian Energy Regulator, Media release: AER expects final decisions to lower electricity bills for ACT and NSW customers (30 April 2015), <http://www.aer.gov.au/node/31954>

2.31 Mr Vince Graham, Chief Executive Officer of Ausgrid, Essential Energy and Endeavour Energy, stated that the determinations represented a 'significant hit' to the networks' revenues, namely:

- Ausgrid – reduction of $3.178 billion
- Essential Energy – reduction of $1.72 billion
- Endeavour Energy – reduction of $1.26 billion.[28]

2.32 The basis for these determinations, as outlined by the Australian Energy Regulator, was that the distribution businesses were not operating as efficiently as other networks, coupled with falling demand for electricity:

> The AER has access to a consistent body of evidence indicating that the distribution businesses in NSW … are not operating as efficiently as other networks. Our final

25 Evidence, Ms Groves, 15 May 2015, p 26.

26 Answers to questions on notice, Ms Michelle Groves, Chief Executive Officer, Australian Energy Regulator, 22 May 2015, p 3.

27 Tabled document, Hon Mike Baird MP, NSW Premier, *Rebuilding NSW: Long term lease of the NSW Electricity Networks*, 11 May 2015, p 23.

28 Evidence, Mr Vince Graham, Chief Executive Officer, Ausgrid, Essential Energy and Endeavour Energy, 11 May 2015, p 58.

> decision provides sufficient operating expenditure for an efficient network business, to provide a safe and reliable service to customers. …
>
> The demand for electricity has fallen and is expected to remain reasonably flat over the 2015 to 2019 regulatory control period. This puts less strain on the network and requires less investment to provide a reliable supply of energy. This final determination reduces the spending proposal to ensure that only prudent and efficient costs are recovered from consumers.
>
> The AER has not accepted the revenue allowances proposed by any of the … NSW electricity businesses. In part, this is due to our decision to apply a lower rate of return and corporate tax allowance, consistent with our rate of return guideline and recent market trends …
>
> The perceptions of risk which increased during the global financial crisis, when the AER made its last determination, are now decreasing. This means that the lower cost of capital for debt and equity translate into the lower financing costs necessary to attract efficient investment.
>
> While the final decisions allow greater amounts for operating and capital expenditure compared to the draft, the rate of return on capital is lower.[29]

2.33 On 13 May 2015, the Australian Energy Regulator wrote to the network businesses advising of its intention to 'revoke and substitute' its determinations to address a small number of administrative errors in the 30 April determinations. Following consultation with the networks and subsequent legal advice, the AER decided not to revoke the distribution determinations at this time.[30] Instead it told the committee that:

> We still intend to correct the errors in the final determinations as soon as practicable, in accordance with the National Electricity Rules. We anticipate this would occur no earlier than the latter of:
> - the commencement of the next regulatory control period (1 July 2015); and
> - once any appeal in relation to the distribution determination is resolved.[31]

2.34 The regulator confirmed that the errors were clerical in nature and 'will not change the savings that customers should expect as a result of our decisions'.[32]

2.35 On 21 May 2015, Ausgrid, Essential Energy and Endeavour Energy announced their intention to appeal the 30 April determinations, focusing particularly on the cuts to operating expenditure and the cost of capital.[33]

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29 Australian Energy Regulator, *Media release: AER expects final decisions to lower electricity bills for ACT and NSW customers* (30 April 2015), <http://www.aer.gov.au/node/31954>.

30 Answers to questions on notice, Ms Groves, 22 May 2015, p 1.

31 Answers to questions on notice, Ms Groves, 22 May 2015, p 2.

32 Answers to questions on notice, Ms Groves, 22 May 2015, p 2.

33 Ausgrid, *Media release: Ausgrid, Endeavour Energy and Essential Energy to appeal AER decisions* (21 May 2015), <http://www.ausgrid.com.au/Common/About-us/Newsroom/Media-Releases/2015/May/ NSW-network-businesses-to-appeal-AER-decisions.aspx?page=1&year=&month=&id=5dc6b7ee-56b3-4a69-bb6a-46352d18564f.>

2.36 Since then, the Public Interest Advocacy Centre has also signalled an intention to engage in an appeal, seeking even further cuts to network revenues.

Chapter 3 The Government's proposal to lease electricity infrastructure

The leasing of electricity infrastructure is an important issue for the people of New South Wales. Labelled by the Premier as a 'once in a generation opportunity',[34] the NSW Government has committed to partially lease the electricity transmission and distribution businesses in order to raise funds for extensive infrastructure investment across the state.

This chapter will explore the Government's proposal to lease TransGrid and a majority part of Ausgrid and Endeavour Energy, including the likely structure and sequencing of the lease transactions, protections for consumers and the expected proceeds of the lease. It will also outline how the proceeds from the transactions will be used to fund key infrastructure projects in regional and metropolitan New South Wales, including the economic benefits this investment is claimed to generate for the future.

The proposal

3.1 On 10 June 2014 the Premier, the Hon Mike Baird MP, announced the NSW Government's intention to undertake a long-term lease of 49 per cent of the state's electricity transmission and distribution service providers. This would entail the 99-year partial lease of TransGrid, AusGrid and Endeavor Energy.[35] The NSW Government also announced its intention to retain complete ownership of Essential Energy, a regional distribution network.[36]

The historical context

3.2 While the electricity leasing debate was at the forefront of the recent State election, it is by no means is a new issue for New South Wales. In fact, the idea of selling electricity assets has been in the political arena since 1997, when the then Treasurer, the Hon Michael Egan AO, released a discussion paper proposing the sale of the state's generation, transmission, distribution and retail electricity assets.[37] However, those transactions did not progress. Mr Egan told the committee this was 'simply because many people were opposed to them'.[38]

3.3 A decade later, the privatisation issue arose again when in 2007, after the release of the Owen Report, the ALP Government announced its intention to sell its electricity retail functions to the private sector and to lease the power generation stations on a long-term basis. A bill giving effect to this proposal was introduced in 2008 by the then Treasurer, Mr Michael Costa.

34 Evidence, Hon Mike Baird MP, NSW Premier, 11 May 2015, p 5.

35 Media release, Hon Mike Baird MP, NSW Premier, *Government announces $20 billion plan to turbocharge infrastructure*, 10 June 2014, p 1; NSW Government, *Rebuilding NSW: Update on Electricity Networks*, 18 December 2014, p 1.

36 NSW Government, *Rebuilding NSW: Update on Electricity Networks*, 18 December 2014, p 1.

37 Hon Brian Tamberlin QC, *Final Report of the Special Commission of Inquiry into the Electricity Transactions*, October 2011, p 38.

38 Evidence, Hon Michael Egan AO, former NSW Treasurer, 18 May 2015, p 35.

However, the bill was subsequently withdrawn due to a lack of support from the Liberal / National Party Opposition and the Greens.[39]

3.4 A year later, the Government, then led by Premier Nathan Rees, decided to proceed with the sale of the electricity retail businesses, development sites and the electricity generation output contracts, known as the 'Gentrader' contracts. It did not require enabling legislation to proceed with these transactions. A second phase of privatisation was initiated with the change of Government in 2011 under Premier Barry O'Farrell, involving the sale of the electricity generation businesses.

3.5 While Premier Baird's proposal to lease the electricity network businesses follows a long political history debating electricity asset privatisation in New South Wales, other jurisdictions have already gone down this path. In Victoria, electricity assets were first privatised in 1995, when the businesses were sold to the private sector for approximately $19.7 billion.[40]

3.6 In South Australia, in 1999/2000, the Government disposed of their electricity distribution businesses by way of a long term lease and the retail business by way of a sale. This was followed by the long-term lease of two of the three generation businesses, reportedly for 100-year periods. The final stage of the privatisation program took place in 2000/2001, with the long-term lease of the third generation business and the transmission business.[41] Queensland still has its electricity assets held in public ownership.

3.7 The Government's announcement followed the release of a report from the Productivity Commission in which state and territory Governments were encouraged to consider privatising Government-owned power networks, retail businesses and major ports in order to fund infrastructure investment. The Productivity Commission considered that such privatisation should be undertaken where:

> … it improves investment and operational efficiency, and only after Governments have determined the essential elements of the policy and any efficient economic and other regulatory frameworks that will be faced by the businesses post-privatisation.[42]

Structure and sequencing of the lease transaction

3.8 According to the Government's proposal, overall there will be a 49 per cent long term lease of the electricity network businesses. The percentage of each business to be leased to the private sector will be:

- 50.4 per cent for Endeavour Energy
- 50.4 per cent for Ausgrid
- 100 per cent for TransGrid, the state's transmission business.[43]

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39 Hon Brian Tamberlin QC, *Final Report of the Special Commission of Inquiry into the Electricity Transactions*, October 2011, pp 47-50.

40 Hon Brian Tamberlin QC, *Final Report of the Special Commission of Inquiry into the Electricity Transactions*, October 2011, p 28.

41 Hon Brian Tamberlin QC, *Final Report of the Special Commission of Inquiry into the Electricity Transactions*, October 2011, p 29.

42 Productivity Commission, *Public Infrastructure Inquiry Report Volume 1*, July 2014, p 36.

3.9 Taking into account the 100 per cent retention of Essential Energy, the Government would continue to retain 51 per cent overall of the network businesses. While the lease percentages put forward by the Government are the expected amounts, the Government stated that the 'Final proportions will be calculated in accordance with the Government's commitment to maintain 51 per cent of the network businesses in public hands'.[44] The lease percentages are by value of asset, not customer numbers or length of line.

3.10 Under the proposal, the private sector will have full control over the operations of TransGrid, Ausgrid and Endeavour Energy.[45]

3.11 The 51 per cent of share of the network businesses retained by the Government will be managed by a new NSW Future Fund that '… will be a statutory asset fund with the potential to fund future liabilities of the State, and with a particular responsibility to protect the value of assets held by the State'.[46]

3.12 The Premier explained that details relating to the structure of the transaction and governance arrangements will be outlined in the legislation.[47]

3.13 Mr Phillip Gaetjens, Secretary of NSW Treasury, advised the committee that the Government is seeking to form a structure that operates within the tax laws of Australia, so that the state's holding in each lease entity will still receive state tax equivalent payments.[48]

3.14 In terms of sequencing and effecting the transactions, it is expected that the leasing of TransGrid will occur first. This will occur via a trade sale, however, for the other businesses, the Premier advised that the Government wants to retain flexibility to consider an initial public offering, depending on market conditions.[49] Discussion about whether a trade sale of initial public offering is best in terms of maximising value for the state is discussed in chapter 7.

Expert reports

3.15 The Government's approach to the execution of the lease transactions and more generally, its proposal to lease the electricity network businesses, has been informed by a number of expert reports, including a:

- scoping study conducted by UBS and Deutsche Bank in late 2014 in which advice was provided to the NSW Government on the most appropriate transaction structure and sequence for the leases. This study has not been made public due to commercial-in-

43 Evidence, Mr Baird, 11 May 2015, p 3.

44 Submission 10, NSW Government, p 3.

45 Answers to supplementary questions, Hon Mike Baird MP, NSW Premier, 19 May 2015, p 5.

46 NSW Government, *Rebuilding NSW Fact Sheet No. 9 – Protecting the Public Interest in 'Poles and Wires'*, June 2014, p 2.

47 Evidence, Mr Baird, 11 May 2015, pp 18 and 21-23.

48 Evidence, Mr Phillip Gaetjens, Secretary, NSW Treasury, 18 May 2015, pp 80-81.

49 Tabled document, Hon Mike Baird MP, NSW Premier, *Rebuilding NSW: Long term lease of the NSW Electricity Networks*, 11 May 2015, p 10.

confidence material contained in the report.[50] Concerns about the confidentiality of this report are outlined in chapter 6.

- 2014 report prepared by Ernst & Young on behalf of NSW Treasury in which the long term trends in the prices and costs of the electricity network services is analysed.[51]
- 2014 report prepared by HoustonKemp Economists for the NSW Department of Premier and Cabinet, in which a summary of the reliability standards and framework applying to electricity network businesses is outlined.[52]
- 2014 report authored by Frontier Economics which discussed the regulatory arrangements for electricity network pricing.[53]
- 2015 report prepared by HoustonKemp Economists for NSW Treasury examining the economic regulation of the electricity network businesses in the context of the Government's proposal.[54]
- 2014 report by Deloitte Access Economics on the economic impact of the *Rebuilding NSW* infrastructure strategy, conducted for the NSW Department of Premier and Cabinet. The report forecast a $300 billion uplift in the economy as a result of the proceeds from the lease transaction being used to fund key infrastructure projects across the state.[55] This report is discussed further in chapter 4.

3.16 In summarising the extent to which the Government has considered expert and stakeholder opinions in formulating and strengthening their proposal to lease the state's 'poles and wires', the Treasurer, the Hon Gladys Berejiklian MP, stated:

> It is worth bringing to the attention of the committee the multiple reports, expert opinion and stakeholder buy in of people and organisations that support the Government's position in regard to the overwhelming benefits of proceeding with the poles and wires transaction. Some of these organisations and individuals include: Ernst and Young, the Productivity Commission, Australian Competition and Consumer Commission Chairman Rod Sims, UnitingCare Australia, the Council of Social Service of NSW, the Grattan Institute, Frontier Economics, the Energy Users Association of Australia and indeed former premiers and treasurers on both sides of the political divide.[56]

50 Evidence, Mr Baird, 11 May 2015, p 13.

51 Ernst & Young, *Electricity network services: Long term trends in prices and costs*, 2014, Attachment A to Submission 10, NSW Government.

52 HoustonKemp, *Electricity Networks Service Standards: An Overview: A Report for the NSW Department of Premier and Cabinet*, 2014, Attachment B to Submission 10, NSW Government.

53 Frontier Economics, *Regulatory arrangements for network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, Attachment D to Submission 10, NSW Government.

54 HoustonKemp, *Economic Regulation of NSW Electricity Network Businesses*, 2015, Attachment G to Submission 10, NSW Government.

55 Deloitte Access Economics, *Economic Impact of State Infrastructure Strategy – Rebuilding NSW*, November 2014.

56 Evidence, Hon Gladys Berejiklian MP, NSW Treasurer, 18 May 2015, p 72.

Consumer protections

3.17 Given that electricity is an essential service for individuals, households and businesses, the Government has announced a range of consumer protection measures to be implemented alongside the leasing transaction, in addition those that already apply under the current regulatory framework. The Government has argued that these protections will ensure consumers are unaffected by the change in management of the electricity network businesses.

3.18 The legislation governing the lease transactions sets out the additional consumer protections that will operate. While the Premier and Treasurer outlined some of these measures during their evidence to the committee, much of the detail is included in the legislation.

3.19 In addition to the legislative and regulatory framework that already exists, the Premier stated that the lease transaction itself will be structured to ensure lessees uphold safety, performance and reliability standards. It will also ensure there are obligations on the lessee to maintain the infrastructure in good order.[57] The Premier noted that the state will retain the right to terminate the lease in defined circumstances, such as a failure by the businesses to operate or maintain the network.[58]

3.20 In terms of access to the network for customers, the Government argued that the proposed transaction will not impact connections or disconnections, as the National Energy Customer Framework will continue to apply. The Government stated in its submission that consumers will have guaranteed access to electricity and that there will be strong legal protections for vulnerable customers, including no disconnections for vulnerable people on payment plans.[59]

3.21 Three of the new measures designed to protect consumers will be discussed in this section, including the new licensing requirements for businesses, measures to protect prices from rising and expanded powers for the Minister and Independent Pricing and Regulatory Tribunal (IPART).

New licensing requirements

3.22 The Government outlined that network businesses will be subject to new licensing requirements. The Government argued that this will enable the state to have control over the suitability and capability of network operators and that it will ensure that there is a continued substantial operational presence in Australia. The Government stated that licence requirements will enable conditions to be set to ensure 'continuity, reliability, network performance and safety'.[60]

3.23 The Treasurer said that serious penalties that will apply for breaches of the new licence requirements:

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57 Tabled document, Hon. Mike Baird MP, Premier, *Rebuilding NSW: Long term lease of the NSW Electricity Networks*, 11 May 2015, p 10.

58 Tabled document, Hon Mike Baird MP, Premier, *Rebuilding NSW: Long term lease of the NSW Electricity Networks*, 11 May 2015, p 28.

59 Submission 10, NSW Government, p 5.

60 Submission 10, NSW Government, p 4.

> The licence will impose strict conditions on electricity network businesses and protect the interests of the State and consumers. Breaches of the licence conditions and other obligations will attract maximum penalties up to 35 times higher than those currently faced for safety and other breaches.[61]

3.24 The Government also outlined the role of the Independent Pricing and Regulatory Tribunal, which will be appointed to ensure compliance with licence conditions and safety and reliability standards:

> IPART will receive regular reports in relation to reliability and customer service standards and require annual independent audits of reliability and customer service standards. IPART will have the power to appoint inspectors for electrical installations and equipment and the investigation of serious electricity accidents.[62]

Electricity Price Commissioner and pricing guarantees

3.25 A key component of the Government's commitment to ensuring lower electricity prices is the establishment of an Electricity Price Commissioner, who will need to approve the lease documents before they are signed to ensure the transactions will not raise electricity prices in the short, medium or long term.[63]

3.26 The Premier asserted that this newly created role provides a 'further assurance to the people of this state' that there will downward pressure on electricity prices.[64] He also noted that the advice of the Price Commissioner will be publicly disclosed.

3.27 The committee was informed that Professor Allan Fels, the former Chair of the Australian Competition and Consumer Commission, will be appointed to this new role. The Treasurer commented on the significance of this appointment for consumers:

> … we have appointed perhaps Australia's best known consumer advocate in Professor Allan Fels to actually give the final tick off or cross before the transaction is complete in relation to pricing … the Government has done all it can to put in place all those guarantees which give the public confidence and assurance that as a Government we are committing to downward pressure on network prices.[65]

3.28 Under the proposed Electricity Price Guarantee, the committee was told by the NSW Government that the network businesses will be required to guarantee that network revenues will be lower in 2019 than they were in 2014, and that savings from greater efficiency will be passed on to consumers. In addition, the businesses will be required to provide an annual compliance statement to the Electricity Price Commissioner, who will be able to refer any concerns to the Australian Energy Regulator or the Australian Competition and Consumer Commission.[66]

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61 Evidence, Ms Berejiklian, 18 May 2015, p 72.

62 Submission 10, NSW Government, p 4.

63 Tabled document, Hon Mike Baird MP, NSW Premier, *Rebuilding NSW: Long term lease of the NSW Electricity Networks*, 11 May 2015, p 20.

64 Evidence, Mr Baird, 11 May 2015, p 4.

65 Evidence, Ms Berejiklian, 18 May 2015, p 80.

66 Submission 10, NSW Government, p 4.

Energy Minister's powers

3.29 Another measure said to protect consumers will be the existing power of the Energy Minister to 'step in' should a breach of a licence condition or regulatory obligation threaten the safety, security or reliability of electricity supply. Under a change to these powers, the Independent Pricing and Regulatory Tribunal will also become the 'step in operator' until the Minister determines that it is no longer required.[67]

3.30 The Government also stated that there will be stronger enforcement powers for the Minister and increased penalties for serious breaches of licensing conditions, however no further details were provided in the Government submission.[68]

Transaction proceeds

3.31 The NSW Government anticipates that the lease of the state's 'poles and wires' will generate approximately $20 billion in proceeds that will be used to fund infrastructure programs.[69]

3.32 This is expected to include:

- $13 billion in net proceeds[70]
- $2 billion from the Commonwealth Asset Recycling Initiative[71]
- interest from the investment of transaction proceeds until the funds are required for infrastructure projects.[72]

3.33 In addition, the Government is transferring $2 billion from Restart NSW funds.[73]

3.34 Premier Baird advised that in addition to the upfront proceeds from the lease transactions, the state will continue to receive tax equivalent payments and distributions on the retained interests from Ausgrid, Endeavour Energy and Essential Energy.[74] In relation to tax equivalent payments under the lease structure, the Premier stated that the Australian Taxation Office 'has not raised any concerns regarding the preferred structures presented by the State'.[75] The Premier also stated that the distributions from Ausgrid and Endeavour Energy 'will be

67 Submission 10, NSW Government, p 5.

68 Submission 10, NSW Government, p 5.

69 Evidence, Mr Baird, 11 May 2015, p 3.

70 Evidence, Mr Gaetjens, 18 May 2015, p 85; Parliamentary Budget Office, *Budget Impact Statement 2015 – Coalition – Part 2*, 23 March 2015.

71 This is a financial incentive provided by the Commonwealth Government to State and Territory Government's to privatise assets and use the proceeds to fund productivity-enhancing infrastructure. The incentive is a financial contribution of 15 per cent of the assessed sale value of the asset used to fund infrastructure.

72 NSW Government, *Rebuilding NSW: Update on Electricity Networks*, 18 December 2014, p 1.

73 NSW Government, *Rebuilding NSW: Update on Electricity Networks*, 18 December 2014, p 1.

74 Evidence, Mr Baird, 11 May 2015, p 3; Tabled document, Hon Mike Baird MP, NSW Premier, *Rebuilding NSW: Long term lease of the NSW Electricity Networks*, 11 May 2015, p 13.

75 Answers to questions on notice, Hon Mike Baird MP, NSW Premier, 19 May 2015, p 1.

increased by the efficiency benefits achieved by the private sector'.[76] As this committee has no knowledge of what the 'preferred structures presented by the State' to the Australian Taxation Office are, we cannot determine how likely they are to achieve the aim of protecting State revenues.[77]

Infrastructure investment

3.35 The NSW Government announced that it would 'recycle' the $20 billion received from the planned partial lease of New South Wales' electricity distribution and transmission businesses to 'turbocharge' the delivery of state-wide infrastructure. The Government claimed that this investment would lead to the creation of more than 120,000 jobs and boost the economy by over $300 billion over the next twenty years.[78]

3.36 This section examines the NSW Government's plans for infrastructure investment, including its *Rebuilding NSW* program and State Infrastructure Strategy. It also discusses the key infrastructure projects planned for regional and metropolitan New South Wales.

Rebuilding NSW

3.37 In August 2014, the NSW Government released a discussion paper entitled *Rebuilding NSW,* which provided further detail on the Government's proposal to spend the net proceeds from the leasing of electricity infrastructure. *Rebuilding NSW* was presented as a 10 year, $20 billion infrastructure plan that would provide an opportunity to build new, productive infrastructure essential to meeting the needs of a growing New South Wales, without incurring debt.[79]

3.38 In addition to the projects announced by the Premier, *Rebuilding NSW* identified funding for a number of other priorities, including a focus on schools and hospitals, regional roads, regional water, and sporting and cultural programs.[80]

Role of Infrastructure NSW

3.39 Infrastructure NSW, an independent statutory authority established in 2011 to develop infrastructure strategy, was directed by the New South Wales Government to consider and advise 'on the best use of the forecast $20 billion of proceeds from the long term lease of 49 percent of the electricity transmission and distribution networks'. Infrastructure NSW was asked to update the 2012 State Infrastructure Strategy to factor in the additional funding and include recommendations on priority infrastructure.[81]

3.40 In addition to the development of the infrastructure strategy, Infrastructure NSW has responsibility for Restart NSW, established by the NSW Government in June 2011 to hold

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76 Tabled document, Hon Mike Baird MP, NSW Premier, *Rebuilding NSW: Long term lease of the NSW Electricity Networks*, 11 May 2015, p 13.

77 Answers to supplementary questions, Hon Mike Baird MP, NSW Premier, 19 May 2015, p 1.

78 Evidence, Mr Baird, 11 May 2015, p 2.

79 NSW Government, *Rebuilding NSW Discussion paper*, August 2014, p 3.

80 NSW Government, *Rebuilding NSW Discussion paper*, August 2014, p 3.

81 Evidence, Mr Jim Betts, Chief Executive Officer, Infrastructure NSW, 11 May 2015, p 65.

funds intended for future infrastructure projects in New South Wales. Funds from the release of the Sydney Desalination Plant and Port Botany have been directed to Restart NSW, along with funds from windfall tax revenue and Waratah Bonds.[82]

3.41 Restart NSW will be used 'as the vehicle' for implementing *Rebuilding NSW*, with the proceeds from the partial leasing of New South Wales electricity networks to be added to this fund.[83]

3.42 In making its recommendations on priority infrastructure to be built, Infrastructure NSW must factor into its selection process that thirty percent of Restart NSW funds must be used for regional infrastructure projects.[84]

State Infrastructure Strategy

3.43 Infrastructure NSW released an updated State Infrastructure Strategy in November 2014, which included 83 recommendations targeting infrastructure projects and programs that would 'provide the greatest economic and social benefit to the people of New South Wales'.[85] Infrastructure NSW noted that the Strategy was underpinned by three critical priorities: a competitive global Sydney; supporting population and economic growth in Greater Sydney, and ensuring a competitive and connected regional economy.[86]

3.44 The 2014 State Infrastructure Strategy provided a guide to the infrastructure projects that Infrastructure NSW recommended for implementation through *Rebuilding NSW*. Infrastructure NSW noted that infrastructure projects and programs were selected on the basis that they would 'reduce congestion, support population growth and stimulate productivity across Sydney and regional NSW.'[87]

3.45 Infrastructure NSW proposed that the following areas would benefit from infrastructure investment and reform, now possible through *Rebuilding NSW*:

- urban public transport
- urban roads
- international gateways
- regional transport
- water security
- education

82 NSW Government, *Rebuilding NSW Discussion paper*, August 2014, p 4.

83 NSW Government, *Rebuilding NSW Discussion Paper*, August 2014, p 5.

84 Infrastructure NSW, *State Infrastructure Strategy Update 2014: Recommendations to the NSW Government*, November 2014, p 13.

85 Evidence, Mr Betts, 11 May 2015, p 65.

86 Infrastructure NSW, *State Infrastructure Strategy Update 2014: Recommendations to the NSW Government*, November 2014, p 7.

87 Infrastructure NSW, *Update to the 20-year State Infrastructure Strategy* (25 May 2015), <http://www.infrastructure.nsw.gov.au/state-infrastructure-strategy/state-infrastructure-strategy-update-2014.aspx>

- health
- culture and sport
- energy.[88]

3.46 In addition, Infrastructure NSW included recommendations in relation to improving infrastructure planning, procurement and use to enhance the quality of infrastructure investment and decision making in New South Wales.[89]

3.47 Mr Jim Betts, Chief Executive Officer of Infrastructure NSW, commented on the process that was undertaken to identify priority areas and recommend infrastructure projects:

> Having been given the initial remit by the Premier, we had reference to our founding legislation, the *Infrastructure NSW Act 2011* but also, importantly, to the *Restart NSW Act 2011* which specifies the criteria against which Infrastructure NSW is to consider proposed infrastructure projects and make recommendations. Generally speaking we recommend projects where they have clear strategic merit, where they have a business case behind them and where they have a benefit cost ratio of greater than one. Many of the projects that we were looking at in the context of this State Infrastructure Strategy were at a relatively early stage of development so we were primarily guided by whether they had strategic merit as projects. We were primarily guided by the agenda around promoting economic growth which is there in the Restart NSW legislation.[90]

3.48 Infrastructure NSW noted that many of the projects identified had already been earmarked as part of the 2012 Infrastructure Strategy and that some were already in the initial stages of development. The funding from the leasing of electricity infrastructure, it was asserted, would allow the completion date for these projects to be brought forward considerably.[91]

Priority infrastructure projects

3.49 Infrastructure NSW recommended some 24 different projects, costing $20 billion, that should be funded from the proceeds of *Restart NSW*. These projects, along with their sector, cost and indicative timeframe are outlined in Table 2.

Table 2 Rebuilding NSW

Sector	Project/Program	Reservation	Regional NSW	Funding from
Urban public transport	Sydney Rapid Transit	$7,000m		2016-17
	Sydney's Rail Future 2 Upgrades	$1,000m		2015-16
	Parramatta Light Rail	$600m		2017-18

88 Infrastructure NSW, *State Infrastructure Strategy Update 2014: Recommendations to the NSW Government,* November 2014, p 21.

89 Infrastructure NSW, *State Infrastructure Strategy Update 2014: Recommendations to the NSW Government* November 2014, p 140.

90 Evidence, Mr Betts, 11 May 2015, p 66.

91 Evidence, Mr Betts, 11 May 2015, p 70.

	Bus Rapid Transit and Bus Priority Infrastructure	$300m		2016-17
	Subtotal	**$8,900m**		
Urban roads	WestConnex northern and southern extensions; Western Harbour Tunnel	$1,100m		2015-16
	Pinch Points & Clearways	$400m		2015-16
	Smart Motorways	$400m		2015-16
	Gateway to the South	$300m		2015-16
	Traffic Management Upgrades	$200m		2015-16
	Subtotal	**$2,400m**		
Regional transport	Regional Road Freight Corridor	$2,000m	$2,000m	2015-16
	Regional Growth Roads	$1,000m	$1,000m	2015-16
	Fixing Country Roads	$500m	$500m	2015-16
	Fixing Country Rail	$400m	$400m	2018-19
	Bridges for the Bush	$200m	$200m	2015-16
	Subtotal	**$4,100m**		
Water security	Regional Water Security and Supply Fund	$1,000m	$1,000m	2017-18
Education	Future Focused Schools	$700m		2016-17
	Regional Schools Renewal program	$300m	$300m	2016-17
	Subtotal	**$1,000m**		
Health	Hospitals Growth Program	$600m		2018-19
	Regional Multipurpose Facilities	$300m	$300m	2015-16
	Care Co-location Program	$100m		2016-17
	Subtotal	**$1,000m**		
Culture and Sport	Culture and Arts	$600m		2017-18
	Sports Stadia	$600m		2017-18
Culture and Sport	Regional Environment and Tourism Fund	$300m	$300m	2017-18
	Subtotal	**$1,500m**		
Other opportunities	Corridor Identification and Reservation	$100m		2016-17
TOTAL		**$20,000m**	**$6,000m**	

Source: NSW Government, Rebuilding NSW State Infrastructure Strategy 2014, p 2.

3.50 The NSW Government accepted the above recommendations of Infrastructure NSW and have committed to the allocation of funds against the projects identified as priorities.

Infrastructure for regional New South Wales

3.51 The NSW Government plans to allocate \$6 billion for regional infrastructure projects, representing in excess of 30 per cent of the \$20 billion dollars available through *Rebuilding NSW*. A substantial proportion of regional funds, \$3.7 billion, will be used to improve roads in regional New South Wales, making it easier for regional producers to access their markets.[92]

3.52 According to the NSW Government, freight movements will double by 2031. To respond to this, \$2 billion of regional funding will be allocated to the Regional Road Freight Corridor Program. Several highways linking regional New South Wales would be upgraded including the Newell Highway, the major freight route between Queensland and Victoria. In addition, \$400 million will be invested in rail freight infrastructure.[93]

3.53 Mr Betts commented on the need to invest in regional roads to improve their capacity and support regional population growth:

> That includes programmatic investment, for instance, to improve the capacity of major regional arterials like the Newell Highway, the Great Western Highway, the New England Highway and the Golden Highway to improve north-south and east-west connections. That is so that our primary producers, whether they are in mining or in agriculture, can get their goods efficiently to market. Sometimes it is about investment in major highways—the Pacific Highway, the Princes Highway—and it is about meeting the needs of population growth in regional areas, whether that is in the Hunter, Central Coast, North Coast or the Illawarra. Sometimes it is about local investments in the last mile to enable trucks to get to the grain silos or to the dairy production facilities.[94]

3.54 Regional New South Wales will also have access to funding of \$1 billion which has been reserved to improve water security and supply. Initiatives proposed by the Government for further consideration include installation and upgrade of pipelines and investment in waste water services.[95]

3.55 The remaining funds allocated for regional New South Wales will be used to improve infrastructure for schools and hospitals, and sporting, cultural and environmental initiatives.[96]

Infrastructure for metropolitan New South Wales

3.56 A significant portion of *Rebuilding NSW* funding will be directed to projects designed to improve traffic congestion and public transport services for metropolitan New South Wales. The State Infrastructure Strategy noted that the current level of congestion in Sydney comes at

92 NSW Government, *Rebuilding NSW – Rebuilding Regional NSW*, November 2014, p 1.

93 NSW Government, *Rebuilding NSW – Rebuilding Regional NSW*, November 2014, p 1.

94 Evidence, Mr Betts, 11 May 2015, p 75.

95 NSW Government, *Rebuilding NSW – Rebuilding Regional NSW*, November 2014, p 1.

96 NSW Government, *Rebuilding NSW – Rebuilding Regional NSW*, November 2014, p 1.

a cost of at least \$5 billion per annum, which is predicted to increase to \$8 billion by 2020 if left unchecked.[97]

3.57 The Premier outlined to the committee the importance of addressing congestion in the city:

> In 2016 the cost is expected to be \$6.5 billion. By the time we get to 2036 if we do nothing the problem gets worse and worse. There is an exponential impact and it will increase to just under \$30 billion. It is a significant cost and drag on the economy. That does not take into account quality of life. As the population grows, if we are not investing in this infrastructure to relieve congestion there is also a significant increase in costs for the economy. Doing nothing is not acceptable.[98]

Urban roads

3.58 Several projects to improve roads in and around Sydney have been earmarked for funding through *Rebuilding NSW* with a total allocation of \$2.4 billion reserved for this purpose. One of the most significant of these is the extension of the WestConnex construction project that will ultimately link the M4 and M5 motorways. The NSW Government has directed the WestConnex Development Authority to examine the expansion of the project to include a southern and northern extension to create a new link from the Sutherland Shire in Sydney's south northwards to the Anzac Bridge and Victoria Road.[99]

3.59 Another significant urban roads project is the planned Western Harbour Tunnel which will provide a new route under Sydney Harbour from the WestConnex extension located at Rozelle in the western suburbs of Sydney to northern Sydney. The tunnel will provide a means for travelers to bypass the Sydney central business district.[100]

3.60 The NSW Government has reserved \$1.1 billion of *Rebuilding NSW* funds for investment in both the WestConnex extension and the Western Harbour Tunnel.

Urban public transport

3.61 Sydney's urban public transport will receive \$8.9 billion in funding through *Rebuilding NSW*. The planned rail projects have been described by the NSW Government as providing 'a once in a generation transformation of Sydney's rail network'.[101]

3.62 The Sydney Rapid Transit project, earmarked to receive \$7 billion of funding, will extend the North West Rail Link Service under Sydney Harbour, through the Sydney central business district and on to Bankstown.[102]

3.63 The importance of this project in addressing problems with the current public transport network was outlined by Mr Betts:

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97 NSW Government, *Rebuilding NSW State Infrastructure Strategy 2014*, November 2014, p 1.

98 Evidence, Mr Baird, 11 May 2015, p 3.

99 NSW Government, *WestConnex Building for the future, Investigating new extensions Fact sheet*, June 2014, p 1.

100 NSW Government, *Rebuilding NSW State Infrastructure Strategy 2014*, November 2014, p 11.

101 Transport for NSW, *Sydney Rapid Transit Transforming NSW,* November 2014, p 1.

102 NSW Government, *Rebuilding NSW State Infrastructure Strategy 2014*, November 2014, p 12.

> The problem with the 'more trains' argument is that in many cases our networks are already reaching the limits of their capacity. If you think about the western line out to Parramatta, without significant upgrades to that line, significant improvements to power supply and significant improvements in station capacity we will very soon reach the limits where we can no longer put more trains on that network. Sydney Rapid Transit is such an important project because it breaks that nexus and frees up capacity in the centre of the city. More and more investment is required as we reach limits… At least in Sydney now we are ahead of the curve and we have the capacity to invest before congestion really hits our rail system.[103]

3.64 Funding will also be provided to enhance services and improve capacity on the Western and Northern train lines.

3.65 The NSW Government claimed that the rail infrastructure planned under *Rebuilding NSW* will increase train capacity to the centre of Sydney by 60 per cent during peak hour and allow for an additional 100,000 passengers to travel every hour.[104]

3.66 Other urban public transport initiatives targeted to receive funding are the Parramatta Light Rail project and the Bus Rapid Transit project.[105]

Other programs for metropolitan Sydney

3.67 Like regional New South Wales, metropolitan Sydney will receive funding from *Rebuilding NSW* for health, education, cultural and sport initiatives. Metropolitan health services will receive $600 million in funding which will be directed at improving hospital infrastructure services and reforming health services delivery models.[106]

3.68 Education funding will be directed at addressing the predicted growth in student numbers, particularly in Western and South Western Sydney. The 10 year Future Focused Schools Program will provide funding for the development of new school models and more efficient utilisation of existing infrastructure.[107]

3.69 Sporting infrastructure will receive $600 million which will be used to upgrade Allianz Stadium. In addition options for new infrastructure will be assessed, including rectangular stadia at Parramatta and Sydney Olympic Park and new facilities in outer Western Sydney.[108]

3.70 The NSW Government will develop a cultural infrastructure plan which will focus on establishing an arts precinct in the Sydney central business district, and an Indigenous cultural centre at Barangaroo. A cultural precinct at Parramatta is also planned.[109]

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103 Evidence, Mr Betts, 11 May 2015, p 73.

104 NSW Government, *Rebuilding NSW State Infrastructure Strategy 2014*, November 2014, p 13.

105 NSW Government, *Rebuilding NSW State Infrastructure Strategy 2014*, November 2014, p 12.

106 NSW Government, *Rebuilding NSW State Infrastructure Strategy 2014*, November 2014, p 12.

107 NSW Government, *Rebuilding NSW State Infrastructure Strategy 2014*, November 2014, p 17.

108 NSW Government, *Rebuilding NSW State Infrastructure Strategy 2014*, November 2014, p 20.

109 NSW Government, *Rebuilding NSW State Infrastructure Strategy 2014*, November 2014, p 20.

Chapter 4 Impact on the budget

The previous chapter examined the Government's lease proposal and its plan to apply the proceeds to fund infrastructure development across the State. Notwithstanding the benefits associated with this proposal, several stakeholders to this inquiry argued that the Government's proposal does not make fiscal or economic sense. These arguments centred on concerns about the loss of future Government revenue from the network businesses.

Loss of future Government revenue

4.1 As state-owned corporations, the electricity network businesses return both dividends to the NSW Government as well as income tax equivalent payments. A concern raised by a number of stakeholders was that the Government's proposal involved a loss of this income stream, which would result in worsening fiscal outcomes for the state. However, there was considerable debate about how large this income stream would be in the future.

4.2 A report for the McKell Institute commissioned by the Electrical Trades Union NSW Branch concluded that 'the decision to part with a stable and growing revenue stream' was 'a fundamental misstep in fiscal management that is likely to leave future governments with substantially more challenging budget scenarios'.[110]

4.3 One of the report's authors, Mr Stephen Koukoulas, Managing Director of Market Economics, told the committee that the loss of recurrent revenue from dividend payments would lead to 'a shortfall over the medium-term in the revenue projections'. He explained that this was because the proceeds would be spent on infrastructure that delivers a lower return to the state:

> Sure, there is a sugar hit, if we can call it that, from the revenue that the privatised assets gives to the State budget. … [But] if you are investing in infrastructure that delivers a lower return, even if it is worthy infrastructure but it just happens to deliver a lower return to the State Government budget each year, then by definition you have either got to look for other sources of revenue to balance your budget and maintain your triple-A credit rating, if that is your objective, or be aware that … in a few years' time when you lose the revenue from dividends and other payments from the publicly owned entities, the budget position is worse …[111]

4.4 The Hon Michael Egan AO, a former Treasurer of New South Wales, made the same point in his evidence to the committee:

> … the Government was happy to convey the impression that by selling the poles and wires it would get a windfall of around $13 billion. That, too, is wrong. To the extent that there is a windfall, and I believe there will be, it will be a fraction of the expected net sale price of $13 billion. That is because the $13 billion is not all new money plucked from a newly discovered money tree. Most of it will simply be the current value of the dividend stream that is to be sold off. In other words, the real windfall will simply be the difference between the sale price and the retention value. To the

110 Submission 11, Mr Stephen Koukoulas, p 6; Submission 23, The McKell Institute, p 6.

111 Evidence, Mr Stephen Koukoulas, Managing Director, Market Economics, 18 May 2015, pp 14 and 17.

> extent that any new public works expenditure exceeds that windfall or what is already funded in the budget, it will involve an additional cost that needs to be funded by cutting other expenditures, increasing debt or increasing taxes. You cannot sell income-earning assets and replace them with non-income-earning assets without leaving a budget hole that needs to be filled in one way or another. Nevertheless, any excess in the sale price over the retention value is a windfall and, no matter how modest, it will still be of some benefit and will enable a commensurate expansion of the State's public works program.[112]

4.5 Professor John Quiggin, an economist at the University of Queensland, was also of the view that the proposed lease would have a negative impact on the state's budget. He stated that the transaction will lead to an overall budget deficit:

> The sale of the assets involves the loss of the associated flow of dividends and tax equivalent payments. If the proceeds of asset sales are used to repay debt, the fiscal effect is broadly neutral. If the proceeds are spent, then the foregone revenue, if not replaced by additional taxation, will contribute permanently to the budget deficit and will imply continuously growing debt.[113]

4.6 In contrast, in arguing that the transactions would benefit the state, the Premier, the Hon Mike Baird MP, maintained that the transactions would proceed only if the Government can obtain more from the proceeds of leasing the assets than it would have received had it retained them:

> Obviously the up-front proceeds are nothing more than the net present value of the future dividend stream … for the Government to undertake the lease it must receive more than those dividend streams are worth.[114]

Diminishing dividends?

4.7 In addressing how much the future revenue stream from the network assets is worth, the Government emphasised the potential impact of the recent determinations by the Australian Energy Regulator. While acknowledging that it was 'too early to definitively assess the impact of the AER's decision on the State Budget', the NSW Government adverted to evidence suggesting that 'the dividends and tax equivalent payments from the distribution businesses may fall to zero over the forward estimates'.[115]

4.8 NSW Treasury estimates prepared in conjunction with the Half Yearly Review 2014/2015 indicated that the Regulator's determinations would result in dramatically reduced payments to the state from the three distribution networks, compared with previous years. For instance, as shown in Table 3, while the revenue from dividends and tax equivalent payments was $1.7 billion in 2012/2013, this is forecast to drop to just $152 million in 2017/2018.

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112 Evidence, Hon Michael Egan AO, former NSW Treasurer, 18 May 2015, p 34.

113 Submission 9, Professor John Quiggin, p 4.

114 Evidence, Hon Mike Baird MP, NSW Premier, 11 May 2015, p 3.

115 Submission 10, NSW Government, p 8.

Table 3 Treasury forecasts of payments from distribution networks

Financial year	Total payment from dividends and tax equivalent payments
2012/2013	$1,714 million
2013/2014	$1,440 million
2014/2015	$1,172 million
2015/2016	$400 million
2016/2017	$277 million
2017/2018	$152 million

Tabled document, Hon Mike Baird MP, Premier, Rebuilding NSW: Long term lease of the NSW Electricity Networks, 11 May 2015, p 26.

4.9 In his evidence to the committee, the Premier stated that the lower returns expected in the future 'reflects the increased risk … with owning these businesses with the volatility of income and change in returns'.[116] Echoing these remarks, the Treasurer, the Hon Gladys Berejiklian MP, described the future dividends as 'very volatile' and 'diminishing'.[117]

4.10 These comments were reflected in observations by the Parliamentary Budget Officer concerning the Government's *Rebuilding NSW* proposal:

> The dividends for NSW network electricity businesses have shown very different patterns in recent years, in opposite directions. For the five year period up to 2012-13 dividends rose at a rapid rate, from $426m in 2008-09 to $1098m for dividends from the distribution and transmission businesses in 2012-13. The dividend increases were due largely to increased margins arising from increases to the regulated network tariffs under the previous AER regulatory determination, coupled with significant cost reductions that were unanticipated at the time of the determination. The dividends then fell in 2013-14 and estimated dividends continue to fall further it [sic] the Budget and forward estimates for the reasons outlined above.
>
> It should also be noted annual energy consumption per capita peaked in 2011 and has since been in decline, reversing a long term historical trend of growing energy consumption per person. … These factors mean the past ten years is not a reliable guide to the future ten.[118] [references omitted]

4.11 The Parliamentary Budget Office ultimately agreed that 'future dividends are likely to be lower … than those which applied on average over the previous ten years'.[119] Somewhat more drastically, Mr Brendan Lyon, Chief Executive of Infrastructure Partnerships Australia, told the committee that he could not 'see the networks under current ownership arrangements with the current regulatory determination continuing to return to the budget'.[120]

116 Evidence, Mr Baird, 11 May 2015, p 5.

117 Evidence, Hon Gladys Berejiklian MP, NSW Treasurer, 18 May 2015, p 83.

118 NSW Parliamentary Budget Office, *Briefing note: Costing of Rebuilding NSW* (23 March 2015), pp 9-10.

119 NSW Parliamentary Budget Office, *Briefing note: Costing of Rebuilding NSW* (23 March 2015), p 11.

120 Evidence, Mr Brendan Lyon, Chief Executive, Infrastructure Partnerships Australia, 11 May 2015, p 42.

4.12 In contrast, the Government highlighted 'compelling reasons to believe that the lease will be a very attractive investment proposition',[121] with Mr Lyon similarly affirming that 'the State should be very confident that there will be extensive competition [among investors to lease the assets] and that we will get very good value for these assets'.[122] The interest from investors is discussed further in chapter 6.

4.13 A number of stakeholders to this inquiry highlighted the tension between these two propositions, and stated that the Government could not on the one hand maintain that the future revenue stream from the assets would be significantly lower, but on the other hand insist that the lease will generate strong interest and a good price for the state.

4.14 Dr Richard Denniss, Executive Director of the Australia Institute, stressed that 'the only reason that someone is willing to buy these assets is because they expect the flow of dividends to them to be much greater than the flow of interest they will have to pay'.[123] In outlining his scepticism about the Government's claim that the dividends would 'dramatically decrease' into the future, he explained:

> … the fact that someone would be willing to pay a large price for it suggests that they, too, would be sceptical that dividends will continue to fall. The lost dividends are what are being sold. Again, you are not really selling poles and wires; you are selling a flow of future income. The fact that someone is willing to pay a lot for it is proof that they expect that those future dividends will be very high. The idea that we in a public hearing could be sitting here saying, 'All these dividends are going to fall and stay down low, but don't tell people who are going to come and buy them', beggars belief.[124]

4.15 These concerns were echoed by Emeritus Professor Bob Walker and Dr Betty Con Walker, who contended that the network assets were much more valuable than the Government has stated:

> If two of the agencies slated for partial or full sale had prepared their financial statements on the same basis as listed public companies, they would have reported returns on shareholders' funds of 80% to 82% per annum – these can only be described as 'super profits'.[125]

4.16 Professor Walker and Dr Con Walker claimed that the Government had used a valuation method designed to deliberately understate the reported returns on the network assets in order to 'prepare the ground' for privatisation.[126] Professor Walker told the committee that the level of dividends received by the Government from the network businesses 'is negotiated between agencies and shareholding Ministers', and that '[i]n effect, Government can manage the level of dividends'.[127] Dr Con Walker stated that it was therefore 'nonsense' to claim a relationship

121 Submission 10, NSW Government, p 13.

122 Evidence, Mr Lyon, 11 May 2015, p 54.

123 Evidence, Dr Richard Denniss, Executive Director, The Australia Institute, 15 May 2015, p 44.

124 Evidence, Dr Denniss, 15 May 2015, p 52.

125 Submission 34, Emeritus Professor Bob Walker and Dr Betty Con Walker, p 1.

126 Submission 34, Emeritus Professor Bob Walker and Dr Betty Con Walker, p 1.

127 Evidence, Emeritus Professor Bob Walker, Emeritus Professor of Accounting, University of Sydney, 18 May 2015, p 47.

between the lower revenues determined by the Australian Energy Regulator and lower dividend payments to the Government.[128]

4.17 Along similar lines, Dr Denniss noted that there was 'incredible discretion' from an accounting point of view in how future distributions are calculated, and explained that:

> The profitability of an entity and the current distribution of dividends are really unrelated. In the long run they have to be related. In the short term, they have nothing to do with each other.[129]

4.18 Dr Denniss stated that he could not see 'any other real explanation' than that Treasury was 'pushing the dividends down'.[130]

4.19 Treasury officials, however, were dismissive of these arguments and denied that Treasury had any role to play in setting the dividends paid by the network business. The Secretary of NSW Treasury, Mr Philip Gaetjens, told the committee that:

> In essence the businesses run their businesses, they come up with a profit and we have a pretty formulaic approach to dividends, if you like; either it is 70 or 80 per cent of net profit after tax. I think we have been doing some further finessing of that approach in terms of looking not just at the net profit after tax but looking at their business drivers as well. But there is no manipulation.[131]

4.20 Nevertheless, the power of the Treasurer to direct that the State-owned electricity businesses made dividend and tax equivalent payments is well-established in legislation, in the *State Owned Corporations Act 1989* at ss 20S (Dividends) and 20T (Tax equivalents). The *Public Finance and Audit Act 1983* also deals with the Treasurer being able to direct statutory bodies to pay tax-equivalents: see ss 58B, 59B and 58C, with the latter provision setting out how the Treasurer-appointed Tax Assessor sets the amount to be paid.

4.21 In responding to concerns about the impact of its proposal on the budget, the Government pointed to numerous fiscal and economic benefits that would only arise if its proposal is implemented. Overall, it predicted that the transaction would lead to 'a significant improvement in the State's financial position', not to mention 'an improvement in the Budget result (Budget surplus/deficit) over the forward estimates'.[132]

4.22 In terms of revenue foregone from the lease of the network assets, the Government noted that the budget will benefit from commonwealth incentive payments and earnings on the investment of the proceeds, and stated that this 'will more than offset the reduction in revenue from distributions from the businesses and the impact of the additional infrastructure investment program'.[133]

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128 Evidence, Dr Betty Con Walker, Principal, Centennial Consultancy, 18 May 2015, p 50.

129 Evidence, Dr Denniss, 15 May 2015, p 53.

130 Evidence, Dr Denniss, 15 May 2015, p 53.

131 Evidence, Mr Philip Gaetjens, Secretary, NSW Treasury, 18 May 2015, p 87.

132 Submission 10, NSW Government, p 9.

133 Submission 10, NSW Government, p 9.

4.23 The Government also argued that the transaction will lead to a significant reduction in the state's debt over the forward estimates period. The Premier pointed out that, were the transaction to proceed:

> … we end up both in the total State sector with a significant reduction in our debt, which goes to circa $50 billion down to about $20 billion, and net Government sector debt, which is actually eliminated. So we end up in a much stronger position.[134]

4.24 The Treasurer confirmed that the lease proceeds would be used to pay off the total borrowings by the four network businesses, estimated to reach approximately $21 billion in 2014-15.[135] The three network businesses that are the subject of the proposed transactions carry debt that is estimated at approximately $15 billion.[136] The committee notes that the gross sale price for the leases would therefore be required to be close to $30 billion.

Loss of loan guarantee payments

4.25 Another concern raised about the Government's valuation of future returns from the network assets was that it did not include loan guarantee payments paid by the networks to Treasury Corporation. These payments represent 'the Government fee from the businesses that compensates the State for the risk of guaranteeing the electricity networks' debt', which the Government acknowledged was 'the largest component of the reduction in revenue'.[137]

4.26 In his evidence to the committee, Professor Walker asserted that if the loan guarantee payments to Treasury Corporation were 'not included in the calculation of retention value then the Government indicates it is prepared to sell the assets for far less than they are worth'.[138]

4.27 The Government strongly disputed this argument, and stated that foregoing the loan guarantee payments involves a commensurate reduction in risk: '[a] reduction in [this] income is offset, dollar-for-dollar, by a reduction in the risk-adjusted profile of the State's balance sheet'.[139]

4.28 The Government also stated that this reduced risk would lead to reduced borrowing costs for the state, and noted that Victoria's borrowing costs have averaged around 3 basis points less than NSW over 2014.[140]

A $300 billion boost to the economy?

4.29 A critical component of the Government's claim that its proposal would benefit the budget overall is its prediction of a significant increase in state taxation revenues from the forecast

134 Evidence, Mr Baird, 11 May 2015, p 17.

135 Evidence, Ms Berejiklian, 18 May 2015, p 72.

136 Evidence, Dr Con Walker, 18 May 2015, p 53.

137 Submission 10, NSW Government, p 9.

138 Evidence, Professor Walker, 18 May 2015, p 47.

139 Answers to questions on notice, Hon Mike Baird MP, NSW Premier, 19 May 2015, p 1.

140 Submission 10, NSW Government, p 9.

$300 billion boost to the economy and the creation of 120,000 jobs as part of the *Rebuilding NSW* program.

4.30 The Treasurer informed the committee 'that the benefits of the transactions upfront and the increased economic activity that the transactions will generate will far outweigh any perceived income risks'.[141]

4.31 Mr Gaetjens emphasised that the forecast boost to the economy as a result of the lease and associated infrastructure investment was over and above that which would normally be expected:

> Two things I think come into play here: one is that the Deloitte report suggests that there is an increase to economic growth above and beyond what would be expected normally, as a result of the lease and as a result of the reinvestment of the funds from that lease, over a period that is estimated to be about $300 billion. [142]

4.32 Mr Gaetjens also explained that the relationship between gross state product (GSP) and the level of state taxes received has been historically stable, and hence any expected increase in gross state product due to the lease and infrastructure investment program will lead to an increase in tax receipts:

> In terms of the tax receipts, New South Wales has a pretty stable relationship with its tax revenue to GSP of about 12.8 per cent. If you apply that 12.8 per cent to the increase in GSP you will get the answer of increased tax revenue.[143]

4.33 The committee notes that using the relationship identified by Mr Gaetjens that tax receipts to gross state product is about 12.8 per cent, the expected increase in taxation receipts due to the uplift in economic activity from the leasing transactions and *Rebuilding NSW* program is $38.4 billion over the years to 2035/36.[144]

4.34 In making these assertions the Government relied heavily on the economic modelling done by Deloitte Access Economics, who forecast the $300 billion uplift to the economy. The Government's heavy reliance on this report made it worthy of further investigation by the committee.

The Deloitte Access Economics Report

4.35 As noted in chapter 3, in 2014 Deloitte Access Economics was engaged by the NSW Government and Infrastructure NSW to model the effects on the state economy of the Government's leasing and infrastructure investment proposal. The Deloitte report used a 'computable general equilibrium model' to assess the economic impact of the lease and infrastructure program. Critically for the Government, the modelling found that *Rebuilding NSW* would result in the State's gross state product in 2035/36 being $30.9 billion larger than it otherwise would have been, with a total increase over 20 years in gross state product of almost $300 billion. The report stated:

141 Evidence, Ms Berejiklian, 18 May 2015, p 73.

142 Evidence, Mr Gaetjens, 18 May 2015, p 76.

143 Evidence, Mr Gaetjens, 18 May 2015, p 76.

144 That is, 12.8 per cent of $300 billion.

> The main driver of this growth is better transport infrastructure attracting and retaining more workers in Sydney and regional NSW. Improvements in the efficiency of the electricity networks also add to the productive capacity of the economy. The combined impact of these two growth drivers is greater than the sum of each taken individually.[145]

4.36 The Deloitte modelling separated the impact of the actual leasing itself, and that of the associated infrastructure building program. Of the increase in gross state product in 2035-36 of $30.9 billion, around $4.3 billion of this was from the partial lease and $26.6 billion from the infrastructure investment.[146]

4.37 Deloitte attributed the benefits of the leasing and infrastructure investment plan to three main areas: capital expenditure, population increases and productivity increases:

> The positive impact of Rebuilding NSW on GSP is due to increases in capital expenditure, population and productivity, that is:
>
> - In the short run, the increase in economic activity is associated with the large **capital expenditures** of Rebuilding NSW and the SIS [State Infrastructure Strategy].
> - Over time, these benefits transition towards the population and productivity components.
> - In the long run, **population** increases as better transport infrastructure reduces commuting time and improves freight productivity, enhancing quality of life which attracts and retains more people in Sydney and regional NSW.
> - In terms of **productivity**, electricity and transport infrastructure are fundamental inputs into almost every sector in the economy. A reduction in the price of electricity and the cost of transporting goods and people thus leads to cost savings for a range of industries. These cost savings are then passed through to lower prices for consumers. Lower prices free up income which can then be spent on goods and services in other areas of the economy, which ultimately leads to increased economic output and higher levels of economic wellbeing.[147]

4.38 Deloitte identified the increase in population as a key driver in the forecast increase in gross state product. The report explained that this was because population increases lead to greater productivity and therefore jobs:

> In the long run, population increases as better transport infrastructure reduces commuting time and improves freight productivity, enhancing quality of life which attracts and retains more people in Sydney and regional NSW. More populous and dense cities are associated with deeper markets and have been found to be, generally, more productive, connected and skilled than smaller cities (Department of Infrastructure 2014).

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145 Deloitte Access Economics, *Economic Impact of State Infrastructure Strategy – Rebuilding NSW*, November 2014, p 6.

146 Deloitte Access Economics, *Economic Impact of State Infrastructure Strategy – Rebuilding NSW*, November 2014, p 16 and p 27.

147 Deloitte Access Economics, *Economic Impact of State Infrastructure Strategy – Rebuilding NSW*, November 2014, p ii.

> By 2035-36 NSW's population is estimated to increase by around 260,200 beyond what is expected in the baseline. This is also associated with an increase in employment of around 122,500 full time equivalent jobs.[148]

4.39 The Deloitte report attracted some criticism during the course of the inquiry. The Hon Michael Egan, a former Treasurer of New South Wales, supported the Government's leasing proposals but nevertheless described the Deloitte report as 'nonsense':

> I think they gathered all their data together and put it through a Thermomix, which is renowned for cooking up anything you want to cook up. It is absolute nonsense. … The whole of their analysis is deficient. Firstly, they assume that there is a windfall of $20 billion—a figure that has just come from nowhere. Secondly, they assume that we are sort of a closed off economy like in North Korea so nothing leaks out and nothing leaks in. It is just nonsense.[149]

Committee comment

4.40 The committee acknowledges the concerns expressed by numerous stakeholders in this inquiry about the impact of the partial leasing of the electricity transmission and distribution businesses on the budget. The committee also acknowledges that there appears to be some disconnect between the Government's claim that the revenue streams from the network assets will significantly diminish over time, yet is confident in achieving a good price because of strong interest from investors.

4.41 In this regard, the committee accepts at face value the proposition that a $300 billion boost to the economy would benefit the budget through increased tax revenue. However, the committee is concerned about suggestions that the evidence underpinning the Government's claimed $300 billion boost – the Deloitte Access Economics report – is not robust.

4.42 Given how pivotal this $300 billion boost to the economy is to the Government's case for reform, the committee believes that it should be subject to an additional layer of scrutiny. It is important that the integrity of the report's assumptions, methodology and conclusions are rigorously tested, so as to assure both the Parliament and the general public that the Government's proposal will, in fact, benefit the state's fiscal position.

4.43 The committee has identified two firms experienced in 'computable general equilibrium' modelling which would be suitable to undertake this review:

- ACIL Allen Consulting, one of Australia's leading providers of economic modelling services to both the public and private sectors. They are experienced in developing and applying a range of economic modelling techniques, including computable general equilibrium modelling, to solve complex economic problems and measure the impacts on the economy.[150]

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148 Deloitte Access Economics, *Economic Impact of State Infrastructure Strategy – Rebuilding NSW*, November 2014, p 11.

149 Evidence, Mr Egan, 18 May 2015, p 43.

150 ACIL Allen Consulting, *Economic modelling and impact analysis* (21 May 2015), <http://www.acilallen.com.au/expertise/3/economic-modelling-and-impact-analysis>

- The Centre of Policy Studies based at Victoria University, an independent research unit which undertakes economic-modelling research for governments and businesses in many parts of the world. They are world-leading experts in computable general equilibrium modelling and policy analysis.[151]

4.44 There may also be other firms with appropriate expertise. Accordingly, the committee recommends that the NSW Government commission an independent review of the Deloitte Access Economics report entitled *Economic Impact of State Infrastructure Strategy – Rebuilding NSW* by a suitably qualified modeling expert before any legislation is enacted, with the results to be published when complete.

Recommendation 1

That the NSW Government commission an independent review of the Deloitte Access Economics report entitled *Economic Impact of State Infrastructure Strategy – Rebuilding NSW* by a suitably qualified modelling expert before any legislation is enacted, with the results to be published when complete.

151 Centre of Policy Studies, *About the Centre* (21 May 2015), <http://www.vu.edu.au/centre-of-policy-studies-cops/about-the-centre>

Chapter 5 Impact on network pricing

Another issue central to the debate about the Government's proposal is the impact it will have on electricity prices. While the Government claimed that prices will fall under the leasing scenario, other stakeholders provided a number of arguments that disputed this assertion. This chapter examines these competing claims.

Will prices rise or fall?

5.1 Several broad themes emerged in the debate about the impact of the Government's proposal on electricity network prices. These included competing arguments about whether prices are generally lower in jurisdictions where the electricity networks have been privatised; whether privatised networks are more efficient from a capital investment perspective and an operating costs perspective; and whether consumers could be assured that prices would be lower through the Government's appointment of an Electricity Price Commissioner.

Comparisons across jurisdictions

5.2 One of the key claims by the Government and others supporting the proposal was that it would lead to lower electricity network prices. In this regard, the Government referred to a number of reports and sources indicating that networks naturally become more efficient over time as a result of privatisation. One such study was the Productivity Commission's review of electricity networks in 2013, which noted that state-owned networks have conflicting objectives, thereby reducing their efficiency:

> State-owned network businesses have conflicting objectives, which reduce their efficiency and undermine the effectiveness of incentive regulation. Their privately-owned counterparts are better at efficiently meeting the long-term interests of their consumers.[152]

5.3 The Government also cited statements made by the Chairman of the Australian Competition Consumer Commissioner, Mr Rod Sims, a strong supporter of privatisation. Mr Sims has put on the public record his view that NSW electricity prices 'would now be significantly lower had the NSW electricity network assets been privatised, say, five years ago'.[153] In his view:

> If the private sector owns them, they will run them more efficiently and therefore, given a constant regulatory regime, prices in NSW will be lower in future if they are privately owned. You've only got to look at the performance of the publicly owned networks against the private ones – its chalk and cheese.[154]

152 Productivity Commission, *Electricity Network Regulatory Frameworks, Report No. 62* (9 April 2013), p 3, <http://www.pc.gov.au/inquiries/completed/electricity/report/electricity-volume1.pdf.>

153 Cited in NSW Government, *Rebuilding NSW Discussion Paper* (August 2014), p 13, <https://www.nsw.gov.au/sites/default/files/miscellaneous/rebuilding-nsw-discussion-paper-august-2014.pdf>

154 Cited in Submission 10, NSW Government, p 14.

5.4 This observation was also reflected in several pieces of research relied on by the Government comparing electricity pricing across different states. Ernst & Young, engaged by NSW Treasury to analyse the long term trends in electricity prices and costs, reported that network prices for typical residential customers in Victoria and South Australia have fallen since privatisation, whereas network prices in Queensland and New South Wales, where assets remain stated owned, have risen by over 100 per cent in the same period.[155]

5.5 The Government also relied on empirical research conducted by the Grattan Institute. In its submission to the committee, the Grattan Institute identified that state-owned network businesses spend more on capital infrastructure and have higher operating costs than their privately operated counterparts:

> The proposed transactions should deliver lower prices for electricity consumers than would have been achieved if the assets had continued to be owned and operated by the Government. This conclusion is based on a quantitative analysis of the outcome of privatisation of similar assets in Victoria and South Australia and in comparison with government-owned assets in New South Wales and Queensland. Our analysis indicates that, on average, the government-owned businesses spend more on capital infrastructure and more on operating that infrastructure. These higher costs are reflected in prices.[156]

5.6 Similar findings were contained in reports by Frontier Economics,[157] Uniting Care Australia,[158] the Public Interest Advocacy Centre[159] and the Council of Social Service of New South Wales (NCOSS).[160] According to the Premier, these findings demonstrate that 'the bills of every consumer, private and business, have been significantly higher in New South Wales than they should have been on the back of public ownership'.[161]

5.7 Infrastructure Partnerships Australia, a think tank concerned with the infrastructure market, was also strongly of the view that the Government's proposal would result in lower prices. Relying on the research referred to above, Chief Executive Mr Brendan Lyon noted:

> The public interest is clearly about getting the price of electricity down and it is very clear that the way to get that down is to transfer the operation and ownership of these assets across to private managers as has happened in other States.[162]

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155 Ernst & Young, *Electricity network services: Long term trends in prices and costs*, 2014, p 3, Attachment A to Submission 10, NSW Government.

156 Submission 32, Grattan Institute, p 2.

157 Frontier Economics, *Regulatory arrangements for network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, p 37, Attachment D to Submission 10, NSW Government.

158 Uniting Care Australia, *Network tariffs applicable to households in Australia: empirical evidence*, 2015, p 5, Attachment F to Submission 10, NSW Government.

159 Submission 13, Public Interest Advocacy Centre, Attachment 2, p 26.

160 Submission 21, Council of Social Service of New South Wales, Attachment 1, p 60.

161 Evidence, Hon Mike Baird MP, NSW Premier, 11 May 2015, p 4.

162 Evidence, Mr Brendan Lyon, Chief Executive, Infrastructure Partnerships Australia, 11 May 2015, p 51.

A critique of these claims

5.8 A number of stakeholders disputed the claim that electricity prices would fall as a result of the proposed partial lease of the electricity networks and outlined a number of flaws in the arguments put forward by supporters of the proposal.

5.9 One key criticism related to the findings by Ernst & Young and others that electricity network prices were lower in states where the networks have been privatised. For example, the McKell Institute claimed that such findings failed to properly account for factors beyond the control of the governance of the network, like the physical span of the network or state-based taxes and regulations:

> Regrettably, previous studies that have found in favour of electricity privatisation haven't undertaken the necessary depth of analysis and have unfairly provided comparisons between companies that could not be reasonably considered like-for-like.[163]

5.10 Mr John Pierce, Chairman of the Australian Energy Market Commission, also noted that while customer electricity prices are higher in South Australia than compared to Victoria or New South Wales, the main reason for this is the differences in fuel sources, geography and the nature of the networks across the jurisdictions:

> The relativities between the jurisdictions that we observe now are comparable to how they have been for many decades and, in the main, that is a reflection of differences in fuel sources, geography, the nature of the networks in those jurisdictions.[164]

5.11 Frontier Economics noted the difficulty in comparing the costs of the electricity businesses in the different states. They stated that:

> In considering the data in this section, it is important to note that these measures of expenditures and prices do not adjust for network customer density, geographic terrain or other key factors influencing network costs and network reliability. Because the data cannot be directly compared on a like-for-like basis, definitive conclusions about the drivers of network outcomes cannot be formed.[165]

5.12 Professor John Quiggin, an economist at the University of Queensland, also disputed the research by Ernst & Young, and argued that its report looked only at 'the change in distribution charges over a cherry-picked time interval' between the different states.[166] According to Professor Quiggin, the more relevant comparison is the average price charged to households with medium levels of electricity use. He referred to the Australian Energy Market Commission's *2013 Residential Electricity Price Trends report*, which found that 'the lowest prices were in Queensland, under public ownership, and the highest in South Australia under privatisation', as shown in Table 4.[167]

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163 Submission 11, Mr Stephen Koukoulas, p 9; Submission 23, The McKell Institute, p 9.

164 Evidence, Mr John Pierce, Chairman, Australian Energy Market Commission, 15 May 2015, p 25.

165 Frontier Economics, *Regulatory arrangements for network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, p 28, Attachment D to Submission 10, NSW Government.

166 Submission 9, Professor John Quiggin, p 11.

167 Submission 9, Professor John Quiggin, p 11.

Table 4 2013 Residential Price Trends

State	Average residential price (c/kwh)
Queensland	23.71
New South Wales	27.86
Victoria	27.66
South Australia	31.27

Submission 9, Professor John Quiggin, page 11

5.13 Nevertheless, Professor Quiggin was not of the view that privatisation would necessarily lead to higher electricity prices::

> I do not believe the lease proposal will have a substantial impact on prices either way. The large increases in prices we have seen have been associated with the process of reform. Of course, the claim that privatisation is necessary to complete reform has been one of the main arguments presented in justification. I do not believe that stacks up.[168]

5.14 Another view expressed to the committee was that comparisons across different jurisdictions demonstrate that publicly owned networks are in fact more efficient than those that are privately operated. The McKell Institute found that:

> … after accounting for the varying physical spans of each network, privately-owned network providers operating in the National Electricity Market were in fact underperforming relative to their publicly-owned counterparts – including in NSW.[169]

Driving down costs

5.15 In its determinations the Australian Energy Regulator outlines the total revenue that a transmission and distribution company is allowed to earn, and it is then up to the electricity businesses to manage their costs. The costs most relevant to pricing can be grouped into two types – capital investment and operating costs.

5.16 Capital investment is a major driver of network pricing outcomes, feeding into the regulator's calculation of both return on capital and return of capital.[170] As noted in chapter 2, return on capital is the largest cost component for networks, accounting for around half of a network's allowed revenue. Operating expenditure is also important, accounting for about thirty per cent of the network's allowed revenue.[171]

5.17 These costs, and arguments as to whether the private sector or publicly owned electricity companies are the best manager of these costs, are explored in the following section.

168 Evidence, Professor John Quiggin, Economist, University of Queensland, 15 May 2015, p 35.

169 Submission 11, Mr Stephen Koukoulas, p 10; Submission 23, The McKell Institute, p 10.

170 Submission 25, Australian Energy Market Commission, p 11.

171 Submission 25, Australian Energy Market Commission, p 10.

Capital investment costs

5.18 Several inquiry participants made specific arguments focusing on capital expenditure, and put forward the view that privately-operated network businesses are more efficient in this regard. For example, the Chief Executive Officer of the Energy Supply Association of Australia, Mr Matthew Warren, explained to the committee that the political cycle can interfere with efficient investment by state owned electricity utilities:

> Commercially owned networks plan like a normal business and they invest over smoother timeframes. The governance arrangements for Government-owned networks can be interfered with by the political cycle. There can be pressure on those businesses to return greater revenues to their owners or to suppress increases in electricity prices. Therefore, they are more volatile, and we have seen that in New South Wales and Queensland in particular.[172]

5.19 By way of example, Mr Warren referred to a series of blackouts that occurred in New South Wales and Queensland in 2004, after which both state Governments spent 'large sums of money' setting reliability standards 'at levels which were probably unnecessary but over-responding to the political pressure of the blackouts at the time'.[173] The committee notes, however, that the setting of reliability standards is not now a function of ownership. Mr Kieran Donoghue, General Manger, Policy, Energy Supply Association of Australia, explained further:

> [T]he reliability issues arose because of low levels of investment in the preceding decade, which was done so that governments did not have to push through price rises to pay for that. So the response to that was like a catch-up investment and one that occurred at the time in the aftermath of the global financial crisis when capital became more expensive for a while.[174]

5.20 The committee notes however that the regulation of network reliability and investment changed dramatically in the mid-2000s.

5.21 Mr Warren and Mr Donoghue were of the view that these inefficiencies were 'endemic to the situation where Governments own assets that are long lived', rather than being the result of the incompetence of any one Government.[175]

5.22 In direct contrast to the evidence given by the Energy Supply Association of Australia, the McKell Institute argued that publicly-owned networks are able to take a longer-term view in terms of their capital investment, making them more efficient in the long run:

> Private networks are incentivised to deliver a consistent capex program in order to deliver on their expectations as a utility investment – that is, stable but growing returns for investors. Government owned networks are less beholden to this requirement and therefore have greater flexibility to invest now for a longer-term

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172 Evidence, Mr Matthew Warren, Chief Executive Officer, Energy Supply Association of Australia, 11 May 2015, pp 28 and 30.

173 Evidence, Mr Warren, 11 May 2015, p 32.

174 Evidence, Mr Kieran Donoghue, General Manager, Policy, Energy Supply Association of Australia, 11 May 2015, p 32.

175 Evidence, Mr Donoghue, 11 May 2015, p 32.

> horizon. Over the long term, this is likely to deliver better outcomes for end users on a cost-efficiency basis.[176]

5.23 In his evidence to the committee, one of The McKell Institute report co-authors, Mr Stephen Koukoulas, emphasised the importance of taking a long-term view in regards to capital expenditure, given the challenges facing the state in the future. He stated:

> If you take a step back and think well, we know that New South Wales' population is increasing by roughly a million people every six or seven years, and where they live and where they work will require electricity—of course it will. … I daresay a publicly owned entity would be a little bit more inclined to anticipate that growth and build their capacity early—this is where some of the criticism of gold-plating and those sorts of things come in. On the other hand, a private entity may be reluctant to do that and instead have a slightly shorter-term focus on current profitability rather than undertaking the capex and hurting their 'shareholders' in the short term.[177]

5.24 The unions also strongly disputed the notion that privately-operated networks are more capital expenditure efficient. Mr Steve Butler, Secretary, Electrical Trades Union NSW Branch, outlined the cyclical nature of network capital investment in the industry. He told the committee that while NSW has recently invested in its network, soon Victoria and South Australia will need to do the same:

> In what I hear politicians call gold-plating, there was about a $16 billion spend in New South Wales to bring the infrastructure up to speed, but very necessary. What has happened in Victoria and South Australia is that they are on the bottom end of their cycle. New South Wales has invested and the network is very high. Victoria and South Australia have not invested and the network is a third lower than in New South Wales. Very soon they will have to start pouring some coin into the infrastructure in Victoria and South Australia to get it up to the New South Wales level … When they do that, their power prices will go up.[178]

5.25 This argument was directly addressed in the Government-commissioned report by Frontier Economics entitled *Regulatory arrangements for electricity network pricing*. It found that the average age of the Victoria distribution networks did not appear to be higher, and if anything is lower than the New South Wales networks. Frontier Economics therefore rejected the notion that 'the Victorian networks will soon need to embark on a large-scale wave of capital expenditure, as New South Wales networks have done over the last decade'.[179]

5.26 Overall, the Frontier Economics report found that the evidence 'does not support the view that capital expenditure has been increasing at a faster rate for privately owned network businesses'.[180] It referred to a study conducted by the Productivity Commission in 2013, which found that:

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176 Submission 11, Mr Stephen Koukoulas, p 19; Submission 23, The McKell Institute, p 19.

177 Evidence, Mr Stephen Koukoulas, Managing Director, Market Economics, 19 May 2015, p 18.

178 Evidence, Mr Steve Butler, Secretary, Electrical Trades Union NSW Branch, 15 May 2015, pp 11-12.

179 Frontier Economics, *Regulatory arrangements for network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, p 31, Attachment D to Submission 10, NSW Government.

180 Frontier Economics, *Regulatory arrangements for network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, p 31, Attachment D to Submission 10, NSW Government.

> … distribution network capital expenditures were much higher in absolute terms and generally higher in relative terms for government-owned networks than for privately-owned networks.[181]

5.27 Mr Vince Graham, Chief Executive Officer of Ausgrid, Essential Energy and Endeavour Energy, also linked private ownership with a lower capital expenditure, on the basis that:

> … private sector owners have developed strong financial discipline in the development and delivery of their capital programs. Any capital investment proposal in any business must satisfy three basic questions. Is the investment necessary, is it designed to the right standard and is the delivery model efficient?[182]

5.28 One factor identified as contributing to high network costs paid in New South Wales was the size of the networks' regulatory asset bases, namely 'the poles and wires and substations that are owned and operated by those businesses'.[183] Dr Gabrielle Kuiper, Senior Policy Officer with the Public Interest Advocacy Centre expressed concern that 'regulatory failure has combined with Government ownership to lead to large, in fact, excessive regulated asset bases and stranded assets'.[184] Dr Kuiper referred the committee to research commissioned by the Centre which concluded that 'households and businesses in New South Wales are paying twice the amount per kilowatt hour [for capital investment costs] than are households and businesses in Victoria' as a result.[185]

Operating costs

5.29 Operating costs include items like network control, switching, maintenance, vegetation management under power lines, and general running costs. As noted, operating costs comprise some 30 per cent of a network's allowed revenue.

5.30 Several stakeholders argued that publicly-owned networks have higher operating costs, particularly labour costs. Mr Graham, Chief Executive Officer, Ausgrid, Essential Energy and Endeavour Energy, put forward the view that a 'public sector culture' was to blame: 'Public ownership, politically powerful unions and amenable management have all combined to deliver union agreements that drive higher labour costs and higher electricity bills'.[186]

5.31 Mr Graham also argued that although the NSW distribution networks had improved their efficiencies over the last three years, there was a danger of these efficiencies going backwards if they remain in public ownership, particularly in terms of operating costs:

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181 Frontier Economics, *Regulatory arrangements for network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, p 31, Attachment D to Submission 10, NSW Government.

182 Tabled document, Mr Vince Graham, Chief Executive Officer, Ausgrid, Essential Energy and Endeavour Energy, *Selling off electricity networks will give NSW cheaper power bills*, 11 May 2015, p 1.

183 Evidence, Dr Gabrielle Kuiper, Senior Policy Officer, Public Interest Advocacy Centre, 18 May 2015, p 3.

184 Evidence, Dr Kuiper, 18 May 2015, p 3.

185 Evidence, Dr Kuiper, 18 May 2015, p 3.

186 Tabled document, Mr Vince Graham, Chief Executive Officer, Ausgrid, Essential Energy and Endeavour Energy, *Selling off electricity networks will give NSW cheaper power bills*, 11 May 2015, p 1.

> … I have some criticisms of the public sector culture of these organisations. I have some criticism in that article of the ongoing union shadow management of these organisations that has seriously restricted management prerogative—middle and supervisory managers getting on and doing the job in the interests of the consumers of New South Wales. I hold a firm personal view that that union shadow management creates a fundamental conflict within the employees, and I believe there is an ever present danger of recidivism under public sector ownership.[187]

5.32 Mr Graham also observed that, notwithstanding the recent efficiency improvements, '[t]here should not have been the extent of that inefficiency for us to pull out over the past three years'.[188]

5.33 The Hon Michael Egan, a former New South Wales Treasurer, agreed with the notion that publicly-owned utilities were more susceptible to so-called employee 'feather-bedding'. He told the committee:

> There are a lot of nervous nellies in all political parties. This is a problem when government owns these utilities. Local members of parliament respond to their constituents. If Bill Bloggs is going to be moved from one depot to another depot, he goes to his local member and the local member gets onto the Minister and the Minister gets onto the general manager. You cannot operate like that—it is ridiculous.[189]

5.34 In terms of operating costs more generally, Frontier Economics examined statistics from the Australian Energy Regulator and concluded that the evidence 'does not support the view that operating expenditure has been increasing at a faster rate for privately owned network businesses'.[190]

5.35 Other inquiry participants questioned the links drawn between operating costs and public or private ownership. For example, the McKell Institute report found that 88 per cent of the variation in operating expenditure per gigawatt hour between networks in different states was directly attributable to differences in the physical span of networks, regardless of their status as public or privately-owned entities.[191] As the report explained:

> … It is self-evident that a physically larger network will have higher operating expenditures. The cost to provide a utility to a disparate population is expected to be higher, in part because of the increased labour and transport costs associated with servicing a physically larger network. …
>
> … When a regression analysis of the impact of physical span on upkeep costs per customer was undertaken, there was a strong, simple and intuitively appealing correlation between network costs and line length. In other words, the greater the

187 Evidence, Mr Vince Graham, Chief Executive Officer, Ausgrid, Essential Energy and Endeavour Energy, 11 May 2015, p 59.

188 Evidence, Mr Graham, 11 May 2015, p 59.

189 Evidence, Hon Michael Egan AO, former NSW Treasurer, 18 May 2015, p 38.

190 Frontier Economics, *Regulatory arrangements for network pricing: A report prepared for the NSW Department of Premier and Cabinet*, 2014, p 33, Attachment D to Submission 10, NSW Government.

191 Submission 11, Mr Stephen Koukoulas, p 33; Submission 23, The McKell Institute, p 33.

> distance that has to be serviced, the higher the cost per customer of running the network upkeep aspect of the business.[192]

Measures to ensure lower prices for consumers

5.36 As part of its package of reforms the Government has also proposed the appointment of Professor Allan Fels as Electricity Price Commissioner, as outlined in chapter 3. The Commissioner's role is essentially twofold.

- Pre-transaction: Professor Fels will review the proposed lease transactions to ensure they will not put upward pressure on prices in the short, medium and long term. In his evidence before the committee, the Premier confirmed that the transactions would not proceed without Professor Fels' sign-off, effectively giving him a veto-power.[193] In performing his review, Professor Fels will be given access to all relevant documents, including those that are commercial-in-confidence.[194]
- Post-transaction: Professor Fels will be provided with the network businesses' annual statement of compliance with the price guarantee, namely the guarantee that network charges will be lower in 2019 than they were in 2014, and that savings from greater efficiency will be passed on to consumers. Professor Fels will have the power to 'refer any concerns' to the Australian Energy Regulator or the Australian Competition and Consumer Commission.[195]

5.37 The Treasurer informed the committee that Professor Fels will be supported by a secretariat staffed by officials from the Department of Premier and Cabinet.[196]

5.38 Notwithstanding these measures, the Electrical Trades Union expressed concern that any savings by the networks would not be passed on by the retailers to consumers:

> … [T]here is no guarantee under private ownership that any reduction in future network pricing will be passed on to consumers due to the fact that the Baird Government moved to fully deregulate the retail electricity market from 1 July, 2014. This means that there is no guarantee and no mechanism to force electricity retailers to pass on any future network price reduction.[197]

5.39 This concern was rejected by the Australian Energy Regulator, who asserted that competition in the deregulated retail market and the 'very high levels of switching between retailers that occurs in this sector' would ensure that network price reductions would be passed on:

> … [P]art of what the commission does at the request of the [ministerial] council is to conduct reviews each year of the nature of retail competition in various jurisdictions.

192 Submission 11, Mr Stephen Koukoulas, p 33; Submission 23, The McKell Institute, p 33.

193 Evidence, Mr Baird, 11 May 2015, p 19.

194 Evidence, Hon Gladys Berejiklian MP, NSW Treasurer, 18 May 2015, p 87.

195 Submission 10, NSW Government, pp 4 and 7.

196 Evidence, Ms Berejiklian, 18 May 2015, p 87.

197 Submission 26, Electrical Trades Union NSW Branch, p 7.

> We have not had any experience in the past of anything other than the changes in the regulated part of the costs being passed through to consumers.[198]

Committee comment

5.40 In examining the issue of electricity pricing, the committee believes it is important to recognise that electricity is an essential service. As such, any change in electricity pricing as a result of the Government's proposal – up or down – will be most keenly felt by those in our community experiencing poverty and disadvantage.

5.41 The committee has heard contradictory evidence on the question of whether network prices will rise, fall, or stay the same under the Government's proposed lease. In evaluating this evidence, the committee believes it is important, first and foremost, to emphasise the role played by the Australian Energy Regulator in setting network prices. The regulator's purpose is to set network prices at an efficient level, and it does so completely irrespective of whether the business is privately operated or publicly owned.

5.42 In this context, the committee acknowledges that the various studies comparing network efficiency across different states have come to opposing conclusions about whether privately operated or publicly owned networks are more efficient.

5.43 The committee is persuaded that factors like network span and geography do play a role in determining a network's capital investment and operating costs. However, even taking this into account, the committee believes that the weight of the evidence shows that privatised electricity networks are more efficient, and hence have lower costs, than publicly owned networks.

5.44 Given the regulatory framework is incentive-based, the committee accepts that private companies will have a greater incentive to reduce its costs than publicly owned companies, leading to lower network prices and lower retail prices in the long run.

5.45 It is evident to the committee that the privatisation of the 'poles and wires' in other States has led to lower network prices. In reaching this conclusion the committee notes that this evidence comes not only from reports commissioned by the Government, but from independent, consumer-focused bodies like the Public Interest Advocacy Centre and NCOSS.

5.46 The committee is also confident that competition between electricity retailers will ensure that network price reductions will be passed on to consumers.

Finding 1

That the leasing of electricity infrastructure by the NSW Government is expected to lead to a decrease in electricity network prices and retail prices.

5.47 The committee supports the appointment of Professor Fels as Electricity Price Commissioner. The committee is confident that his role reviewing the transactions before they proceed will

198 Evidence, Mr Pierce, 15 May 2015, p 25.

provide assurance that electricity network prices will not be negatively affected in the short, medium and long term.

5.48 However, the committee has some reservations about Professor Fels' role once the transactions are completed. These reservations arise from the lack of detail the Government has provided about how exactly the Commissioner's powers will work in practice. All the committee has been told is that the Commissioner can 'refer any concerns' about networks' compliance with the price guarantee to the Australian Energy Regulator or the ACCC.

5.49 While the committee was assured that the details will be spelt out in the legislation governing the transactions, we are concerned about the Government's apparent failure to consult with key stakeholders about whether this is the best model for enforcing the price guarantee, and more broadly, for ensuring consumers' interests are protected. In the committee's view, the detail should have been provided and consultation undertaken before the legislation was introduced.

5.50 Given that the enabling legislation has already been introduced into Parliament, we recommend that the NSW Government undertake, in consultation with key stakeholders, a review of the powers of the Electricity Price Commissioner, with this review conducted within 12 months of the leasing of electricity infrastructure.

Recommendation 2

That the NSW Government commission an independent review, including consultation with stakeholders, of the powers of the Electricity Price Commissioner within 12 months of the leasing of electricity infrastructure.

Chapter 6 Other concerns about the Government's proposal

The previous two chapters have examined two important specific concerns relating to the Government's proposal, namely the impact it will have on the budget and on electricity network pricing.

This chapter looks at other concerns that have been expressed about the Government's plans to lease electricity infrastructure, including the impact it will on electricity workers in the industry, with fears of jobs losses and fewer apprenticeship opportunities. It will also examine concerns that privatisation of electricity infrastructure will compromise reliability and safety. Finally, this chapter will explore issues raised in relation to foreign investment in public infrastructure and transparency of the Government's proposal.

Impact on employment

6.1 One of the significant concerns about the Government's proposal to lease the state's 'poles and wires' is the impact it will have on electricity workers. Some 11,000 staff are employed by electricity network businesses across New South Wales, and unions, in particular, are worried about job losses, as well as opportunities for apprentices.

6.2 This section considers the impact the lease proposal may have on electricity workers, particularly in regional areas. It also discusses the need for employment protection guarantees for existing workers with the leasing transaction.

Job losses

6.3 Unions NSW argued that job losses will occur with privatisation as a result of private companies wanting to reduce their operational costs so as to deliver savings. They stated that this will result in lower rates of pay and conditions for workers, in addition to increased redundancies.[199]

6.4 Unions NSW referred to the experience of South Australia and Victoria, where electricity networks have been privatised. They noted that in Victoria in 1990, there were 21,500 employees in the state owned electricity company, whereas by 2005, after privatisation, only 8,000 jobs were left.[200]

6.5 The United Services Union also highlighted the impact of privatisation on workers in Victoria, where downsizing of the workforce occurred through voluntary redundancies. Citing a 1996 report about the Victorian Power Industry, the Union observed the resulting loss of job security with privatisation:

> The Victorian experience proved to be a devastating one for electricity workers. Many found themselves without employment, or else with employment which was not

199 Submission 29, Unions NSW, p 4.

200 Submission 29, Unions NSW, p 4.

> meaningful … There was a distinct lack of job security, and extremely low morale among workers who managed to retain jobs. To a large extent, work was very precarious, with most jobs being offered upon a contractual or casual basis. [201]

6.6 On the impact of job losses on individuals and families, Mr Steve Butler, Secretary of the Electrical Trades Unions NSW Branch, noted that 'layoffs' contribute to higher rates of suicide:

> What we see when there are major layoffs in any industry is the rate of suicide increases. I have not got studies in front of me but certainly if I look at something like Newcastle and the shutdown of BHP, as a result of that there was an increase in suicides of people who were put out of work or made redundant or took redundancy.[202]

6.7 In addition to the social impact of job losses, Mr Butler outlined the profound economic impact that the leasing of electricity infrastructure will have on regional communities:

> The glue of those communities in regional New South Wales is good jobs. Once they disappear out of a town then that town starts to fall apart. Anyone from regional New South Wales knows that to be a fact. To answer your question more directly about what does power privatisation bring, we have already seen it. There are three things we have said: loss of jobs; loss of job opportunities for young folk; and rises in electricity cost.[203]

6.8 Similarly, the United Services Union argued that job losses will have a significant impact on communities in regional areas, given Ausgrid and Endeavour Energy operate in areas such as the Hunter Valley, Newcastle, Central Coast, Illawarra, Blue Mountains and Lithgow, and TransGrid has a substantial number of employees in rural and regional NSW. They explained that this impact will be compounded by job losses occurring in the mining industry, for example, also in the Hunter Valley and Illawarra.[204]

6.9 Mr Scott McNamara, the Manager of Energy and Utilities for the United Services Union stated: 'With the industry already facing job losses and the retail arm of the electricity network already sold off, employees face a bleak future if future privatisation is to occur'.[205]

6.10 While unions were concerned about job losses as a result of 'privatisation', the recent determination by the Australian Energy Regulator was also discussed, with several witnesses acknowledging that this too is likely to lead to job cuts.

6.11 The NSW Government noted that the recent determination by the Regulator (discussed in chapter 2) will require the reduction of staff in the electricity distribution businesses, irrespective of ownership.[206] The Premier, the Hon Mike Baird MP, explained how the

201 Submission 24, United Services Union, p 8.

202 Evidence, Mr Steve Butler, Secretary, Electrical Trades Union, NSW Branch, 15 May 2015, p 10.

203 Evidence, Mr Butler, 15 May 2015, p 10.

204 Submission 24, United Services Union, p 8.

205 Evidence, Mr Scott McNamara, Manager, Energy and Utilities, United Services Union, 15 May 2015, p 4.

206 Submission 10, NSW Government, p 11.

Regulator's determination will lead to close to 3,000 jobs being cut from the sector prior to any leasing arrangement.[207]

6.12 More specifically, the committee was informed that out of 10,911 employees as at 30 June 205, only the following number of positions will be funded as a result of the regulator's determination:

- 3,570 of 4,670 Ausgrid employees
- 2,130 of 2,353 Endeavour Energy employees
- 2,488 of 3,888 Essential Energy employees
- all 1,072 of the existing employees with TransGrid.[208]

6.13 Mr Vince Graham, the Chief Executive of Ausgrid, Essential Energy and Endeavour Energy, emphasised the challenge of meeting the regulator's determination when industry standards and practices within those companies were not competitive. He gave examples of employment entitlements that are 'well out of step with the community', for example, higher levels of employer contribution to superannuation and higher than average sick leave entitlements.[209]

6.14 More specifically, Mr Graham outlined that the industry standards for entitlements in New South Wales are effectively double that of other states:

> With more than 10 years' service, long service leave is 2.6 weeks per annum. Our industry standard in other States is 1.3 weeks per annum, so we are double the standard. With superannuation, our employees in accumulation funds enjoy 15 per cent employer contribution to superannuation, but those in defined benefit funds can get up to 26 per cent employer contribution. Ausgrid enjoys 18 days per annum of sick leave/personal leave. They are some of the more general issues.[210]

6.15 Mr Graham also outlined the proposition he recently put to unions to try and protect current apprentices from job losses, including a two-year wage freeze for all employees:

> My proposition last Friday to the unions is that all employees across the business—managers and award employees—would have a wage freeze for two years to enable us to fund those graduating apprentices for a continuing term through to either December 2016 or, in the case of Essential Energy, June 2017. I have also put forward for negotiation in the next enterprise agreement the development of retraining and redeployment schemes to aid our employees, placing those excess employees in other organisations, and the negotiation of new redundancy arrangements in the next round of enterprise agreements, consistent with the Government's Managing Excess Employee Policy …[211]

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207 Evidence, Hon Mike Baird MP, NSW Premier, 11 May 2015, p 21.

208 Tabled document, Hon Mike Baird MP, NSW Premier, *Rebuilding NSW: Long term lease of the NSW Electricity Networks*, 11 May 2015, p 24.

209 Evidence, Mr Vince Graham, Chief Executive, Ausgrid, Endeavour Energy and Essential Energy, 11 May 2015, p 64.

210 Evidence, Mr Graham, 11 May 2015, p 64.

211 Evidence, Mr Graham, 11 May 2015, p 63.

6.16 Mr Butler, from the Electrical Trades Union, disagreed that the regulator's determination meant that there had to be loss of jobs. He felt that there are other ways to achieve the necessary reduction in costs. He also appeared critical of Mr Graham's recent proposal:

> … what I find difficult is that they hold these 500 apprentices up as a bargaining tool and say that if you do not take a wages freeze, if you do not do this then they are going to be out of a job. That, to me, is reprehensible—that approach in relation to a negotiation where you say, 'Here are 500 young folk. They have done four years training, they have done all this, but if you don't agree to a wage freeze then we're going to sack them'. [212]

6.17 Mr Butler also disputed the number of jobs that needed to be deleted as a result of the AER determination, citing the ability of the network operators to return to bidding for work in contestable activities that are outside of the AER's jurisdiction. Mr Butler said:

> The organisations were in an area that they call 'contestable work'. That is work that is open to the full market. Instead of, for example, Ausgrid having a monopoly, contractors can bid on the work so that the customer gets the best price. Ausgrid withdrew completely from the contestable market. It has all the trucks, people and gear; it is ready to go. However, it withdrew from the contestable market and left it to private contractors. … We said that the organisation should re-enter that contestable market. It is an area in which it can make money and as a result keep more jobs.[213]

Fewer apprenticeships

6.18 The United Services Union expressed concern about the impact of the Government's proposal on apprenticeships in the industry, and noted that public sector utilities have been known for investing in apprentices. The Union outlined the already declining number of apprenticeships in Ausgrid and Endeavour Energy.[214] Mr Gordon Brock, from Professionals Australia, also expressed concerns about the future of apprentices, as well as graduates and cadet engineers.[215]

6.19 Unions NSW raised the same issue, and explained that Ausgrid, Endeavour Energy and TransGrid have all played an important role in training future electricians and technicians through apprenticeship programs. Unions NSW argued that these opportunities are of critical importance, 'particularly in the context of such high youth unemployment rates across the state'. They said that they do not believe that private companies will provide the same level of training and development opportunities.[216]

6.20 Mr Butler noted the skills gap that occurred in Victoria after privatisation, as a result of the businesses not putting on apprentices for 10 years. He suggested that the same number of apprentices engaged over the last five or six years be maintained so that a 'skill gap' does not eventuate in the sector in New South Wales in years to come.[217]

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212 Evidence, Mr Butler, 15 May 2015, p 9.

213 Evidence, Mr Butler, 15 May 2015, pp 19-20.

214 Submission 24, United Services Union, p 9.

215 Evidence, Mr Gordon Brock, Director NSW, Professionals Australia, 15 May 2015, p 5.

216 Submission 29, Unions NSW, p 5.

217 Evidence, Mr Butler, 15 May 2015, p 20.

Employment protections for workers

6.21 Another issue was employment protections for the existing workers transferring to the newly created companies. Strong support was expressed for employment protections for workers, including a potential five-year employment guarantee and protection of entitlements such as superannuation.

6.22 Unions NSW provided the committee with a list of the employment protections they would like to see implemented, including:

- a minimum five years continued employment with the new employer
- no reductions in salary during the five year period for affected employees
- a transfer payment, for example, up to 30 weeks' pay for 10 years' service on a sliding scale plus 1 week for each year exceeding 10 years
- a five year protection of all existing positions including regional positions
- no forced or compulsory redundancies during the five year period
- transfer of accrued entitlements, including annual, long service and sick leave
- recognition of prior service
- no forced transfers to the private sector
- no forced relocations, and where employees agree to relocate, relocation costs covered.[218]

6.23 The Electrical Trades Union also advocated in favour of employment protections, including the five-year employment guarantee for workers.[219] Mr Butler also supported the protection of superannuation entitlements and the position of no forced redundancies.[220]

6.24 The United Services Union concurred with these suggestions and argued for protections similar to those given to the electricity retail sector when it was privatised.[221]

6.25 Mr McNamara highlighted the importance of effective employment protection guarantees, particularly in light of issues in Victoria where certain organisations sought to circumvent the protections through creative means. He emphasised the importance of ensuring employment protections are secure:

> In any decision about privatisation or leasing, and hopefully at the end of this process we realise this is not the best thing for the State, but if it is, we need to ensure those employment protections are secured in a consistent manner. Governments come and go, legislation comes and goes, but regulations change. We need to ensure that the people in this industry are protected.[222]

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218 Answers to question on notice, Unions NSW, 25 May 2015, attachment entitled *NSW Electricity Network Employment Protections,* pp 1-2.

219 Submission 26, Electrical Trades Union NSW Branch, p 5.

220 Evidence, Mr Butler, 15 May 2015, pp 13-14.

221 Submission 24, United Services Union, pp 10-11.

222 Evidence, Mr Butler, 15 May 2015, p 19.

6.26 Mr Colin Brann, an electricity sector employee, outlined in his submission how he, along with a number of other electricity workers, had been affected by previous reforms to the electricity industry. He noted how previous employment protections implemented with the transfer of electricity businesses have been ineffective in guaranteeing his employment entitlements, such as sick leave and prior recognition of service. He asked that his experience be considered, so that 'no other electricity worker employees are subjected to such harsh and unfair treatment'.[223]

6.27 While the Government, in its submission, acknowledged job losses are likely as a result of the Regulator's determination, it also outlined that the terms and conditions of employment are set through an Enterprise Agreement operating between the employer and employees, which is overseen by the Fair Work Commission. The Government stated that the *Fair Work Act* and enabling legislation would ensure continuity of an employee's accrued entitlements including superannuation.[224] This does not address the terms and conditions of employment, including rates of pay and employment security.

6.28 The Treasurer told the committee that the arrangements for employees transferring to the new lessees 'is the subject of further consultation and discussion' with stakeholders. However, the United Services Unions stated that, to date, neither they nor any other union had been consulted by the Government on these issues.[225]

6.29 When the Premier was asked to provide additional information about the employment protections the Government will introduce for affected electricity workers, the response provided was that the legislation governing the transaction is currently being drafted and that the 'detail of the employment protection arrangements is being considered by the Government'.[226] However, this has not been provided for in the legislation passed by the Legislative Assembly.

6.30 In terms of superannuation entitlements, the committee was informed that the state will arrange for defined benefit schemes to be fully funded as at the date of the transfer. Any employer contribution towards future service liabilities will be an obligation of the new employer.[227] The superannuation fund will also continue to be administered by the trustees on behalf of beneficiaries and the trustees are required to ensure that future liabilities are funded by the relevant employer on an ongoing basis.[228]

Committee comment

6.31 The committee acknowledges that electricity workers are experiencing uncertainty as to their job security as a result of the Government's proposal to lease the network businesses. This uncertainty comes on top of the threat of large scale job losses resulting from the Australian Energy Regulator's determinations. The committee also recognises that workers are concerned

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223 Submission 2, Mr Colin Brann, p 5.

224 Submission 10, NSW Government, p 11.

225 Submission 24, United Services Union, pp 10-11.

226 Answers to supplementary questions, NSW Government, p 4.

227 Answers to supplementary questions, NSW Government, p 6.

228 Answers to supplementary questions, NSW Government, p 6.

about the transitioning arrangements and whether their jobs and employment entitlements will be protected.

6.32 The industry is facing a challenging time, not only because of the proposed leasing arrangements, but also because job losses are undoubtedly set to occur as a result of the Australian Energy Regulator's latest determination. Job losses are always difficult and will understandably have a significant impact on those affected.

6.33 The committee acknowledges the important role that the Government can play in supporting electricity workers through this difficult time. It encourages consultation between the Government, unions and employees on all matters, including redundancies as a result of the recent regulator's determination, and transitional arrangements as a result of the leasing of the businesses.

6.34 While the Premier expressed his commitment to supporting electricity workers and providing employment protections with the lease of the network businesses, the committee has been unable to ascertain what these protections are and whether they will be effective in guaranteeing employment and securing workers entitlements. The committee would not want to see cases where workers have lost or been denied entitlements they have earned, as a result of ineffective protections or loopholes in legislation. The committee also believes that other arrangements need to be put in place to address the loss of employment security, in a way that has occurred with previous like events such as occurred with the Generators in 2012.

6.35 Given the importance of apprenticeships and opportunities for young people in the community, and the need to avoid a skill gap developing in the industry, the committee recommends that the NSW Government develop strategies that will ensure that sufficient numbers of apprenticeships are offered by the new operators of the electricity network businesses, to meet the needs of the electro-technology industries of New South Wales.

Recommendation 3

That the NSW Government develop strategies that will ensure that sufficient numbers of apprenticeships are offered by the new operators of the electricity network businesses, to meet the needs of the electro-technology industries of New South Wales.

6.36 The committee also recommends that the NSW Government ensure that the employment protection guarantees sought by Unions NSW and the Electrical Trades Union, similar to the Generators package in 2012, are included in any enabling legislation: including at least five years continued employment with the new employer; transfer of all accrued employee entitlements, including annual, long service and sick leave; recognition of prior service; job location guarantees; a sufficient number of apprenticeship opportunities; a payment on transfer from the public sector and only consensual transfers to a new employer.

Recommendation 4

That the NSW Government ensure the employment protection guarantees sought by Unions NSW and the Electrical Trades Union as outlined at paragraph 6.22 are included in any enabling legislation, including:

- at least five years continued employment with the new employer
- transfer of all accrued employee entitlements, including annual, long service and sick leave
- recognition of prior service
- job location guarantees
- sufficient number of apprenticeship opportunities
- a payment on transfer from the public sector
- only consensual transfers to a new private sector employer.

Impact on safety and reliability

6.37 A number of inquiry participants raised concerns relating to the reliability of electricity services if the network businesses are leased, fearing increased supply disruptions and outages.

6.38 With reliability standards set out in the regulatory framework and licensing conditions of businesses, the NSW Government argued that the lease transaction would not result in deterioration in reliability. [229]

6.39 Despite these standards being set by the Regulator, Unions NSW and the Electrical Trades Union suggested that reliability is likely to be affected by privatisation of the networks. Unions NSW argued that privately operated businesses will reduce their costs by cutting workforces and maintenance, and that this will contribute to lower reliability of supply and service. They noted that after privatisation in Victoria, blackouts increased by 32 per cent. They also contended that private companies do not have to meet social obligations, meaning they are 'not concerned by access, equity … or reliable service delivery in the same way governments are'.[230]

6.40 The Electrical Trades Union was also worried about reduced reliability and slower emergency response times. They argued that privatisation will lead to a lack of investment in the network, which was a contributing factor in the devastating bushfires in Victoria:

> It is the lack of investment in the Victorian network that has been the subject of much attention in recent years as being the contributing factor to the catastrophic Victorian bushfire disaster which resulted in the loss of more than 170 lives.[231]

6.41 Similar concerns were expressed by several other participants in this inquiry, particularly in light of the recent severe storms experienced across Sydney, the Central Coast and the Hunter region.[232] One inquiry participant stated:

[229] Submission 10, NSW Government, p 7.

[230] Submission 29, Unions NSW, p 4.

[231] Submission 26, Electrical Trades Union, p 2.

> My concerns are mainly around the safety and reliability of the network. I live on the NSW Central Coast and we have just experienced the worst storm and damage to the Network up here since June 2007. The restoration of supply and cleanup effort by the State Owned distribution company was great – we know full well that under private operators that wouldn't have happened. There would be people without power for months if it was left up to private operators to clean up and restore. I also suspect lives would be lost.[233]

6.42 In response to these concerns, the NSW Government stressed that the regulatory framework will continue to include incentives for the distribution and transmission businesses to improve their level of service performance compared to historic outcomes over time, as well as penalties if their performance level deteriorates. They also noted that there are agreements in place to put in additional resources to deal with emergency situations.[234]

6.43 Overall the Government was confident that the partial lease of electricity networks will not lead to deterioration in reliability. The Government referred to a report prepared by HoustonKemp for the Department of Premier and Cabinet, which found that:

- the reliability performance of the NSW network businesses has traditionally been comparable to that of other network businesses in the national electricity market
- the reliability performance of privately owned network business (in Victoria and South Australia) is typically quite high and has not deteriorated over time.[235]

6.44 The Government also referred to the findings of a report by Ernst & Young in 2014, which found that reliability and service levels had improved in other states where electricity infrastructure had been privatised.[236] In referring to this research, the Premier stated:

> In terms of safety and reliability—obviously there are some private sector run that are lower and some private sector that are high, but that is the average. We will ensure the highest possible reliability standards we can as part of the transaction. But the evidence shows that indeed the private sector on average significantly outperforms the public sector in terms of reliability.[237]

6.45 However, Ernst & Young in its report stated that '[m]easures of electricity reliability should be interpreted with some care, as reliability standards can differ between States and a short time series may not present the most accurate'.[238]

6.46 While the HoustonKemp research found that the reliability of the privately operated systems is 'quite high' compared to in NSW, their reliability performance is typically reported after excluding 'abnormal' events such as those attributable to extreme weather events, and care

232 Submission 3, Name suppressed, p 1; Submission 7, Name suppressed, p 5; Submission 8, Name suppressed, p 1; Submission 19, Name suppressed, p 1; Submission 28, Mr Andrew Murphy, p 1.

233 Submission 5, Name suppressed, p 1.

234 Submission 10, NSW Government, p 11.

235 Submission 10, NSW Government, pp 7-8.

236 Submission 10, NSW Government, p 8.

237 Evidence, Mr Baird, 11 May 2015, p 5.

238 Ernst & Young, *Electricity network services: Long term trends in prices and costs*, 2014, p 10, Attachment A to Submission 10, NSW Government.

must be taken in interpreting figures because the business across jurisdictions are subject to different reliability standards.[239]

6.47 However, the Grattan Institute research found that investment had led to reliability standards in NSW being higher than in the privately owned and operated States.[240]

6.48 When asked whether there is any discernible difference between privately and publicly owned networks, Mr Warren, Chief Executive Officer of the Energy Supply Association of Australia, commented that '[t]he reliability of networks across Australia that we experience is at an extremely high level and the differences in the numbers are so marginal as to be decimal points.[241]

6.49 The Council of Social Services of New South Wales (NCOSS) examined the HoustonKemp research and other evidence regarding comparative network reliability. In a report entitled *Consumer Power: The lease of the NSW Electricity Networks from an electricity consumer's perspective*, NCOSS found that the following arguments should be rejected:

- that the overall reliability of privatised network businesses will be inferior because the private owners are more concerned with profits. This is because '[t]here is no evidence to suggest that the privately owned network delivers a lower reliability', and '[o]n most measures, their performance is as good or better than the publically-owned networks, despite the lower levels of investment'.[242]
- that privatisation of an electricity network will lead to a decline in reliability over time because private owners seek to reduce capital investment and maintenance expenditure. Instead, the evidence demonstrates that 'in the decade following the privatisation of the Victorian networks, there is no evidence that reliability declined'.[243]
- that without government ownership, there will be no-one to impose reliability standards or drive improvements in the networks. In fact, the regulatory framework was 'the main driver of the higher reliability performance of the Victorian networks', and this framework 'sustained good performance levels, despite the organisational disruption'.[244]

Committee comment

6.50 The committee acknowledges concerns from unions and individuals about a deterioration in reliability should privatisation of electricity infrastructure proceed. While some participants are worried about increased outages and delays in network repairs, the committee is persuaded by evidence that indicates privatised electricity businesses in other jurisdictions maintain high reliability standards.

239 HoustonKemp, *Electricity Network Service Standards: An overview*, 2014, pp 23 and 25, Attachment B to Submission 10, NSW Government.

240 Grattan Institute, *Putting the customer back in front*, 2012, pp 2-4 and 51, Attachment C to Submission 10, NSW Government.

241 Evidence, Mr Matthew Warren, Chief Executive Officer, Energy Supply Association of Australia, 11 May 2015, p 36.

242 Submission 21, Council of Social Service of New South Wales, Attachment 1, pp 88-89.

243 Submission 21, Council of Social Service of New South Wales, Attachment 1, p 89.

244 Submission 21, Council of Social Service of New South Wales, Attachment 1, p 89.

6.51 In addition, the committee notes evidence which suggests that private operators perform better than publically owned networks in terms of reliability, regardless of their levels of capital investment and maintenance expenditure. This may be attributed to the fact that reliability standards are contained within the regulatory framework. Essentially, the standards will continue to apply, regardless of who is operating the business.

6.52 The NSW Government has also provided assurance that the licensing conditions they intend to introduce will help to ensure reliability is not compromised as a result of the leasing arrangement. While the committee has not received extensive details about this aspect, it is satisfied that the regulatory framework will operate to ensure reliability is maintained.

Finding 2

That the leasing of electricity infrastructure by the NSW Government is expected to have a neutral impact on safety and reliability of the services provided by the leased network businesses.

Foreign investment

6.53 The Government has expressed its commitment to maximising the return to the state and has encouraged interest from domestic and international investors in the leasing of the network businesses. The Government believes that the leases will be an attractive investment proposition because:

- the electricity assets offer a 'once in a generation' opportunity for investors
- the withdrawal of competing transactions by the Queensland Government will increase the likely level of competition for, and interest in, the NSW transaction
- the stable and predictable returns from regulated utility businesses are highly attractive in the current low rate interest rate environment.[245]

6.54 Reflecting on current market conditions, and the strong interest in the Government's proposal, the Premier highlighted the great opportunity this transaction will provide for the state:

> This is a point-in-time opportunity. The people of this State have a point-in-time opportunity to have the interest rates where they are and to have the sort of funds looking for—and Australian super funds are part of this—the opportunity for these types of assets. We are unlikely to see the market conditions together with the competitive pressure come together in a way that gives us a chance for a great outcome on these assets.[246]

6.55 While the Premier welcomed international interest in the businesses, several unions expressed concern about investment from international investors, preferring that key infrastructure not be owned or managed by foreign companies or governments.

245 Submission 10, NSW Government, p 13.

246 Evidence, Mr Baird, 11 May 2015, p 16.

6.56 Mr Adam Kerslake, the Director of the 'Stop the Sell-Off' campaign, stated that unions are worried about interest by off-shore investors as they do not want the electricity network businesses to be owned by foreign investors or governments.[247] Mr Mark Lennon, Secretary of Unions NSW, similarly expressed concern about 'essential services' being sold to foreign companies that may be state owned and run by 'authoritarian governments'.[248]

6.57 Mr Butler, Secretary of the Electrical Trades Union, held the same view and argued that the Government should instead get investment from the people of New South Wales. He observed that in South Australia and Victoria, privatised networks are owned by China or Singapore.[249]

6.58 Both Mr Butler and Mr Lennon noted the interest foreign investors may have in the transaction, including that from the State Grid Corporation of China. Mr Lennon held concerns about this and stated that 'there is no doubt that some corporations are state-owned by governments that are not open, transparent and democratic governments and it is a cause for concern'.[250]

6.59 To maximise the potential return to state, the Premier and Treasurer encouraged interest from all investors, both domestic and international. The Treasurer assured the committee that the Foreign Investment Review Board would oversee any interest in the leases from foreign investors:

> … we have an additional mechanism through the Foreign Investment Review Board, which would look at all bidders who had a majority overseas interest to ensure that they are within our national interests and also our State's interests. There are those very strict guarantees in place to make sure that all bidders, no matter where they come from, go through those stringent processes.[251]

Committee comment

6.60 The committee acknowledges that foreign investment is an important factor in supporting growth in the economy. It also recognises the important role played by the Foreign Investment Review Board in scrutinising foreign investment transactions.

6.61 The committee believes that, should the leasing of the electricity infrastructure proceed, the Government has a responsibility to ensure that the transaction is effected in a manner that maximises the return to the state. Closing the door to any investor, whether domestic or international, may affect the price the state receives for these assets and as such, is not supported by the committee.

247 Evidence, Mr Adam Kerslake, Director, Stop the Sell-Off campaign, 15 May 2015, p 5.

248 Evidence, Mr Mark Lennon, Secretary, Unions NSW, 15 May 2015, p 5.

249 Evidence, Mr Lennon, 15 May 2015, p 5.

250 Evidence, Mr Lennon, 15 May 2015, p 16.

251 Evidence, Hon Gladys Berejiklian MP, NSW Treasurer, 18 May 2015, p 87.

Lack of transparency

6.62 The leasing of the state's 'poles and wires', should it proceed, will be one of the most significant transactions undertaken by the NSW Government. Given this, and the potential impacts of the transaction on the public, industry and consumers, concerns were raised during the inquiry about the transparency of the Government's proposal.

6.63 In particular, there was a concern that the Government would not release the scoping study conducted by UBS and Deutsche Bank, in which advice was provided about the structure of the lease transaction. Other concerns related to the lack of detail provided about the governance structure and powers of the Electricity Price Commissioner.

The scoping study

6.64 As mentioned in chapter 6, UBS and Deutsche Bank were engaged in 2014 to advise the Government on the most appropriate structure for the lease transaction. Their advice is confidential, regarded as 'commercial-in-confidence'.[252]

6.65 When the Premier was asked about whether he would release the scoping study conducted by UBS and Deutsche Bank, even in a redacted form, he declined, telling the committee that there 'a number of significant commercial-in-confidence issues within it'.[253]

6.66 The committee was informed by the Premier that it is the standard practice for such studies to be kept confidential and that this is necessary to achieve the best commercial outcome for the state with the lease transaction:

> The Government wants to achieve the best commercial outcome for taxpayers and releasing the commercially sensitive Scoping Study report could reduce proceeds. The Government, and previous Governments, have not released Scoping Studies for previous transactions.[254]

6.67 It was also noted that the scoping study was not provided to the Parliamentary Budget Office, which was established to cost all of the major parties' election commitments.[255] However, in their Briefing Note about the costing of *Rebuilding NSW*, the Parliamentary Budget Office noted that a parliamentary leader is only required to cost policies that 'are likely to impact on the current and relevant forward estimates', meaning that policies with no impact on the forward estimates do not fall within the remit of their office.[256]

6.68 While the Briefing Note acknowledged that NSW Treasury did not provide the Parliamentary Budget Office with a copy of the scoping study, it also noted that the costings in relation to the proposal for a long term partial lease of the NSW electricity were not within its remit:

252 Evidence, Mr Matthew Grounds, Chief Executive Officer and Country Head, UBS Australasia, 11 May 2015, p 79.

253 Evidence, Mr Baird, 11 May 2015, p 13.

254 Answers to supplementary questions, Hon Mike Baird MP, NSW Premier, 19 May 2015, p 3.

255 Evidence, Mr Baird, 11 May 2015, p 14.

256 *Parliamentary Budget Officer Act 2010*, s 18(1A)(a), cited in Parliamentary Budget Office, *Budget Impact Statement 2015 – Coalition – Part 2*, 23 March 2015.

> The proposed long term lease of a proportion of the State's electricity businesses is thus a transaction that would not, at this stage, be recorded in the forward estimates. It would affect the budget or forward estimates only upon finalisation of the contract. The proposal therefore falls outside the scope of s.18 of the *Parliamentary Budget Officer Act 2010*.[257]

Details about the transaction and governance structure

6.69 The Government was also criticised for not providing crucial information about the transaction, including the governance structure and powers of the proposed Electricity Price Commissioner.

6.70 NCOSS noted that it is still unclear under the partial lease model what governance structures will be in place and how the interests of the state will be represented in networks that remain partially owned. Ms Tracy Howe, Chief Executive Officer, asserted that 'maximising transparency around lease processes is important to realising benefits and minimising risks for electricity consumers'.[258]

6.71 The Council of Social Serving of NSW called for an 'open consultative process', to ensure the transactions benefit from a range of expertise and avoids 'unintended consequences'. One way to achieve this, they suggested, was through the establishment of a governance committee or advisory group, who would have expertise across a broad range of areas:

> The concept is for an advisory group bringing in a range of expertise. We think consumers are important stakeholders in that group but we also think that experts, in the way the regulatory framework works, would strengthen the group. Obviously, they would need to include people with expertise in financial transactions. It is really about understanding how all of the interests work together in this space. For instance, if you were going into this process to maximise the least price, you may not recognise an issue that might be downstream, because the regulatory framework does not work in a particular way. By bringing all of that expertise together so they can discuss that in real time, you can uncover where there might be gaps, manage around those risks and come up with fixes. If that happens before the lease is proceeded with, we will get the best outcomes for people.[259]

6.72 Ms Amelia Christie, Manager of Research and Advocacy with the Combined Pensioners and Superannuants Association of New South Wales, also supported greater transparency in the process, particularly from a consumer perspective. She was concerned about the impact of the transaction on vulnerable consumers, in a privatised market where she suggested 'consumers are losing out'.[260]

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257 Parliamentary Budget Office, *Budget Impact Statement 2015 – Coalition – Part 2*, 23 March 2015.

258 Evidence, Ms Tracy Howe, Chief Executive Officer, Council of Social Service of New South Wales, 18 May 2015, p 2.

259 Evidence, Ms Carolyn Hodge, Senior Policy Officer, Council of Social Service of New South Wales, 18 May 2015, p 11.

260 Evidence, Ms Amelia Christie, Manager, Research and Advocacy, Combined Pensioners and Superannuants Association of New South Wales, 18 May 2015, p 61.

6.73 Dr Betty Con Walker, Principal of Centennial Consultancy, similarly identified transparency concerns in relation to the Government's proposal. She argued that the Government was being 'misleading' with its claim that as only 49 per cent of the network assets are being leased, the Government retains a majority interest. She asserted:

> In fact, using the book value of the network agency assets, the State's interest in the three agencies to be privatised would be less than 38 per cent. Mr Baird claimed to be selling only 49 per cent when it is actually 62 per cent. That goes to the ethics of the sales job.[261]

6.74 Dr Con Walker and Professor Walker also suggested that the structure of the transaction is not clear and that this has made it difficult to understand some of the Government's assertions in relation to how the transaction affects the Government's fiscal position:

> Well, you have got the three agencies slated for privatisation that have borrowings of $15 billion. They also have accrued employee benefits of around $1.4 billion. Who is going to take care of those things? Are they going to be part of the price? Is that the $13 billion net of all those, which means that the actual implied sale price is something closer to $30 billion?[262]

6.75 Dr Con Walker contended that this 'does not make any sense, or there is not enough information for us to conclude anything from that'.[263]

6.76 Dr Richard Denniss, Executive Director of The Australia Institute supported transparency when it comes to 'enormous and long-lasting transactions',[264] as did Mr Brendan Lyon, Chief Executive of Infrastructure Partnerships Australia. However, Mr Lyon cautioned against the disclosure of information that may disadvantage the state's interest in maximising the value received for the assets:

> People usually expect me to jump in and say that you should always protect the information and keep it quiet. They are always disappointed in the answer, which is that I think there should be full transparency of everything. What I would say is that these are going to be very large and very well competed transactions, so there are going to be aspects of this that are strictly commercial-in-confidence until the transactions have been complete. I would say that the Government, its advisers and this Committee will need to have a non-partisan and real discussion about what should be disclosed and what will disadvantage the State's interests … These are going to be very large, very well competed transactions. There is going to need to be a very high degree of probity around access to data rooms, access to information and so on.[265]

6.77 When it was put to the Premier that the Government is not providing the detail to demonstrate that there are adequate safeguards underpinning the transaction, the Premier

261 Evidence, Dr Betty Con Walker, Principal, Centennial Consultancy, 18 May 2015, p 47.

262 Evidence, Dr Walker, 18 May 2015, p 53.

263 Evidence, Dr Walker, 18 May 2015, p 53.

264 Evidence, Dr Richard Denniss, Executive Director, The Australia Institute, 15 May 2015, p 48.

265 Evidence, Mr Brendan Lyon, Chief Executive, Infrastructure Partnerships Australia, 11 May 2015, pp 52-53.

responded that the Government has been given a mandate and that the criticisms relating to transparency were about 'political point scoring', rather than constructive engagement.[266]

6.78 The Premier told the committee that the legislation is being prepared and is currently not finalised. He said that the legislation will be presented before Parliament and that at that time, there would be an opportunity for parliamentary members to consider it in detail.[267]

6.79 The Treasurer reiterated this point to the committee, and stated that the 'legislation will be aired in the public domain as is normally the case'. As to whether there will be an exposure draft released, the Treasurer responded that they are still working through issues that are outstanding in the regulatory environment and that they 'want to make sure that the legislation we put forward is the most robust and thorough it can be'.[268]

6.80 The Treasurer asserted that 'the Government has provided a detailed, transparent, fact-based and compelling case for why this plan is in the best interests of this State'.[269] The Treasurer also said the Government will ensure that the public is kept informed about the transaction as it proceeds as they are committed to openness and transparency:

> … as the transactions go through their stages, assuming we get the legislation through and the transactions proceed, we will ensure that at every stage of the process we keep the public aware of what is going on, what the market conditions are, and what stage we are embarking on because this is not something that is going to happen overnight; it is something that will happen over a period of time and we will make sure that we keep the public aware of every step of the process, similar to our openness and transparency in relation to telling people what we were actually doing if we were to be re-elected.[270]

Committee comment

6.81 It is difficult for the committee to assess the leasing transactions with the limited information available. Given the significance of the lease transaction for the state, the committee agrees with the comments of Mr Lyon that there would be full transparency, subject to commercial-in-confidence restrictions. However, the committee believes that this should not come at a cost to the state.

6.82 Certain information, like the UBS and Deutsche Bank scoping study, should be kept confidential. As is the standard practice, documents like this are regarded as commercial-in-confidence. Release of the information in the report may negatively impact the price the NSW Government receives for the businesses and this would be detrimental for all.

266 Evidence, Mr Baird, 11 May 2015, pp 21-22.
267 Evidence, Mr Baird, 11 May 2015, p 23.
268 Evidence, Ms Berejiklian, 18 May 2015, pp 78-79.
269 Evidence, Ms Berejiklian, 18 May 2015, p 71.
270 Evidence, Ms Berejiklian, 18 May 2015, p 89.

6.83 However, there are other matters on which the committee believes that the NSW Government has not been forthcoming, for example, about the governance structure, powers of the Electricity Price Commissioner and employment protection provisions in the legislation. Not providing this information to the public, or this committee, has undermined the NSW Government's transparency and it is difficult to accept that the rationale for this is simply about protecting the interests of the state.

Chapter 7 An ideal proposal?

The partial leasing of the state's electricity infrastructure is expected to generate over $13 billion, with these proceeds being used to fund $20 billion of key infrastructure projects across the state. While the impacts of the proposal were discussed in previous chapters, this chapter will look at whether the proposal is ideal, looking at three key issues.

The first issue relates to evolving technology in the electricity industry, with it being argued that the private sector is better placed to deal with changes in the industry. The second issue focuses on the Government's proposal itself, including concerns about the transaction only being a partial lease and being effected via a trade sale. Thirdly, this chapter will discuss whether the state should look to alternative means to fund infrastructure projects, instead of leasing income-generating assets. Within this section, consideration will also be given to the importance of probity in managing infrastructure projects, so as to ensure the best interest of the state are maintained.

Evolving technologies in the industry

7.1 The electricity industry is currently undergoing a significant evolution in new technologies, such as solar power and electrical storage batteries, that some argue could have profound impacts on the operation of the transmission and distribution networks. One of the arguments in support of the Government's proposal is that private operators of electricity businesses will be better placed to embrace and manage technology changes in the industry. It was suggested that there are real risks to the Government if they retain ownership of electricity assets, because the value of these assets could be threatened by new technologies in the industry.

7.2 The scale of the changes was encapsulated by the Public Interest Advocacy Centre, which explained that technology change is influencing the electricity industry, and that, if not careful, energy markets will be serving historical needs and not remaining internationally competitive:

> It is not merely that technological change is transforming the market but that harnessing new technologies and new business models can make energy cheaper and, potentially, more reliable. New technologies can often deliver superior energy services to consumers more efficiently – such as the replacement of energy hungry desktop PCs with laptops, tablets and smart phones. Unless we reconsider what's possible, Australia will be left with energy markets serving last century's needs and out-of-date business models, reducing our international competitiveness.[271]

7.3 Several inquiry participants argued that, when it comes to the electricity sector, the future is uncertain.[272]

7.4 The Energy Supply Association of Australia embraced privatisation of the electricity industry, particularly because of the risks associated with constant evolution of the sector. Mr Matthew Warren, Chief Executive Officer, outlined how changing technologies, like solar, are transforming the industry, creating risks for owners of the assets:

271 Submission 13, Public Interest Advocacy Centre, Attachment 1, p 29.

272 Submission 7, Name suppressed, pp 4-5: Submission 8, Name suppressed, p 1.

> Owning the actual assets is no guarantee of being able to control the evolution of the system. The rise of distributed solar and the potential for shortage and falling demand from both industrial and residential sectors are reshaping this industry. It is exciting and risky. It is unclear how the industry will evolve over the next decade and beyond, but the level of risk now in the industry was not present 10 years ago.[273]

7.5 Mr Warren emphasised that the risks include the assets being devalued or made redundant as a result of what he called 'technology shock':

> In the same way that it is hard to imagine Apple being a government-owned business, it is hard to see what benefits government ownership can deliver to networks in New South Wales in the twenty-first century. They could evolve quickly in many different directions. They are now exposed to being devalued or made redundant by new technology shock. This risk is real, it is new and it is not going away.[274]

7.6 While evolution of technology in the industry presents challenges for the owners of electricity assets, Mr Warren conceded that it was unlikely consumers would completely disconnect from the grid in the short or medium term:

> The cost of storage may continue to come down and as it does the maths on that will change. But the impacts of removing your house from the grid entirely when you live in the middle of a city makes no sense. It means you deprive yourself of electricity at times when you need more than you can generate and store. In the short to medium term we think that is an extremely unlikely event but in the more distant future we may see micro grids and a whole range of completely different shaped networks operating that we do not consider today.[275]

7.7 Rather than disconnecting from the grid, Mr Warren outlined for the committee how consumers may play a greater role in generating and storing electricity in the future and how it will be up to the owners of these assets to make commercial decisions about how to best manage the networks alongside the evolution of these technologies:

> It may be that you can optimise and you will get the same cost of electricity running a smaller grid inside the network, in which case you may see for various reasons industrial parks or groups of households evolve into their own sort of arrangements where they generate some or all of their own electricity. With that model, you then have a network faced with what does it do? It may optimise its returns by choosing to sell parcels of its network, for example, to those customers and then they take control of their own operations. This is neither command and control from a central authority nor is it a stand-alone house by house. It evolves if and when those conditions evolve. It seems that those decisions should be taken on a commercial basis, ensuring that the deliver and supply of electricity is managed inside those networks. It makes sense for that competition to exist and be allowed to flourish.[276]

7.8 Mr David Leitch, Analyst, UBS Australasia, also highlighted the impact of changing technologies on the industry, asserting that privatisation of the sector is good for the

273 Evidence, Mr Matthew Warren, Chief Executive Officer, Energy Supply Association of Australia, 11 May 2015, p 28.

274 Evidence, Mr Warren, 11 May 2015, p 28.

275 Evidence, Mr Warren, 11 May 2015, p 33.

276 Evidence, Mr Warren, 11 May 2015, p 39.

Government. Mr Leitch argued that private businesses will embrace technology changes, as they have 'dynamic management' structures:

> … with all the change in technology that is coming through the industry, whilst it is hard to say exactly how that will impact on the value of the networks, we are increasingly of the view that it provides a great opportunity for them [private businesses] to go out and get a new slice of business but it would be very unlikely to get that in government state-owned hands.
>
> If you look, for instance, at the final report or at the submissions from the State-owned businesses to the Energy Regulator they do not want, for instance, time-of-use metering, or communicating metres and yet that is a business that the ANC has said is going to open to everyone. So here you have got state-owned businesses trying to pretend it is still the 1950s when the world is moving into the twenty-first century. I think they need privately owned, much more dynamic management in order to cope with these changes.[277]

7.9 Mr Leitch told the committee that the networks will have low costs of capital in the future, with technologies like battery storage and solar power playing a role. He asserted that private businesses are well placed to manage forms of renewable energy:

> Another example is all the cases of battery storage, for instance, and even ownership of solar on the rooftops of people's houses. Networks have very low cost of capital. They are arguably ideally placed to be the people who own all this renewable energy that is going to, in my view, be coming through the industry over the next 10 to 15 years.[278]

7.10 Ms Sandra Darroch, an author familiar with the history of the electricity industry in New South Wales, agreed that the industry is changing and that the monopoly position is under threat from new technologies.[279]

Committee comment

7.11 The committee concurs with the arguments that the electricity industry is faced with both threats and opportunities from new technologies. The committee agrees that these threats and opportunities are best faced by privately operated electricity companies, and that this is one of the most compelling reasons for the Government to divest their interest in them.

Does the proposal maximise value for the state?

7.12 While the Government's proposal to partially lease the state's 'poles and wires' is expected to generate around $20 billion for infrastructure investment, a number of inquiry participants have raised concerns that the proposal is not ideal in its current form, as it will not maximise the return to the state.

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277 Evidence, Mr David Leitch, Utilities and Building Materials Analyst, UBS Australasia, 11 May 2015, p 90.

278 Evidence, Mr Leitch, 11 May 2015, p 90.

279 Evidence, Ms Sandra Darroch, author, 18 May 2015, p 32.

7.13 In particular, there were concerns related to the lease structure, such as it being a partial lease of the businesses and not an outright sale. There were also issues raised about the use of a trade sale for the transactions, with concerns that this may limit the potential return to the Government.

Is it better to lease or sell 100 per cent of electricity infrastructure?

7.14 During the inquiry, issues were raised about the structure of the transaction, such as it being a partial lease of only two of the three distribution businesses and not an outright sale of all electricity network assets. Inherently, there appeared to be a contradiction between it being, on one hand, good for the state to lease these businesses because of diminishing dividends and the risks posed by technology, and on the other hand, the Government wanting to retain 100 per cent ownership of Essential Energy and a minority share in the two other businesses.

7.15 The Hon Michael Egan AO, a former NSW Treasurer, while supportive of privatisation overall, described the nature of the transaction as being 'not optimal' for the state and in one regard, 'nonsense':

> Whilst I support this proposal in general, simply because it is the only proposal on the table, it is not optimal. The idea that we sell 51 per cent of two utilities, none of a third utility and all of a fourth utility is nonsense.

7.16 The committee heard that the way the Government has structured the transactions was likely to impact on the value achieved for the assets. Professor John Quiggin, an economist with the University of Queensland, argued that the structure of the lease transaction, being a 99-year lease, is likely to reduce the return to the state than compared if the businesses were just sold outright, with no corresponding benefits:

> … the structure of this particular asset sale procedure—with a 99-year lease and a partial sale of essentially a small majority interest in some assets—that those two features are likely to reduce the return to the State from a privatisation compared to an outright sale with no conditions, without generating any corresponding benefits, in terms of protection to the public.[280]

7.17 Professor Quiggin added that the result of packaging the transaction as a lease may affect the price the state receives for the assets, as it will deter potential buyers who may prefer the security of outright ownership.[281]

7.18 Similarly, the Grattan Institute highlighted the benefits of a privatised electricity industry, but noted that 'the structure of the proposed privatisation as currently envisaged may reduce these benefits, but is a move in the right direction.'[282]

7.19 Dr Richard Denniss, Executive Director, The Australia Institute, argued that in economic terms there is no difference between an outright sale and a 99 year lease, but in fiscal terms a lease is riskier for both sides, with a resultant decrease in the lease proceeds to the state. [283]

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280 Evidence, Professor John Quiggin, Economist, University of Queensland, 15 May 2015, p 35.

281 Submission 9, Professor John Quiggin, p 6.

282 Submission 32, Grattan Institute, p 1.

283 Evidence, Dr Richard Denniss, Executive Director, The Australia Institute, 15 May 2015, p 47.

7.20 Other economists agreed with this view, including Emeritus Professor Bob Walker and Professor Quiggin.[284] Professor Quiggin argued that there was no practical difference between the two, pointing to comments from the Queensland Treasurer, Mr Tim Nicholls, who in 2010 made the statement: 'As anyone would know if they had observed the privatisation of assets, a 99-year lease is as good as giving away the farm'.[285]

7.21 Finally, Dr Denniss even questioned what state the network will be in 99 years' time:

> … when we get it back in 99 years' time it becomes our problem again. So we are giving it away when it is massively cash flow positive and we are accepting it back when who knows what it needs in 99 years' time. It might be a remediation mess that we have to solve.[286]

7.22 When the committee questioned the Treasurer, the Hon Gladys Berejiklian MP, about whether a 99-year lease is effectively a sale, giving the example of the 99-year lease for Port Kembla and it being recorded in the 2013-14 New South Wales Report on State Finances as a 'disposal', the Treasurer emphasised that 'retaining 51 per cent of the network businesses is what the Government will do'.[287] The Treasurer stressed that the difference between a sale and a 99-year lease is that the state retains ownership:

> No, it is a long-term lease because the State retains ownership of the assets and we have rights as both lessor and lessee under the transaction. We are the owner and also lessee as well as landlord. That is very distinct. You cannot compare electricity network distributions in the same way that you would compare a port transaction.[288]

7.23 Professor Quiggin argued that retaining ownership for the purpose of having control is 'of no use to the public', as it 'cannot be used in ways that would advance public policy'.[289]

Will a trade sale maximise value?

7.24 There are two main methods the Government can use to undertake the lease of electricity assets. The first is referred to as a trade sale, whereby the electricity asset is leased to a single lessee. The second is an initial public offering, whereby shares of stock in the leased portion of the asset are sold to the general public on a securities exchange. As discussed earlier, the Government intends to proceed with a trade sale of the three network businesses, 'with the flexibility to undertake one transaction as an initial public offering (IPO) if market conditions suggest that this would achieve the best outcome for taxpayers'.[290]

7.25 On-Market BookBuilds, a company which has developed a facility to price and allocate new securities, raised concerns about the Government's proposed approach. According to Mr Ben

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284 Evidence, Emeritus Professor Bob Walker, Emeritus Professor of Accounting, University of Sydney, 18 May 2015, p 47; Submission 9, Professor John Quiggin, p 4.

285 Submission 9, Professor John Quiggin, p 5.

286 Evidence, Dr Denniss, 15 May 2015, p 47.

287 Evidence, Hon Gladys Berejiklian MP, NSW Treasurer, 18 May 2015, pp 77-78.

288 Evidence, Ms Berejiklian, 18 May 2015, p 78.

289 Evidence, Professor Quiggin, 15 May 2015, p 43.

290 Submission 10, NSW Government, p 3.

Bucknell, the Chief Executive Officer, proceeding with trade sales would effectively exclude one-third of the superannuation pool, as well as mum and dad investors, potentially reducing the potential proceeds from the transactions:

> … by going down the path of a trade sale, $600 billion worth of assets currently held in self-managed superannuation funds will be not be able to participate as part of the bidding process, nor will 5.98 million Australians. We are comparing the difference between going down a trade sale route versus an IPO and then, if we go down the IPO route, how to maximise the proceeds.[291]

7.26 In its submission to the inquiry, On-Market BookBuilds explained that its facility, licensed to the Australian Stock Exchange, would allow:

> … every Australian investor and every broker to bid and be allocated shares using existing ASX infrastructure. Unlike previously used initial public offering (IPO) methods for government privatisations, it is the only way to attract the true volume of bids from every possible investor, at the marginal prices that they are willing to pay, and allow these bids to create a fully contestable pricing outcome.[292]

7.27 Mr Bucknell also explained that this method could be used in conjunction with the process used by the Government to attract institutional bids:

> We have not tried to get rid of the way that the process works currently. This is an addition to the existing process. The lead investment bank still goes out and gets all its institutional bids. All of that side of the process works the same as it does today. The main difference is that there is a live price in the market and everybody can bid in, not only those people who are bidding either at final as the case may be under the prospectus.[293]

7.28 In her evidence, the Treasurer confirmed to the committee that the Government would proceed with a trade sale for TransGrid, as this 'will far and away get the best return for taxpayers'.[294] Mr Tim Spencer, Deputy Secretary, Commercial Group, NSW Treasury, explained the rationale for this conclusion:

> The advice received is for these businesses, which need to go through a level of transformation in relation to the regulatory environment—the AER determination—are businesses which are best subject to lease via a trade sale than an IPO. It suits that class of investor better than it does investors in an IPO.[295]

7.29 Nevertheless, the Treasurer confirmed that the Government would be 'leaving the door open for an IPO for either of the other two assets', depending on market conditions.[296]

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291 Evidence, Mr Ben Bucknell, Chief Executive Officer, On-Market BookBuilds, 18 May 2015, p 93.

292 Submission 12, On-Market BookBuilds, p 1.

293 Evidence, Mr Bucknell, 18 May 2015, p 96.

294 Evidence, Ms Berejiklian, 18 May 2015, p 82.

295 Evidence, Mr Tim Spencer, Deputy Secretary, Commercial Group, NSW Treasury, 18 May 2015, p 82.

296 Evidence, Ms Berejiklian, 18 May 2015, p 82.

7.30 The Premier stressed that the Government's decision as to whether to carry out the transactions relating to Ausgrid and Endeavour Energy via trade sale or an initial public offering will depend on which method will achieve the best value for the state:

> Whether we use an initial public offering [IPO] for Ausgrid or Endeavour Energy depends upon market conditions. We are examining the best way to achieve the best value for the people of this State. The advice is that a trade sale is the best strategy. However, there may well be interest in an IPO as we run through the process.[297]

Investing in infrastructure – funding sources and probity of projects

7.31 The NSW Government introduced its proposal to lease parts of the transmission and distribution networks with a commitment to allocate the proceeds to infrastructure development. This section considers two arguments, the first being that the Government should not be making infrastructure investment contingent on the leasing of electricity infrastructure, and second, that there are more appropriate ways to fund the proposed infrastructure projects, such as through increased borrowings. It concludes with some comments about the oversight of the infrastructure construction program.

Considering infrastructure investment independently of the lease proposal

7.32 The Government has consistently promoted the benefits of leasing the state's 'poles and wires', including the $300 billion uplift to the economy as a result of the infrastructure investment that would be made with the proceeds of the transaction. Essentially, the Government has outlined how the leasing of the electricity businesses is critical to injecting money into infrastructure projects across the state.

7.33 However, a number of inquiry participants argued that the lease proposal should be considered separately from the issue of whether infrastructure investment is needed. Mr Mark Lennon, Secretary of Unions NSW, asserted that the two concepts should be treated separately:

> There are serious concerns about the idea that the two concepts should be considered separately. Do we need to retain assets, like our poles and wires, in public hands? That is the first question, and we say of course we do. The second question is: If there is a need for infrastructure, what is that infrastructure? What are the cost benefits of that infrastructure? How should that be funded? In this we have scrambled the two issues together and that is not going to lead to a very good outcome, in my view, for the State of New South Wales.[298]

7.34 Similarly, Dr Denniss gave evidence that the Government should consider the feasibility of infrastructure investment separately to considering the sale or lease of an income-producing asset:

> If they are good investments you should make them. But this idea that you can only invest in rail… it has just got nothing to do with economics or finance. If the income-

[297] Evidence, Hon Mike Baird MP, NSW Premier, 11 May 2015, p 3.

[298] Evidence, Mr Mark Lennon, Secretary, Unions NSW, 15 May 2015, p 2.

> producing asset is giving you an 8 per cent flow of income and you can borrow money at 2 per cent, if you want to build a $10 billion rail project you should, but you should finance it by the cheapest way you can find. Giving up an 8 per cent return rather than borrowing at 2 per cent is costing you 6 per cent of $10 billion—it is hugely expensive.[299]

Alternative sources of funding infrastructure projects

7.35 During the inquiry a number of stakeholders expressed concern that leasing the state's 'poles and wires' is not the best way to fund public infrastructure projects. Some unions and economists suggested that it would be cheaper for the Government to retain the network businesses (and their revenue streams) and instead borrow funds to pay for the infrastructure program.

7.36 Professor Walker and Dr Betty Con Walker questioned whether the privatisation of profitable electricity assets was the best way to fund infrastructure investment. They suggested that the revenues generated from retaining the assets should be used to source payments for infrastructure projects:

> Obviously it is crazy to be selling assets that are producing such high rates of return – before getting any benefits from their just-completed five year program of capital works. Earnings from the retention of the distribution agencies could help pay for future investment in priority infrastructure projects, particularly schools, hospitals and public transport.[300]

7.37 Professor Walker and Dr Con Walker also asserted that the Government would be better off borrowing funds at what are historically low interest rates to fund infrastructure. They observed that the level of state debt is 'miniscule' in comparison to other developed countries:

> The state could borrow (or use a combination of borrowing and own-source revenues). In June 2014 NSW had general government net debt of $6.869 billion or just 1.4 per cent of Gross State Product (GSP). That level of state net debt is miniscule in comparison to those of many developed countries in the OECD with an average of net debt to Gross Domestic Product of over 70%.
>
> NSW's current level of debt is highly manageable on annual budget revenues of around $70 billion. Net debt is expected to be $9.3 billion in June 2015 and $10.7 billion by 2018 or just 1.8 per cent of GSP (which is forecast at $601 billion). [301]

7.38 Similarly, Dr Denniss characterised the Government's proposal to lease the network assets to pay for the infrastructure as 'economically irrational', given that the Government will be disposing of an income-producing asset, when it can borrow at a low rate:

> If the income-producing asset is giving you an 8 per cent flow of income and you can borrow money at 2 per cent, if you want to build a $10 billion rail project you should, but you should finance it by the cheapest way you can find. Giving up an 8 per cent

[299] Evidence, Dr Denniss, 15 May 2015, p 49.

[300] Submission 34, Emeritus Professor Bob Walker and Dr Betty Con Walker, p 2.

[301] Submission 34, Emeritus Professor Bob Walker and Dr Betty Con Walker, Attachment 1, p viii.

> return rather than borrowing at 2 per cent is costing you 6 per cent of $10 billion—it is hugely expensive.[302]

7.39 When these arguments were put to the Treasurer, her response was that increased borrowing would affect the state's financial risk and triple-A credit rating. The Treasurer argued that it is important for the state to maintain its triple-A credit rating as an increase in borrowings would equate to increased financial risk:

> Using the lease proceeds rather than new debt to pay for infrastructure allows our capital expenditure to grow while containing absolute growth in State debt. This reduces risks and underpins our ability to maintain the State's triple-A credit rating, which is very important. A dramatic increase in borrowings … would raise financial risk and put the State's credit rating in danger.[303]

7.40 Mr Brendan Lyon, Chief Executive Officer of Infrastructure Partnerships Australia, concurred with the Government's view that debt financing was not a viable option, given the Government's commitment to retaining the triple-A credit rating:

> The problem that New South Wales and most other, in fact, all other State jurisdictions have, is that we have already used the capacity that we have, and both of the major parties have an economic and fiscal commitment to retaining the triple-A. That means that there is insubstantial additional capacity for borrowing and it means that we do not have the flexibility to pay for the infrastructure that is wanted without either running very substantial surpluses for a very sustained period of time to bring down the existing borrowings or, in the case of an asset lease, you get a return from those assets and you are able to bring down the level of gearing on the budget.[304]

7.41 UBS, a global investment bank and expert advisor to the Government on the lease proposal, reached the same conclusion in its research note about privatisation. The note stated that funding the infrastructure investment via debt 'would undoubtedly result in a ratings downgrade, which would increase the state's cost of borrowing (by ~0.10% per of new issuance)'.[305] Controversy relating to this research note is detailed in chapter 8.

7.42 The relevance and weight placed on maintaining a triple-A credit rating was, however, disputed by a number of inquiry participants. Dr Denniss suggested that the Government's concerns about the potential loss of the triple-A credit rating through future borrowings were 'massively exaggerated', although he added that the ratings companies have an interest in 'creating a bit of volatility in their ratings'.[306]

7.43 Professor Walker and Dr Con Walker agreed with Dr Denniss and argued that increased borrowings would not affect the state's triple-A credit rating. They said that 'past statements of the impact of a downgrade [on the credit rating] have been grossly exaggerated'.[307]

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302 Evidence, Dr Denniss, 15 May 2015, p 49.

303 Evidence, Ms Berejiklian, 18 May 2015, p 72.

304 Evidence, Mr Brendan Lyon, Chief Executive Officer, Infrastructure Partnerships Australia, 11 May 2015, p 48.

305 David Leitch and Andrew Lilley, UBS, *Utilities Sector, Privatisation finance*: *Addendum*, (17 March 2015).

306 Evidence, Dr Denniss, 15 May 2015, p 51.

307 Supplementary Submission 34a, Emeritus Professor Bob Walker and Dr Betty Con Walker, pp 4-5.

7.44 Professor Walker and Dr Con Walker argued that considering the infrastructure investment program is a long-term plan, the Government should be able to borrow an amount each year without this affecting the manageability of the debt or the state's credit rating:

> It beggars belief that a state the size of NSW is not capable of undertaking a $20 billion investment program over 10 years – that is, an average of $2 billion a year – without privatising profitable assets and without affecting its credit rating.
>
> Adding an average $2 billion per annum borrowings would mean that the state's debt levels would continue to be manageable. According to TCorp, if the Government was to borrow funds right now, the 10-year bond rate is historically low at 2.90%. On this basis, the annual interest on $2 billion would be less than $60 million – a fraction of the payments expected from the remaining electricity agencies.[308]

7.45 Mr Stephen Koukoulas, Managing Director, Market Economics, noted that in the assessment of a state's financial position, the credit rating agencies placed less weighting on a government's level of debt, and a greater weighting on the ability of a government to service that debt:

> … we did look at how the credit rating agencies viewed the financial position of each of the States. They actually gave a very low weighting to the level of debt; it was only, I think, 10 per cent, on how they assessed whether a State has triple-A or double-A plus … It was the sustainability of the budget that got, I think, a 20 per cent weighting.[309]

7.46 In terms of other possible sources of funding, Professor Quiggin asserted that 'public expenditure, including the provision of non-commercial public infrastructure, must be financed primarily through taxation or user charges', such as tolls and fares for transport use.[310]

7.47 Mr Lyon disagreed with this view and argued that there is a disincentive when it comes to changes to the tax system. He told the committee that the state should not be looking at increasing its revenue via taxes until it has dealt with its spending issues:

> … there are really two sources to pay for infrastructure: one is government through tax or retained equity, in this case the poles and wires, and the other is from user charges. I do not believe inherently that we should be looking at raising revenue until we have dealt with expenditure problems. I think that is a bad discipline for the public sector and bad disciplines for governments.[311]

Ensuring infrastructure projects benefit the state

7.48 As referred to in chapter 3, in developing the State Infrastructure Strategy, Infrastructure NSW's guiding purpose was to identify and recommend those projects which provide 'the greatest economic and social benefit to the people of New South Wales'.[312] This section

308 Submission 34, Emeritus Professor Bob Walker and Dr Betty Con Walker, Attachment 1, p 33.

309 Evidence, Mr Stephen Koukoulas, Managing Director, Market Economics, 18 May 2015, p 16.

310 Submission 9, Professor John Quiggin, p 14.

311 Evidence, Mr Lyon, 11 May 2015, p 53.

312 Evidence, Mr Jim Betts, Chief Executive Officer, Infrastructure NSW, 11 May 2015, p 66.

concludes the chapter with a brief discussion around how to ensure that *Rebuilding NSW* is successfully achieved.

7.49 While supporting the need for major infrastructure investment in New South Wales, Local Government NSW expressed concern that *Rebuilding NSW* could fall 'far short of its game changing promise of fully reinvesting proceeds into priority public infrastructure'.[313] It highlighted the importance of engaging with local government stakeholders to ensure that the proceeds of the investment were wisely spent:

> … [I]t is vitally important that the NSW Government meaningfully involves Local Government in the determination of infrastructure investment priorities both at the local and regional level. Local and regional knowledge resource available from councils should not be overlooked. Local Government should be seen as a key partner in implementing Rebuilding NSW.[314]

7.50 One area in which Local Government NSW identified *Rebuilding NSW* as lacking was specific funding for social infrastructure, particularly to address areas of chronic high unemployment and socio-economic disadvantage. In addressing such gaps, Local Government NSW emphasised the need for genuine consultation to continue into the future, to ensure the best outcomes:

> LGNSW commends the NSW Government for establishing a consultation process through the Department of Premier and Cabinet to gather community views on the implementation of Rebuilding NSW. However, consultation does not end with promoting the plan, it must provide for real input into the further development and implementation of the plan.[315]

7.51 The Hon Michael Egan AO, a former New South Wales Treasurer, also stressed the importance of ensuring that the particular infrastructure invested in produces optimal outcomes:

> What is also important is the quality of the assets or your spending, if you like. Not all infrastructure spending is worthwhile. If you look at Japan, it has been spending on public works for the last 20 years in the hope of reviving its economy and it has not really worked—it is still crawling along. The assets that you purchase or invest in have to be good ones. I am not confident that they necessarily will be.[316]

7.52 The NSW Auditor-General has recently tabled in Parliament a report entitled, *Large construction projects: Independent assurance*. The purpose of the audit was to assess the effectiveness of the Government's capital project assurance system, which is 'designed to provide independent assurance to sponsor agencies and hence the government of the viability of a capital project throughout its life cycle'.[317]

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313 Submission 30, Local Government NSW, p 3.

314 Submission 30, Local Government NSW, p 3.

315 Submission 30, Local Government NSW, p 3.

316 Evidence, Hon Michael Egan AO, former NSW Treasurer, 18 May 2015, p 42.

317 NSW Auditor-General, *Large construction projects – Independent assurance: The Treasury, Infrastructure NSW, Transport for NSW, NSW Health, Roads and Maritime Services, Sydney Trains, Venues NSW, Department of Primary Industries*, 7 May 2015, p 2.

7.53 In making this assessment, the report examined a selection of large construction projects (costing over $50 million) and concluded that improvements are required in both capital assurance and compliance:

> Procedures for providing independent assurance to agencies and the government that large construction projects address priority service needs, best options to address these needs are selected, costs are controlled well and variations are justified have evolved, but are not as effective as they could be. Assurance needs to be more independent and compliance needs to be more consistent.[318]

7.54 The report also found that there was a 'low level of compliance' with gateway review requirements for new construction projects included in the 2014/2015 Budget Papers. Gateway reviews are designed to 'provide independent assessment of a project's readiness to proceed to the next stage'.[319]

Committee comment

7.55 The electricity privatisation debate is one that has continued for over a decade, with both major parties introducing privatisation related reforms in the past. While clearly not a new issue, it is without question an important one and one to which this committee has given serious consideration.

7.56 Fundamentally, the committee has had to consider what is in the best interests for the state. While this inevitably provokes arguments both for and against privatisation, the committee acknowledges that both the Premier and Treasurer have put forward the case that the leasing of the network businesses is vital in raising funds for infrastructure investment.

7.57 The committee accepts that the Government has made an informed decision on this matter, taking into account the State's fiscal position, the need to maintain a triple-A credit rating and the economic benefits arising from significant investment in infrastructure. Given this, and based on the weight of the evidence during this inquiry, the NSW Government's proposal to lease the electricity transmission and distribution businesses is supported by this committee. Therefore, the committee recommends that in view of the economic benefits arising from the significant investment in infrastructure, the NSW Government implement its proposal to lease 100 per cent of TransGrid and 50.4 per cent of each of Ausgrid and Endeavour Energy.

Recommendation 5

That in view of the economic benefits arising from the significant investment in infrastructure, the NSW Government implement its proposal to lease 100 per cent of TransGrid and 50.4 per cent of each of Ausgrid and Endeavour Energy.

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318 NSW Auditor-General, *Large construction projects – Independent assurance: The Treasury, Infrastructure NSW, Transport for NSW, NSW Health, Roads and Maritime Services, Sydney Trains, Venues NSW, Department of Primary Industries*, 7 May 2015, p 2.

319 NSW Auditor-General, *Large construction projects – Independent assurance: The Treasury, Infrastructure NSW, Transport for NSW, NSW Health, Roads and Maritime Services, Sydney Trains, Venues NSW, Department of Primary Industries*, 7 May 2015, p 2.

7.58 In terms of whether the lease transaction is effected by a trade sale or an initial public offering, the committee received a limited amount of evidence on this issue. However, the committee encourages the NSW Government to continue to be flexible and to consider market conditions and ongoing expert advice on these issues, as the best return for the State is paramount. In regard to any sale being offered through an initial public offering, the committee acknowledges the evidence of On-Market BookBuilds, and encourages the Government to further investigate utilizing this method of sale.

7.59 The committee supports rigorous oversight of all financial transactions underpinning the infrastructure projects funded under the *Rebuilding NSW* program. Given the high level of spending proposed, and the extent to which these projects can dramatically impact state finances and the economy, it is critical that infrastructure investment be cost effective. The committee encourages the Auditor-General to be active in this area.

Chapter 8 The UBS research note

A key issue discussed during the inquiry related to a research note released by the investment banking company UBS, in which the Government's proposal to lease the state's 'wires and poles' was discussed. The research note as first published, while generally supportive of the lease transactions, did state that the transactions would be bad for the state budget, and hence attracted significant media interest. The note was subsequently revised and re-released as an 'addendum'.

Fundamentally, this chapter explores the issue of independence, including the 'information barrier' operating between the research and investment divisions of UBS. In this context it looks at why the research note was changed, as well as the events surrounding the release of the 'addendum', including the contact UBS staff had with the Premier's office.

UBS businesses

8.1 UBS is a global firm that provides a range of investment and financial services. It operates a number of businesses, including UBS Securities, the business that provides research to institutional investors, and UBS AG, its investment banking and advisory business.[320]

8.2 Since July 2014, UBS AG, the investment side of the business, has been advising the Government in relation to the long term lease of the state's electricity infrastructure. The UBS AG involvement included the preparation of a cabinet scoping study, jointly prepared with Deutsche Bank.[321] Concerns about the confidentiality of this study are addressed in chapter 6.

8.3 Operating between the research and investment businesses of UBS is what is commonly referred to as an 'information barrier'. This barrier functions so as to ensure the business appropriately manages conflicts of interest that may arise, as required by a financial service, in accordance with the *Corporations Act 2001* (Cth).[322]

8.4 UBS informed the committee about the range of measures it employs as a business to ensure independence between its research and investment businesses. In addition to physical restrictions that prevent investment staff from entering research areas, there is also a separation of information systems. Mr Chris Williams, Head of Research and Co-Head of Equities, explained:

> That separation is structural, that separation is physical, that separation is of all information systems. As I referenced earlier, the research business does not have any of the confidential information that may come from corporate or government clients to the investment bank advisory business.[323]

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320 Answers to questions on notice, UBS, 19 May 2015, p 1.

321 Evidence, Mr Matthew Grounds, Chief Executive Officer and Country Head, UBS Australasia, 11 May 2015, p 79; Answers to questions on notice, UBS, 19 May 2015, p 1.

322 *Corporations Act 2001 (Cth),* s 912A.

323 Evidence, Mr Chris Williams, Head of Research and Co-Head of Equities, UBS Australasia, 11 May 2015, p 96.

Release of the UBS research note and addendum

8.5 On the 17 March 2015, at approximately 11.15 am, UBS Securities, the research arm of UBS, released a research note to their clients discussing the Government's proposal to lease the state's 'wires and poles'. The note was titled 'Utilities Sector, Privatisation finance' and had a sub-heading that stated 'Bad for the budget, good for the state'.[324]

8.6 The research note was written by two analysts at UBS, Mr David Leitch and Mr Andrew Lilley, both of whom reported to Mr Williams.[325]

8.7 Later that day, at approximately 3.30 pm, the same research note was re-released as an 'addendum', with the revised sub-heading of 'Good for the state'. Notably, the second version of the note:

- omitted the part of the sub-heading that said 'Bad for the budget'
- included amended content on the first page, in which the benefits to the state that would accrue as a result of higher than expected sale proceeds were emphasised, rather than the original notes' focus on a negative impact on state finances
- omitted a sentence on page 7 of the note which said 'We believe the combined asset recycling plan will be negative for the state's fiscal position in the long run.'
- removed the assumptions they were relying on in support of their original position, from page 7
- omitted a graph which showed the fiscal costs and benefits of asset recycling.[326]

8.8 The release of the original research note occurred approximately two weeks before the 2015 state election, where the proposal to lease the states 'poles and wires' was a key policy issue being debated.

8.9 Separate to this, UBS AG, the investment side of the business, had been engaged by the NSW Government to advise on the lease transaction, including the potential structure and effect of the leases.[327]

8.10 In this context, the changing of UBS's research note attracted significant media interest. Not only was there a perception that the Government's expert advisors thought the leasing proposal was 'bad for the budget', but there were also suggestions that the Premier's office had influenced UBS to make changes so as to improve their position prior to the election.

Why was the research note amended?

8.11 This section documents the explanation provided by UBS research staff as to why the research note was altered. It also outlines what contact UBS had with the Premier's office on the day

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324 David Leitch and Andrew Lilley, UBS, *Utilities Sector, Privatisation finance*, (17 March 2015).

325 Evidence, Mr Grounds, 11 May 2015, p 79.

326 David Leitch and Andrew Lilley, UBS, *Utilities Sector, Privatisation finance*, (17 March 2015) and David Leitch and Andrew Lilley, UBS, *Utilities Sector, Privatisation finance*: *Addendum*, (17 March 2015).

327 Evidence, Mr Grounds, 11 May 2015, p 79.

the note was released, as well as the Premier's response to suggestions that staff in his office influenced UBS to make amendments to the note.

Explanation provided by UBS

8.12 Representatives from UBS, including the two analysts that wrote the research note, provided evidence as to why the research note was changed. Mr Williams, Head of Research, having read the note himself (after it was published), argued that the original research note did not demonstrate that the long-term lease would be bad for the budget and because of this, he felt that there was no option but to amend the note given the headline was 'potentially misleading':

> Despite this heading ['Bad for the budget, good for the state'], the note in fact did not demonstrate that the long-term lease would be bad for the budget. Instead, it set out a number of benefits that would accrue to the State from the long-term lease and new infrastructure. But, in fact, the question as to their combined long-term budgetary impact was left unresolved. In short, the research note had a headline which, in isolation, could mislead readers … After discussions with Mr Leitch and Mr Lilley, we agreed to publish an addendum. Corrections are always embarrassing. However, UBS Securities cannot and will not leave potentially misleading research in the market. In short, we had no choice but to issue an addendum. [328]

8.13 Mr Williams explained that they were getting media inquiries about the research note, some of which led him to believe that the substance of the note was 'not being fully appreciated'. He said that this reaffirmed his view that it was being misinterpreted and that the note needed correction:

> When we have a piece of research that is factually wrong or potentially misleading, we cannot leave that with our investor base. We have an obligation to correct that, and that is a decision we took.[329]

8.14 Mr Leitch, one of the authors of the research, also reflected on the original headline, stating that he did not appreciate the fact that readers may not study the note in its full context. He stated that it was an 'ill-judged attention grabbing headline'.[330]

8.15 Mr Leitch agreed with Mr Williams' opinion that the note had to be 'corrected' due to the misleading headline as 'people were just reading the first four words of the headline and stopping'.[331]

8.16 In terms of why the graph was also removed from the note, Mr Andrew Lilley, the other author of the note, explained that the decision to remove it stemmed from the fact that people were not reading the note in full, such that 'people might read the chart without looking at the assumptions as well'.[332]

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328 Evidence, Mr Williams, 11 May 2015, p 79.

329 Evidence, Mr Williams, 11 May 2015, p 82.

330 Evidence, Mr David Leitch, Utilities and Building Materials Analyst, UBS Australasia, 11 May 2015, p 89.

331 Evidence, Mr Leitch, 11 May 2015, p 82.

332 Evidence, Mr Andrew Lilley, Fixed Income Analyst, UBS Australasia, 11 May 2015, p 84.

8.17 When it was put to Mr Williams and Mr Leitch that the headline was indeed reflective of the substance of the note, Mr Williams disagreed. He argued that when the note was read in its entirety the headline was misleading. He stated to the committee that he did 'not agree with [that] interpretation' and that 'was [his] judgment to make on the day'.[333]

8.18 Mr Leitch also disputed that the revised version was fundamentally different to the original, explaining that he 'wanted the original intention of the note to come through about what a good transaction' it was:

> It had become apparent to me immediately upon the release of it, from the very first time that Chris [Williams] came round with a worried look on his face, that the headline in the note was detracting from the substance and the content of the note. So I absolutely fell in with the suggestion that we should fix that up.[334]

8.19 Mr Leitch elaborated on why he felt the heading was 'sensational' and 'diverting attention', given the 'note considered the lease and subsequent re-investment as a joint decision and did not separately analyse the lease in isolation'. He said that there is analysis in both notes 'that reflects the lease in isolation would strengthen the budget'.[335]

8.20 Mr Williams said that it was 'regrettable' that the research had been released without including the potential benefit of $300 billion to the state. He reflected on the impact this issue had caused to the reputation of UBS: 'We believe we have got a reputation for outstanding research and obviously anything that reflects poorly on that reputation is extremely disappointing'.[336]

8.21 While Mr Williams explained that it was not his role to review every piece of research released, and that he did not have the opportunity to review the research note in question, he commented:

> There are plenty of things with hindsight that we would like to change but I think it is obviously embarrassing, it has damaged the firm's reputation for the quality of our research. I did not have the opportunity to review this piece of research prior to its publication. I would have liked to have done that.[337]

Contact with the Premier's office

8.22 In light of suggestions that the Premier's office influenced UBS to change the research note, the committee looked at what contact the Premier's office had with UBS staff immediately after the original version of the research note had been released.

8.23 The Premier, the Hon Mike Baird MP, acknowledged that two of his staff had phoned UBS after the original research note was released. The first call occurred when Mr Matthew Crocker, the Premier's Director of Policy, contacted Mr Guy Fowler at approximately 1.30 pm

333 Evidence, Mr Williams, 11 May 2015, p 82.

334 Evidence, Mr Leitch, 11 May 2015, p 93.

335 Answers to supplementary questions, UBS, 19 May 2015, p 7.

336 Evidence, Mr Williams, 11 May 2015, p 87.

337 Evidence, Mr Williams, 11 May 2015, p 98.

on the day the note was released. Mr Fowler is the Chairman and leader of the investment banking team at UBS, responsible for advising the Government on the lease transaction.[338]

8.24 At this time, Mr Fowler was already aware that the research team were intending on releasing an addendum, having been told this by Mr Matthew Grounds, the Chief Executive Officer and Country Head of UBS. Mr Fowler outlined the conversation that took place between himself and Mr Crocker, including the apology he provided to the Premier's office during this call:

> Having read the research, I apologised for it. We then had a discussion about the fact that it clearly did not include the productivity benefits from reinvestment of the $20 billion … I had also been made aware by that time that the research team had formed a view that they were going to make an amendment to the note, and I made him aware of that. We then had a discussion around the level of media inquiry that had come from it.
>
> It was important to us that we tried to make it as clear as possible that the views that may be expressed by research are not views that come from the advisory part of the business … the ones providing the advice to Government. That seems to have been misunderstood.[339]

8.25 Mr Fowler also told the committee that Mr Crocker contacted him again, approximately an hour and a half later, to discuss media engagement issues. This was because they wanted to 'make it clear that the views put out by research … were not the views of the advisory part of the business'. Reflecting on this aspect, Mr Fowler stated 'Unfortunately, it is something that we have been spectacularly unsuccessful in getting across'.[340]

8.26 In respect of both conversations he had with the Premier's office, Mr Fowler stated that 'at no stage in those discussions did he [Mr Crocker] ask or suggest that we amend the note'.[341]

8.27 In addition to these two phone calls, Mr Bay Warburton, the Premier's Chief of Staff, also telephoned Mr Grounds at around 3.00 pm, after the amended note had been released. Mr Grounds told the committee that he apologised to Mr Warburton for the 'mistake that research had made' and also discussed media issues as they 'both felt the importance of distinguishing the views of the research department and those of … the Government's expert advisers'.[342]

8.28 Mr Grounds also noted that he had received a text message from Mr Warburton which stated 'Hi Matthew, suspect you are aware of this but a fair degree of angst about the UBS note release today. I am told Guy [Fowler] is working on it'. Mr Grounds replied 'Yes, I am on it also. We have a plan to address (hopefully)'.[343]

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338 Evidence, Mr Guy Fowler, Chairman, UBS Australasia, 11 May 2015, p 80; Evidence, Hon Mike Baird MP, NSW Premier, 11 May 2015, p 15.

339 Evidence, Mr Fowler, 11 May 2015, p 80.

340 Evidence, Mr Fowler, 11 May 2015, p 80.

341 Evidence, Mr Fowler, 11 May 2015, p 80.

342 Evidence, Mr Grounds, 11 May 2015, p 81.

343 Answers to supplementary questions, UBS, 19 May 2015, p 9.

8.29 Following this exchange, Mr Warburton sent another text message to Mr Grounds which stated 'Just told the Premier, and told him I am sure you would be working on it. We don't want to have to distance ourselves from our expert advisors – not ideal'.[344]

8.30 When asked directly as to whether Mr Fowler or Mr Grounds had discussions with Mr Williams, Mr Leitch or Mr Lilley about what was going to be in the amended note, Mr Williams explained that it was he who, after reading the note in his inbox, had 'quickly engaged with Mr Leitch and Mr Lilley'.[345]

8.31 The committee was told that the decision to amend the note was made only by the research staff, namely Mr Williams, Mr Leitch and Mr Lilley, without influence from anyone else. Mr Leitch stated that Mr Williams wanted the headline changed and that he 'wanted to de-emphasise some of the negative parts of it because [he] was particularly concerned that the original reason for writing the note was … to emphasise all the benefits to the state of the entire privatisation process'.[346]

8.32 Throughout their evidence to the committee, the UBS witnesses stressed the independence of the research arm of UBS from the advisory section. Mr Williams emphasised that he, Mr Leitch and Mr Lilley 'are fiercely independent' and that they 'made the decision to publish the addendum with no influence from anyone else'. He added that they [research staff] 'were not aware of any communication between the Government and UBS'.[347]

8.33 This independence was reiterated in their responses to supplementary questions, where they stated: 'Consistent with UBS's policies on research independence, the advisory team from UBS AG did not influence the UBS Securities' decision to issue an addendum'.[348]

8.34 Mr Williams explained to the committee that there is a 'structural separation' between the research and advisory arms of UBS, outlining that this ensures their research is 'objective, accurate and reasonably based'.[349]

8.35 Despite this 'information barrier', Mr Williams stated that Mr Fowler was present during one of the conversations he had with Mr Lilley and Mr Leitch, but that this was 'more by coincidence', as he had come to his office to get him to go to another meeting. He stated to the committee that Mr Fowler 'was not involved in that conversation'.[350]

8.36 When questioned about the effectiveness of their 'information barrier', Mr Williams reiterated that he had 'no concern on [his] part that there was any influence on the authors of the note or [himself] in reviewing the note'.[351]

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344 Answers to supplementary questions, UBS, 19 May 2015, p 9.

345 Evidence, Mr Grounds, 11 May 2015, p 81.

346 Evidence, Mr Leitch, 11 May 2015, p 83.

347 Evidence, Mr Williams, 11 May 2015, p 79.

348 Answers to supplementary questions, UBS, 19 May 2015, p 1.

349 Evidence, Mr Williams, 11 May 2015, p 79.

350 Evidence, Mr Williams, 11 May 2015, p 84.

351 Evidence, Mr Williams, 11 May 2015, p 87.

8.37 When asked why Mr Williams had had contact with Mr Grounds about the issue, Mr Grounds explained that it is his policy for staff to let him know of media issues. He stated: 'I have a policy in the firm, which is if there is going to be something that is going to cause the firm potential reputation damage let me know as soon as possible'.[352]

8.38 UBS argued that this notification was entirely appropriate given the media interest in the issue:

> In the present case there was a clear risk, as has been borne out by subsequent events, that the views of research would be erroneously noted as being the views of the government's expert advisors.[353]

8.39 Mr Grounds also asserted that this conversation would not constitute a breach of the conflict of interest provisions in section 912A of the *Corporations Act 2001* (Cth).[354]

The Premier's response

8.40 This section outlines the Premier's response to suggestions that he, or staff in his office, influenced UBS to change the research note.

8.41 In refuting the proposition that his office was involved in the decision to change the research note, the Premier explained that the note had failed to include key points, such as the asset recycling incentive and $300 billion uplift:

> … there was a loss—non-inclusion—of a significant uplift in respect of the economy. The economic uplift, as you have just seen, is $300 billion over the next 20 years. That uplift was not there. If you run it as the economy grows, the percentage of revenue, as you have seen, historically in the past 13 or 14 years has been about 12 percent, so there is a significant boost to the budget position on the back of the growth in the economy and the jobs that are created.[355]

8.42 Due to the significance of this information and it being overlooked for inclusion in the note, the Premier suggested that it was entirely appropriate for his staff to raise concerns with Mr Grounds and Mr Fowler from UBS:

> Not surprisingly, when a note has a couple of clear things missing, for instance the asset recycling amount that was included was $3 billion is actually $2 billion, and it failed to take into account the uplift in the economy in respect of the long-term impact on the State budget. So, not surprisingly, yes, my Director of Policy and my Chief of Staff raised that with UBS.[356]

8.43 However, in raising these concerns with UBS, via Mr Fowler and Mr Grounds, the Premier emphasised to the committee that his staff did not make a request to UBS that they change the research note.[357]

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352 Evidence, Mr Grounds, 11 May 2015, p 97.

353 Answers to supplementary questions, UBS, 19 May 2015, p 2.

354 Answers to supplementary questions, UBS, 19 May 2015, p 3.

355 Evidence, Mr Baird, 11 May 2015, p 7.

356 Evidence, Mr Baird, 11 May 2015, p 6.

357 Evidence, Mr Baird, 11 May 2015, p 6.

8.44 When asked why his staff contacted Mr Fowler and Mr Grounds, rather than the analysts that wrote the research note, the Premier explained that they (his staff) spoke to the 'people that they have had interactions with' and that that was a 'natural place to make those concerns apparent'.[358]

8.45 The Chairman of the Australia Securities and Investments Commission, Mr Greg Medcraft, advised the committee that his office is currently undertaking an investigation into issues related to the research note issued on the 17 March 2015.[359]

Committee comment

8.46 The release of the UBS research note, and the events that followed, has been a controversial issue and one in which there continues to be significant media interest. The committee acknowledges that the contact between UBS and the Premier's office in relation to these issues raises questions.

8.47 The committee acknowledges the response from UBS that its research business issued an amended note without interference from either the UBS advisory team or staff from the Premier's office.

8.48 We also acknowledge that these matters are the subject of an investigation by the Australian Securities Investment Commission. Therefore there is no need for this committee to investigate this matter any further.

358 Evidence, Mr Baird, 11 May 2015, p 10.

359 Correspondence from Mr Greg Medcraft, Chairman, Australian Securities and Investments Commission, to Chair, 18 May 2015.

Appendix 1 Submissions

No	Author
1	Mr J F Brett
1a	Mr J F Brett
2	Mr Colin Brann
3	Name suppressed
4	Ms Marion Rae (Partially Confidential)
5	Name suppressed
6	Mr Nathan Friedman
7	Name suppressed
8	Name suppressed
9	Professor John Quiggin
10	NSW Government
11	Mr Stephen Koukoulas
12	On-Market BookBuilds
13	Public Interest Advocacy Centre Ltd
14	Name supressed
15	Mr Gavin Simshauser
16	Ms Margery Whitehead
17	Tourism & Transport Forum
18	Name suppressed
19	Name suppressed
20	Mr Milton Caine
21	Council of Social Service of NSW (NCOSS)
22	Taurus Funds Management Pty Ltd
23	The McKell Institute
24	United Services Union
25	Australian Energy Market Commission
26	Electrical Trades Union NSW Branch
27	JMA Parties
28	Mr Andrew Murphy
29	Unions NSW
30	Local Government NSW
31	NuCoal Resources Ltd

No	Author
32	Grattan Institute
33	Mr Lyndin & Mrs Sally Hume
34	Emeritus Prof Bob Walker & Dr Betty Con Walker
34a	Emeritus Prof Bob Walker & Dr Betty Con Walker
35	Ms Sandra Darroch
36	Commercial Economics Consulting
37	Energy Supply Association of Australia

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Monday 11 May 2015		
Macquarie Room Parliament House, Sydney	Hon Mike Baird MP	NSW Premier and Minister for Western Sydney
	Mr Blair Comley	Secretary, Department of Premier and Cabinet
	Mr Simon Draper	Deputy Secretary, Productivity and Sustainability, Department of Premier and Cabinet
	Mr Matthew Warren	Chief Executive Officer, Energy Supply Association of Australia
	Mr Kieran Donoghue	General Manager, Policy, Energy Supply Association of Australia
	Mr Brendan Lyon	Chief Executive, Infrastructure Partnerships Australia
	Mr Jonthan Kennedy	Head of Government Relations and Regulatory Affairs, Infrastructure Partnerships Australia
	Mr Vince Graham	Chief Executive Officer, Ausgrid, Essential Energy and Endeavour Energy
	Mr Jim Betts	Chief Executive Officer, Infrastructure NSW
	Ms Amanda Jones	Chief Operating Officer, Infrastructure NSW
	Mr Matthew Grounds	Chief Executive Officer and Country Head, UBS Australasia
	Mr Guy Fowler	Chairman, UBS Australasia
	Mr Jarrod Key	Head of Power, Utilities and Infrastructure, UBS Australasia
	Mr Christopher Williams	Head of Research and Co-Head of Equities, UBS Australasia
	Mr David Leitch	Utilities and Building Materials Analyst, UBS Australasia
	Mr Andrew Lilly	Fixed Income Analyst, UBS Australasia

Date	Name	Position and Organisation
Friday 15 May 2015		
Macquarie Room **Parliament House, Sydney**	Mr Steve Butler	Secretary, Electrical Trades Union, NSW Branch
	Mr Mark Lennon	Secretary, Unions NSW
	Mr Scott McNamara	Manager, Energy Utilities and Private Sector, United Services Union
	Mr Gordon Brock	Director NSW, Professionals Australia
	Mr Adam Kerslake	Director, Stop the Sell-Off Campaign
	Mr John Pierce	Chairman, Australian Energy Market Commission
	Mr Richard Owens	Senior Director Transmission and Distribution Networks, Australian Energy Market Commission
	Ms Michelle Groves	Chief Executive Officer, Australian Energy Regulator
	Mr Sebastian Roberts	General Manager Networks, Australian Energy
	Professor John Quiggin	Professor of Economics, University of Queensland
	Dr Richard Denniss	Executive Director, The Australia Institute
Monday 18 May 2015 **Macquarie Room**	Ms Tracy Howe	Chief Executive Officer, Council of Social Service of NSW
Parliament House, Sydney	Ms Carolyn Hodge	Senior Policy Officer, Council of Social Service of NSW
	Dr Gabrielle Kuiper	Senior Policy Officer, Public Interest Advocacy Centre
	Mr Stephen Koukoulas	Managing Director, Market Economics
	Ms Sandra Darroch	Author
	Hon Michael Egan AO	Former NSW Treasurer
	Dr Betty Con Walker	Principal, Centennial Consultancy
	Emeritus Professor Bob Walker	Professor of Accounting, University of Sydney
	Ms Amelia Christie	Manager, Research & Advocacy, Combined Pensioners and Superannuants Association of Australia
	Hon Gladys Berejiklian MP	Treasurer and Minister for Industrial Relations

Date	Name	Position and Organisation
	Mr Philip Gaetjens	Secretary, NSW Treasury
	Mr Tim Spencer	Deputy Secretary, Commercial Group, NSW Treasury
	Mr Ben Bucknell	Chief Executive Officer, On-Market BookBuilds
	Mr Nick Motteram	Managing Director, On-Market BookBuilds
	Mr Milton Caine	

Appendix 3 Tabled documents

Monday 11 May 2015
Macquarie Room, Parliament House, Sydney

1 Powerpoint presentation entitled 'Rebuilding NSW: Long term lease of the NSW Electricity Networks', tendered by Hon Mike Baird, Premier of New South Wales

2 Powerpoint presentation entitled 'AER Final Determination', dated 8 May 2015, tendered by Mr Vince Graham, Chief Executive Officer, Ausgrid, Endeavour Energy and Essential Energy

3 Article entitled 'Selling off Electiricty Networks will give NSW cheaper power bills', dated 20 August 2014, tendered by Mr Vince Graham, Chief Executive Officer, Ausgrid, Endeavour Energy and Essential Energy

4 Document entitled 'References to Safety Risk Management in recent Royal Commissions', tendered by Mr Vince Graham, Chief Executive Officer, Ausgrid, Endeavour Energy and Essential Energy

Friday 15 May 2015
Macquarie Room, Parliament House, Sydney

5 Pamplet entitled 'Preparing Energy Markets for consumer-driven transformation – Overview 2013-2014' tendered by Mr John Pierce, Chairman, Australian Energy Market Commission

Monday 18 May 2015
Macquarie Room, Parliament House, Sydney

6 Book entitled 'Power for the people: An (uncensored) story of electricity in Australia 1770-2015', tendered by Ms Sandra Darroch, author

7 Paper entitled 'Analysis of Pacific Power and SECV proposals for an electricity market', tendered by Hon Michael Egan AO, Former NSW Treasurer

8 Book entitled 'Privatisation: sell off or sell out' tendered by authors Emeritus Professor Bob Walker and Dr Betty Con Walker

9 Document entitled 'Key Extracts: An Independent Review for the Secretary of State for Business, Innovation & Skills: IPOs and Bookbuilding in Future HM Government Primary Share Disposals (UK), tendered by Mr Ben Bucknell, Chief Executive Officer, On-Market BookBuilds.

Appendix 4 Answers to questions on notice

The committee received answers to questions on notice/and or supplementary questions from:

- Hon Mike Baird MP, Premier and Minister for Western Sydney
- Infrastructure NSW
- Ausgrid, Endeavour Energy and Essential Energy
- UBS Australasia
- Unions NSW
- Electrical Trades Union, NSW Branch
- Australian Energy Regulator
- Ms Sandra Darroch
- Emeritus Professor Bob Walker & Dr Betty Con Walker
- Hon Gladys Berejikilian, MP, Treasurer and Minister for Industrial Relations
- Combined Pensioners and Superannuants Association of Australia
- Mr Stephen Koukoulas
- Public Interest Advocacy Centre

Appendix 5 Minutes

Minutes no. 1
Wednesday 6 May 2015
Select Committee on the Leasing of Electricity Infrastructure
Members' Lounge, Parliament House, 6.55pm

1. Members present
Revd Nile, Chair
Mr Clarke, Deputy Chair
Mr Borsak
Ms Cusack
Dr Kaye
Mr Khan
Dr Phelps
Mr Primrose
Mr Searle

2. Tabling of resolution establishing the committee
The Chair tabled the resolution from the House establishing the committee.

3. Procedural resolutions
Resolved, on the motion of Dr Phelps: That, unless the committee decides otherwise:
- the committee authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament's website, where technically possible
- the committee adopt the interim guidelines on the use of social media and electronic devices for committee proceedings, as developed by the Chair's Committee in May 2013
- media statements on behalf of the committee be made only by the Chair
- supplementary questions be lodged with the Committee Clerk within one day (excluding Saturday and Sunday) following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within three calendar days of the date on which questions are forwarded to the witness.

4. Inquiry into the leasing of electricity infrastructure

4.1 Proposed timeline
Resolved, on the motion of Ms Cusack: That the proposed timeline for the inquiry be as follows:

Call for submissions	Wednesday 6 May 2015
Closing date for submissions	Thursday 14 May 2015
Public hearings	11, 15 and 18 May 2015
Report deliberative	9.30am Friday 29 May 2015
Table report	Tuesday 2 June 2015

4.2 Advertising
The committee noted that a storify page will be established to promote the inquiry and that the inquiry will be advertised via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales.

4.3 Stakeholder list

Resolved, on the motion of Mr Khan: That the secretariat be authorised to write to people and organisations on the proposed stakeholder list, as amended, to invite them to make a submission to the inquiry.

4.4 Proposed witnesses

Resolved, on the motion of Ms Cusack: That the following witness list be adopted, subject to the availability of witnesses:

11 May 2015	• Premier (1.5 hr) • Australian Energy Market Commission / Australian Energy Regulator (1 hr) • Mr Vince Graham, Networks NSW (45 min) • Infrastructure Partnerships Australia (1 hr) • Infrastructure NSW (1 hr) • UBS – Mr Matthew Grounds, Mr Guy Fowler, Mr David Leitch, Mr Andrew Lilley, Mr Chris Williams (1 hr) • The Hon. Troy Grant (45 min)
15 May 2015	• Unions NSW / Electrical Trades Union (Mr Steve Butler) / Stop the sell-off campaign (1.5 hr) • Council of Social Service of NSW and Public Interest Advocacy Centre (1 hr) • Mr John Quiggan (45 min) • Mr Matthew Warren, Energy Supply Association (45 min) • The Australia Institute (45 min) • Mr Stephen Koukoulas / Mr Thomas Devlin (45 min) • NSW Local Government Association (45 min)
18 May 2015	• The Hon. Michael Egan AO (45 min) • Mr Michael Costa (45 min) • Mr Martin Ferguson AM (45 min) • Mr Peter Debnam (45 min) • Dr Betty Con Walker / Dr Bob Walker (45 min) • Ms Amelia Christie, Combined Pensioners and Superannuants Association of Australia (45 min) • Treasurer / NSW Treasury (1.5 hr)

Resolved, on the motion of Mr Primrose: That members may nominate additional witnesses and stakeholders at future committee meetings.

5. Adjournment
The committee adjourned at 7.05pm, until 8.45am Monday 11 May 2015.

Tina Higgins
Committee Clerk

Minutes no. 2
Monday 11 May 2015
Select Committee on the Leasing of Electricity Infrastructure
Macquarie Room, Parliament House, 8.45 am

1. Members present
Revd Nile, *Chair*
Mr Clarke, *Deputy Chair*
Mr Borsak
Ms Cusack
Mr Farlow *(substituting for Mr Khan)*
Dr Kaye
Dr Phelps
Mr Primrose
Mr Searle

2. Apologies

3. Previous minutes
Resolved, on the motion of Mr Clarke: That draft minutes no.1 be confirmed.

4. Correspondence
The committee noted the following items of correspondence:

Received:
- 11 May 2015 – From The Hon. Troy Grant, NSW Deputy Premier, to the secretariat, declining the invitation to appear as a witness
- 8 May 2015 - From Mr Michael Costa to the secretariat, declining the invitation to make a submission to the inquiry
- 7 May 2015 - From Mr Peter Debnam to the secretariat, declining the invitation to appear as a witness.

5. Conduct of the hearing
Resolved, on the motion of Mr Farlow: That government members decline to use their allocated time for questions, and that this time instead be allocated to a power point presentation by Premier Baird, with the remaining hour divided equally between opposition and crossbench members.

6. 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 witness gave evidence under a former oath:

- The Hon. Mike Baird MP, NSW Premier.

The following witnesses were sworn and examined:
- Mr Blair Comley, Secretary, Department of Premier and Cabinet

- Mr Simon Draper, Deputy Secretary, Productivity and Sustainability, Department of Premier and Cabinet.

The Premier tendered the following document:
- a power point presentation entitled 'Rebuilding NSW: Long term lease of the NSW Electricity Networks', undated.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:
- Mr Matthew Warren, Chief Executive Officer, Energy Supply Association of Australia
- Mr Kieran Donoghue, General Manager, Policy, Energy Supply Association of Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:
- Mr Brendan Lyon, Chief Executive, Infrastructure Partnerships Australia
- Mr Jonathan Kennedy, Head of Government Relations and Regulatory Affairs, Infrastructure Partnerships Australia.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:
- Mr Vince Graham, Chief Executive Officer, Ausgrid, Endeavour Energy and Essential Energy.

Mr Graham tendered the following documents:
- a copy of a power point presentation entitled 'AER Final Determination', dated 8 May 2015
- an article entitled 'Selling off Electricity Networks will give NSW cheaper power bills', authored by Mr Graham, dated 20 August 2014
- a document entitled 'References to Safety Risk Management in recent Royal Commissions', undated.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:
- Mr Jim Betts, Chief Executive Officer, Infrastructure NSW
- Ms Amanda Jones, Chief Operating Officer, Infrastructure NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:
- Mr Matthew Grounds, Chief Executive Officer and Country Head, UBS Australasia
- Mr Guy Fowler, Chairman, CSS Australasia
- Mr Jarrod Key, Head of Power, Utilities and Infrastructure, CSS Australasia
- Mr Chris Williams, Head of Research and Co-Head of Equities
- Mr David Leitch, Utilities and Building Materials Analyst
- Mr Andrew Lilley, Fixed Income Analyst.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The public hearing concluded at 4.45 pm.

7. Tabled documents

Resolved, on the motion of Mr Clarke: That the committee accept and publish the following documents tendered during evidence on 11 May 2015:

- a copy of a power point presentation entitled 'Rebuilding NSW: Long term lease of the NSW Electricity Networks', tabled by the Hon. Mike Baird, NSW Premier
- a copy of a power point presentation entitled 'AER Final Determination', dated 8 May 2015, tabled by Mr Vince Graham
- an article entitled 'Selling off Electricity Networks will give NSW cheaper power bills', dated 20 August 2014, tabled by Mr Vince Graham
- a document entitled 'References to Safety Risk Management in recent Royal Commissions', undated, tabled by Mr Vince Graham.

8. Draft hearing schedules for 15 and 18 May 2015

The draft hearing schedules for 15 and 18 May 2015 were circulated to members.

9. Adjournment

The committee adjourned at 4.50 pm, until 8.45 am Friday 15 May 2015 in the Macquarie Room.

Tina Higgins
Committee Clerk

Minutes no. 3

Friday 15 May 2015
Select Committee on the Leasing of Electricity Infrastructure
Macquarie Room, Parliament House, 8.45 am

1. Members present

Revd Nile, *Chair*
Mr Clarke, *Deputy Chair*
Mr Borsak
Ms Cusack
Dr Kaye
Mr Khan
Dr Phelps
Mr Primrose
Mr Searle

2. Previous minutes

Resolved, on the motion of Mr Clarke: That draft minutes no. 2 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 12 May 2015 – From Mr Neil Baum, Local Government NSW to the secretariat, declining the invitation to appear as a witness
- 12 May 2015 – From Mr Ben Bucknell, On-Market BookBuilds to the Chairman, offering to give evidence to the inquiry regarding the use of the ASX BookBuild facility in an Initial Public Offering
- 13 May 2015 – Email from Mark Laybutt, Australian Competition and Consumer Commission to secretariat, declining the invitation to appear as a witness

- 13 May 2015 – Email from Mr Kevin Crameri to the Chairman, requesting certain questions to be asked of the NSW Government
- 14 May 2015 – Email from Mr Brett Cox, Office of the NSW Treasurer to the secretariat requesting the committee consider an alternate schedule for the Treasurer's appearance on Monday 18 May 2015.

4. Submissions

4.1 Public submissions

Resolved, on the motion of Mr Clarke: That the committee note that submissions no. 1, 2, 6, 9, 10, 11, 12, 13, 16, 17, 20 and 21 were published by the Committee Clerk under the authorisation of an earlier resolution.

4.2 Partially confidential submissions

Resolved, on the motion of Mr Clarke: That the committee authorise the publication of submission nos. 3, 4, 5, 7, 8, 14, 18 and 19 with the exception of identifying and/or sensitive information which is to remain confidential, as per the recommendation of the secretariat.

4.3 Confidential submissions

Resolved, on the motion of Dr Phelps: That the secretariat contact the author of submission 15 to obtain their reasons for requesting confidentiality of their submission, with this information being brought back to the committee at the next meeting.

4.4 Attachments to submissions

Resolved, on the motion of Mr Clarke: That the committee authorise the publication of:

- attachments A to H to submission no. 10 (NSW Government)
- attachments 1 and 2 to submission no. 13 (PIAC)
- attachment 1 to submission no. 17 (Tourism and Transport Forum)
- attachment 1 to submission no. 21 (NCOSS).

5. Additional witnesses for the hearing on 18 May 2015

Resolved, on the motion of Mr Borsak: That On-Market BookBuilds, author of submission 12, be invited to appear as a witness at the public hearing on 18 May 2015.

Resolved, on the motion of Dr Kaye: That Milton Caine, the author of submission 20, be invited to appear as a witness at the public hearing on 18 May 2015.

6. Written questions for the ACCC

Resolved, on the motion of Dr Kaye: That the timeframe for members to email the secretariat with any questions they would like the Australian Competition and Consumer Commission to answer be the same timeframe as for lodging supplementary questions for witnesses appearing at the hearing on 15 May 2015.

7. Conduct of the hearings

Resolved, on the motion of Mr Searle: That for the following witnesses the sequence of questions to be asked at the hearing alternate between government, opposition and crossbench members, in that order, with equal time allocated to each:

- Union representatives
- The Australia Institute
- Professor John Quiggin

Resolved, on the motion of Dr Phelps: That for the Treasurer's evidence on 18 May 2015, government members decline to use their allocated time for questions, and that this time instead be allocated to a 15 minute opening statement by the Treasurer, with the remaining hour divided equally between opposition and crossbench members.

8. 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 Steve Butler, Secretary, Electrical Trades Union, NSW Branch
- Mr Mark Lennon, Secretary, Unions NSW
- Mr Adam Kerslake, Director, Stop the Sell-Off Campaign
- Mr Scott McNamara, Manager Energy, Utilities and Private Sector, United Services Union
- Mr Gordon Brock, Professionals Australia

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr John Pierce, Chairman, Australian Energy Market Commission
- Mr Richard Owens, Senior Director, Australian Energy Market Commission
- Ms Michelle Groves, Chief Executive Officer, Australian Energy Regulator
- Mr Sebastian Roberts, General Manager, Networks, Australian Energy Regulator.

Mr John Pierce tendered the following document:

- a booklet entitled 'Preparing energy markets for consumer driven transformation, Overview 2013-2014', authored by the Australian Energy Market Commission

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Professor John Quiggin, University of Queensland.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Richard Denniss, Executive Director, The Australia Institute.

The evidence concluded and the witness withdrew.

The public and the media withdrew.

The public hearing concluded at 1.15 pm.

9. Tabled documents

Resolved, on the motion of Mr Khan: That the committee accept and publish the following documents tendered during evidence on 15 May 2015:

- a booklet entitled 'Preparing energy markets for consumer driven transformation, Overview 2013-2014', tabled by Mr John Pierce from the Australian Energy Market Commission.

10. Adjournment

The committee adjourned at 1.15 pm, until 8.45 am Monday 18 May 2015 in the Macquarie Room.

Tina Higgins
Committee Clerk

Minutes no. 4
Monday 18 May 2015
Select Committee on the Leasing of Electricity Infrastructure
Macquarie Room, Parliament House, 8.45 am

1. Members present
Revd Nile, *Chairman*
Mr Clarke, *Deputy Chair*
Mr Borsak
Ms Cusack
Dr Kaye
Mr Khan
Dr Phelps
Mr Primrose
Mr Searle

2. Previous minutes
Resolved, on the motion of Mr Clarke: That draft minutes no. 3 be confirmed.

3. Correspondence
The committee noted the following items of correspondence:

Received:
- 18 May 2015 – From Gavin Fox, Australian Energy Regulator to secretariat, enclosing a copy of a media release discussing their revocation of the regulator's determination.

4. Submissions

4.1 Public submissions
Resolved, on the motion of Mr Clarke: That the committee note that submissions no. 15 and 22-34 were published by the Committee Clerk under the authorisation of an earlier resolution.

4.2 Supplementary submission
Resolved, on the motion of Mr Clarke: That the committee authorise the publication of supplementary submission 1a.

4.3 Confidential submissions

4.4 Attachments to submissions
Resolved, on the motion of Mr Clarke: That the committee authorise the publication of attachment 1 to submission 34.

5. Conduct of the inquiry
Resolved, on the motion of Mr Searle: That for the evidence to be given by the Hon. Michael Egan AO the sequence of questions to be asked at the hearing alternate between government, cross bench members and opposition, in that order, with equal time allocated to each.

Resolved, on the motion of Ms Cusack: That following the evidence of the Treasurer there be a 5 minute break.

Resolved, on the motion of Mr Searle: That, subject to the availability of members, and after receipt of answers to questions on notice from the Premier and UBS, consideration be made to hold a deliberative meeting on the 20 or 21 May 2015.

6. 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:
- Ms Tracy Howe, Chief Executive Officer, Council of Social Service of NSW
- Ms Carolyn Hodge, Senior Policy Officer, Council of Social Service of NSW
- Ms Gabrielle Kuiper, Senior Policy Officer, Public Interest Advocacy Centre.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:
- Mr Stephen Koukoulas, Managing Director, Market Economics.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:
- Ms Sandra Darroch, Author.

Ms Darroch tendered the following document:
- a book entitled 'Power for the people: An (uncensored) story of electricity in Australia 1770-2015', authored by Sandra Darroch, published in 2015.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:
- The Hon. Michael Egan AO, former NSW Treasurer.

Mr Egan tendered the following document:
- a paper prepared for the Department of Primary Industry and Energy entitled 'Analysis pf Pacific Power and SECV proposals for an electricity market', authored by Hugh Outhred, John Kaye and Hugh Bannister, dated February 1993.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:
- Professor Bob Walker
- Dr Betty Con Walker.

Professor Walker and Dr Con Walker tendered the following document:
- a book entitled 'Privatisation: sell off or sell out', authored by Professor Bob Walker and Dr Betty Con Walker, published in 2000.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:
- Ms Amelia Christie, Manager, Research and Advocacy, Combined Pensioners and Superannuants Association of Australia.

The evidence concluded and the witness withdrew.

The following witness gave evidence under a former oath:
- The Hon. Gladys Berejiklian MP, NSW Treasurer

The following witnesses were sworn and examined:

- Mr Philip Gaetjens, Secretary, NSW Treasury
- Mr Tim Spencer, Deputy Secretary, Commercial Group, NSW Treasury.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Ben Bucknell, Chief Executive Officer, On-Market BookBuilds
- Mr Nick Motteram, Managing Director, On-Market BookBuilds.

Mr Bucknell tendered the following document:

- a document entitled 'Key Extracts: An Independent Review for the Secretary of State for Business, Innovation & Skills: IPOs and Bookbuilding in Future HM Government Primary Share Disposals (UK)'.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Milton Caine, private individual.

The evidence concluded and the witness withdrew.

The public and the media withdrew.

The public hearing concluded at 5.25 pm.

7. Tabled documents

Resolved, on the motion of Mr Khan: That the committee accept and publish the following documents tendered during evidence on 18 May 2015:

- a book entitled 'Power for the people: An (uncensored) story of electricity in Australia 1770-2015', tabled by Ms Sandra Darroch
- a paper entitled 'Analysis pf Pacific Power and SECV proposals for an electricity market', tabled by the Hon. Michael Egan AO
- a book entitled 'Privatisation: sell off or sell out', tabled by Professor Bob Walker and Dr Betty Con Walker
- a document entitled 'Key Extracts: An Independent Review for the Secretary of State for Business, Innovation & Skills: IPOs and Bookbuilding in Future HM Government Primary Share Disposals (UK)', tabled by Mr Ben Bucknell.

8. Adjournment

The committee adjourned at 5.27 pm, until 9.30 am Friday 29 May 2015 in Room 1254.

Tina Higgins
Committee Clerk

Minutes no. 5
Monday 25 May 2015
Select Committee on the Leasing of Electricity Infrastructure
Room 1254, Parliament House, 3.00 pm

1. Members present
Revd Nile, *Chairman*
Mr Clarke, *Deputy Chair (teleconference)*
Mr Borsak
Ms Cusack *(teleconference)*
Dr Kaye
Mr Khan
Dr Phelps
Mr Primrose
Mr Searle

2. Previous minutes
Resolved, on the motion of Dr Phelps: That draft minutes no. 4 be confirmed.

3. Correspondence
The committee noted the following items of correspondence:

Received:

- 21 May 2015 – From Mr Paul Chapman to Chair, discussing employment protections for workers.
- 18 May 2015 – From Mr Greg Medcraft, Chairman of the Australian Securities and Investments Commission, to the Chair, declining to make a submission to the inquiry on the basis of their ongoing investigation involving UBS.

Answers to questions on notice:

- 19 May 2015 – From NSW Premier, Hon Mike Baird MP forwarding answers to questions on notice and supplementary questions and transcript correction.
- 19 May 2015 –From Ms Annette Spencer, Managing Director, Head of Legal, UBS Australasia and Mr Andrew Jones, Head of Compliance for Operational Risk Control, UBS Australasia – forwarding answers to questions on notice and supplementary questions.
- 19 May 2015 – From Mr Vince Graham, Chief Executive Officer, Ausgrid, Endeavour Energy and Essential Energy – forwarding answers to questions on notice and transcript corrections.
- 19 May 2015 – From Mr Jim Betts, Infrastructure NSW – forwarding answers to questions on notice.
- 19 May 2015 – From Professor John Quiggin – forwarding answer to question on notice and transcript corrections.
- 22 May 2015 – From Ms Sandra Darroch – answers to questions on notice.
- 22 May 2015 – From Mr Gavin Fox, Australian Energy Regulator – forwarding answers to questions on notice.

4. Submissions

4.1 Supplementary submissions
Resolved, on the motion of Dr Phelps: That the committee authorise the publication of supplementary submissions 12a and 34a.

5. Additional hearing

Mr Searle moved: That the committee recall each UBS witness separately and, if necessary in the light of that further evidence, recall the Premier.

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

6. Adjournment

The committee adjourned at 3.42 pm, until 9.30 am Friday 29 May 2015 in Room 1254.

Tina Higgins
Committee Clerk

Draft minutes no. 6
Friday 29 May 2015
Select Committee on the Leasing of Electricity Infrastructure
Room 1254, Parliament House, 9.30 am

1. Members present

Revd Nile, *Chairman*
Mr Clarke, *Deputy Chair*
Mr Borsak
Ms Cusack
Dr Kaye
Mr Khan
Dr Phelps
Mr Primrose
Mr Searle

2. Previous minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 5 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 19 May 2015 – From Mr Ben Bucknell, On-Market BookBuilds to the Chairman providing further information regarding the ASX BookBuild facility.
- 28 May 2015 – From Mr Colin Brann to the Chairman concerning transfer of employment provisions in the *Electricity Network Assets (Authorised Transactions) Bill 2015*.

Answers to questions on notice:

- 22 May 2015 – From Mr Mark Lennon, Secretary, Unions NSW forwarding answers to questions on notice and supplementary questions
- 25 May 2015 – From Mr Steve Butler, Secretary, Electrical Trades Union NSW Branch forwarding answers to questions on notice and supplementary questions

- 25 May 2015 – From Tracy Howe, Chief Executive Officer, Council of Social Service of NSW forwarding answers to questions on notice
- 25 May 2015 – From Combined Pensioners and Superannuants Association of Australia forwarding answers to questions on notice
- 25 May 2015 – From NSW Treasurer, Hon Gladys Berejiklian MP forwarding answers to questions on notice and supplementary questions
- 25 May 2015 – From Emeritus Professor Bob Walker and Dr Betty Con Walker forwarding answers to questions on notice and supplementary questions
- 27 May 2015 – From Dr Gabrielle Kuiper, Public Interest Advocacy Centre forwarding answers to questions on notice and transcript corrections
- 27 May 2015 – From Mr Stephen Koukoulas, forwarding answers to questions on notice and transcript corrections.

4. Other documents

The committee noted that the following public documents, which are largely Government publications and provide information of a factual nature, have been referred to in the report:

- 'Economic Impact of State Infrastructure Strategy – Rebuilding NSW', Deloitte Access Economics, November 2014
- 'Final Report of the Special Commission of Inquiry into the Electricity Transactions', Hon Brian Tamberlin QC, October 2011
- 'Electricity Network Regulatory Frameworks', Volumes 1 and 2, Productivity Commission, 9 April 2013
- 'Public Infrastructure', Volumes 1 and 2, Productivity Commission, 27 May 2014
- 'Rebuilding NSW – Discussion Paper', NSW Government, August 2014
- 'State Infrastructure Strategy Update 2014', Infrastructure NSW, November 2014
- 'Rebuilding NSW State Infrastructure Strategy 2014', NSW Government, November 2014
- 'Rebuilding NSW State Infrastructure Strategy 2014 – Update', NSW Government, February 2015
- 'Performance Audit: Large construction projects: Independent assurance', NSW Auditor-General, May 2015.

5. Consideration of Chair's draft report

The Chair submitted his draft report, entitled 'Leasing of Electricity Infrastructure', which, having been previously circulated, was taken as being read.

Chapter 1.

Dr Kaye moved: That the following new paragraphs and recommendation be inserted after paragraph 1.13:

> 'The inquiry has been rushed, with less than a month to find and hear witnesses and develop a considered opinion. The timetable, driven apparently by political considerations of the government, has provided the committee with a limited opportunity to meet its obligations to fulfil its terms of reference. During the writing of the final report the government unexpectedly introduced its legislation into the parliament, despite having denied the committee and the public the ability to scrutinise draft provisions and assess their impact.
>
> **Committee comment**
>
> The Committee is disappointed that the Premier and the Treasurer failed to provide the committee with a copy of the draft legislation before introducing it into parliament. This is a particularly serious concern given the potential impact of the transactions and the public controversy over many aspects of privatisation.

Recommendation X

The government delay progress of the legislation until there has been ample time for members of parliament and the public to carefully scrutinise the provisions and assess their potential impact.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Chapter 2.

Resolved, on the motion of Dr Kaye: That paragraph 2.1 be amended by:
- a) omitting 'using' and inserting instead 'through'
- b) omitting 'networks'
- c) omitting 'lines' and inserting instead 'networks'
- d) omitting 'cells' and inserting instead 'panels'
- e) omitting 'use' and inserting instead 'export energy to'.

Resolved, on the motion of Dr Kaye: That paragraph 2.5 be amended by omitting 'voltage so it is ready for' and inserting instead 'voltages for distribution and'.

Resolved, on the motion of Dr Kaye: That paragraph 2.7 be amended by inserting 'service provider' after 'transmission network' in the first dot point, and after 'distribution network' in the second, third and fourth dot point.

Resolved, on the motion of Mr Searle: That paragraph 2.8 be amended by:
- a) omitting 'merged' and inserting instead 'placed'
- b) inserting 'leadership of the' before 'state' electricity'
- c) omitting 'into one company known as Networks NSW' and inserting instead 'under a common board and Chief Executive'
- d) inserting at the end 'Each company became a shareholder in a new entity, called Networks NSW, which took on the management and co-ordination of all three businesses.'

Resolved, on the motion of Dr Kaye: That
- a) paragraph 2.12 be amended by inserting 'household' after 'typical' and by omitting 'retail' after 'electricity'.
- b) paragraph 2.13 be amended by omitting 'tariffs' and inserting instead 'costs' and by omitting 'is' and inserting instead 'account for'.
- c) paragraph 2.14 be amended by omitting 'their customers,'.

Resolved, on the motion of Dr Kaye: That paragraph 2.15 be amended by omitting 'because of strong economies of scale'.

Resolved, on the motion of Dr Kaye: That paragraph 2.19 and 2.20 be amended by omitting 'national electricity objective' and inserting instead 'National Electricity Objective'.

Resolved, on the motion of Dr Kaye: That paragraph 2.21 be amended by omitting 'network prices, that is'.

Dr Kaye moved: That paragraph 2.23 be amended by inserting 'in principle' after 'may recover is'.

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Dr Kaye: That the sub-heading before paragraph 2.28 be amended by omitting 'Relevance' and inserting instead 'Regulatory treatment'.

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted after paragraph 2.35:

> 'Since then, the Public Interest Advocacy Centre have also signalled an intention to engage in an appeal, seeking even further cuts to network revenues.'

Dr Phelps moved: That chapter 2, as amended, be adopted.

Question put.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Noes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Question resolved in the affirmative.

Chapter 3.

Resolved, on the motion of Mr Primrose: That the sub-heading before paragraph 3.2 be amended by omitting 'An' and inserting instead 'The'.

Resolved, on the motion of Dr Kaye: That the second paragraph of the chapter introduction be amended by inserting 'and a majority part of' after 'Transgrid,' and by omitting 'predicted' and inserting instead 'claimed'.

Resolved, on the motion of Dr Kaye: That paragraph 3.1 be amended by omitting 'services' and inserting instead 'service providers' and by omitting 'the regional' and inserting instead 'a regional'.

Resolved, on the motion of Dr Kaye: That paragraph 3.9 be amended by inserting at the end: 'The lease percentages are by value of asset, not customer numbers or length of line.'

Dr Kaye moved: That paragraph 3.11 be amended by inserting at the end: 'This is not consistent with the legislation which has been passed by the Legislative Assembly which proposes that ERIC and Endeavour remain under the same ownership structure.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That the following new paragraph be inserted after paragraph 3.12:

> 'Despite this claim, the legislation presented by the Government to Parliament and passed by the Legislative Assembly [FOOTNOTE: The Electricity Retained Interest Corporations Bill 2015 and the Electricity Network Assets (Authorised Transactions) Bill 2015] is unclear as to how each transaction will be structured and governed. The legislation authorizes a lease of network infrastructure assets to the private sector for up to 99 years, which may be renewed, [FOOTNOTE: Electricity Network Assets (Authorised Transactions) Bill 2015, cl 5(1)(b)] with 'no limitations as to the nature of the transactions or arrangements that can be entered into or used for the purposes of an authorised transaction.' [FOOTNOTE: Electricity Network Assets (Authorised Transactions) Bill 2015, cl 12(2)] While the legislation provides for vehicles such as Transaction State Owned Corporations [FOOTNOTE: Electricity Network Assets (Authorised Transactions) Bill 2015, cl 13] and Transaction companies [FOOTNOTE: Electricity Network Assets (Authorised Transactions) Bill 2015, cl 14 and Schedule 3] which may be created by formation, acquisition or

the conversion of existing electricity network State Owned Corporation or Transaction SOC, there is no clear indication in the legislation or the accompanying speeches in Parliament from the Premier or Treasurer that provides any guidance as to how the NSW Government intends to arrange and execute these significant transactions, if authorised by Parliament. The lack of detail and transparency is not only troubling, given the scale and significance of the proposed transactions, but leaves the Committee in the position of not having sufficient detail to determine whether the arrangements to be entered into will adequately protect the public interest.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That the following new paragraphs be inserted after paragraph 3.13:

'At present, the equivalent of company tax is paid by the State-owned electricity companies to the NSW Government. That exemption from Commonwealth company tax only applies to an entity that is one hundred per cent owned by a State Government. Presumably the objective of retaining for the State a share of tax equivalent payments commensurate with its retained interest is sought through the vehicle of the Electricity Retained Interest Corporations, created in one of the Bills now before Parliament. [FOOTNOTE: Electricity Retained Interest Corporations Bill 2015] These entities will hold and advance what remains of the State interest in the electricity network assets. The Premier stated in his evidence to the Committee that he had advice that there was a way for the State to retain a proportionate share of tax-equivalent payments. Answers to supplementary questions from the Treasurer disclosed that this advice was provided by Ernst Young, but that it was commercial-in-confidence. [FOOTNOTE: Treasurer's Answers to Supplementary Questions, Question 42]

Commercial-in-confidence is a designation given to information that, if disclosed, may result in damage to a party's commercial interests, intellectual property or trade secrets. Given the advice relates to a matter involves an area where the State is not in any commercial competition with any other business, such advice cannot be commercial-in-confidence. In any case, the fact this Committee has not seen such advice means we cannot evaluate its quality and so cannot determine whether the 'preferred structures presented by the State' [FOOTNOTE: Premier's Answers to Supplementary Questions, question 1] to the Australian Taxation Office are likely to achieve its aim of protecting State revenues.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Dr Kaye: That paragraph 3.18 be amended by

a) omitting 'is expected to set' and inserting instead 'sets'
b) omitting 'will be' and inserting instead 'is'
c) omitting 'which is currently being prepared by the NSW Government'.

Dr Kaye moved: That the following new paragraph be inserted after paragraph 3.18:

'The committee was not provided with a draft copy of the legislation and has not had the opportunity to examine the legislation and subject witnesses to questioning on it.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That paragraph 3.18 be amended by

a) omitting 'is' and inserting 'was' in the first sentence
b) omitting 'much of the detail will be included in the legislation currently being prepared by the NSW Government.' and inserting instead 'it was claimed that much of the detail would be included in the legislation then being prepared by the NSW Government. However, a review of the legislation since presented to Parliament and passed by the Legislative Assembly does not achieve this, with crucial details left out. Those details, presumably, would be found in the licensing conditions [FOOTNOTE: Electricity Network Assets (Authorised Transactions) Bill 2015, cl 36] or in the terms of any lease entered into concerning the electricity distribution and transmission businesses. [FOOTNOTE: Electricity Network Assets (Authorised Transactions) Bill 2015, cll 12, 48] However, as the Committee does not have those details we are not able to determine whether the course of action to be pursued by the NSW Government will adequately protect the public interest.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved that paragraph 3.19 be amended by:

a) inserting 'For example, the Premier stated that' before 'in addition to'
b) omitting 'the Premier stated that' before 'the lease transaction itself'
c) omitting 'would' before 'also ensure there are'
d) inserting at the end: 'The efficacy of these measures will depend entirely upon their drafting, not merely their stated intent. As the businesses are monopoly businesses, there is no good reason why the NSW Government's key requirements of any successful lessee should not be disclosed fully and clearly so this Committee is able to evaluate their effectiveness. The failure of the NSW Government to provide these details, while inviting the Parliament to pass the authorising legislation, is troubling and most unfortunate.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That the following new paragraph be inserted after paragraph 3.20:

'However, the NSW Government has provided no information regarding the potential impact of the transactions on access to and exit from the network. [FOOTNOTE: See Treasurer's Answers to Supplementary Questions, Question 53, in which there is either a misunderstanding of the question or a deliberate failure to answer it] That is, what effect will the transactions have on ensuring ongoing connectivity to the network for existing and new dwellings, and what impact will those transactions have on customers who seek to disconnect from the network – for example, because they have self-generated electricity and on-site storage capability. The challenge of emerging technology and the challenge it may constitute for the network was canvassed in some of the evidence before the committee; for example, from the Energy Supply Association. New technologies, such as the Tesla battery, [FOOTNOTE: See http://reneweconomy.com.au/2015/tesla-launches-home-business-and-utility-battery-storage-range-74034] may constitute a significant threat to the value of the investment of any purchaser or lessee of the transmission and distribution assets. While this uncertainty could be factored into any price paid for the lease(s), it could also be covered in any lease agreement which will not be made public. The committee is of the view that any concessions made for the benefit of any purchaser/lessee should be fully disclosed to the public, before any transaction is entered into.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That paragraph 3.22 be amended by inserting:

a) a new third sentence: 'However, even in the legislation now before the Parliament this is not spelled out clearly and its efficacy is therefore uncertain.'
b) at the end: 'Again, how effective this proves to be will depend upon how those license conditions are drafted. In the public interest, and in fairness to any entity seeking to bid for the lease(s), these matters should be fully disclosed before any transaction is entered into.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That the following new paragraph be inserted after paragraph 3.23:

'While the penalties of up to $220,000 imposed in the proposed legislation [FOOTNOTE: Electricity Network Assets (Authorised Transactions) Bill 2015, Item [27] of Schedule 7] are significant, they are nowhere near those provided for in the *Work Health and Safety Act 2011* which contains penalties of up to $1.5 million for corporations and $300,000 [FOOTNOTE: *Work Health and Safety Act 2011* s 32] for individuals, and higher where death or serious injury occur. [FOOTNOTE: *Work Health and Safety Act 2011* s 31] The claims of the Treasurer are significantly wrong on this matter. This damages the reliance on which this Committee can place on her other claims in favour of the proposed transactions.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That paragraph 3.27 be amended by omitting

'The Treasurer commented on the significance of this appointment for consumers:

> … we have appointed perhaps Australia's best known consumer advocate in Professor Allan Fels to actually give the final tick off or cross before the transaction is complete in relation to pricing … the Government has done all it can to put in place all those guarantees which give the public confidence and assurance that as a Government we are committing to downward

pressure on network prices.' [FOOTNOTE: Evidence, Hon Gladys Berejiklian MP, NSW Treasurer, 18 May 2015, p 80.]

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That paragraph 3.28 be amended by:

a) omitting 'In addition to the new Electricity Price Commissioner' and inserting instead 'Under the proposed Electricity Price Guarantee, the Committee was told by the NSW Government that'
b) inserting 'In addition' before 'the businesses will be required to provide'.

Resolved, on the motion of Dr Kaye: That paragraph 3.28 be amended by omitting 'charges' and inserting instead 'revenues'.

Mr Searle moved: That the following new paragraphs be inserted after paragraph 3.28:

'However, the legislation [FOOTNOTE: Electricity Network Assets (Authorised Transactions) Bill 2015 cl 8] does not live up to the Government claims. While network charges will have to be lower at 30 June 2019 than they were at 30 June 2014, the Bill does not say by how much. Even $1 would satisfy this proposal. There is nothing in the legislation about charges by the transmission and distribution businesses between 2015 and 2019. There is nothing in the Bill that will require, or even promote, savings from greater efficiency to be passed on to consumers. One of the tasks set for the Price Commissioner is to report on whether the private investment to acquire an interest in the electricity network assets is likely to increase in network charges; [FOOTNOTE: Electricity Network Assets (Authorised Transactions) Bill 2015, cl 8(2)(a)] however, this misses the point. It is not the borrowing costs to invest alone that may have an upward pressure on network prices, there a range of factors including the commercial pressure to provide restless investors with what they perceive to be an adequate return, among other matters. The legislation lists only this one factor and creates a false sense of addressing the issue of cost when it fails to address the wider factors that may cause network prices to increase under a private operator.

The legislation is also silent on whether the Price Commissioner will be able to refer any concerns to the Australian Energy Regulator or the Australian Competition and Consumer Commission. At best, the provision adds nothing to the protections already in place through the National Electricity Law, the Australian Energy Market Operator and the Australian Energy Regulator. This proposal is mere political gimmickry, without any real substance.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That paragraph 3.29 be amended by inserting 'said' after 'Another measure'.

Resolved, on the motion of Dr Kaye: That paragraph 3.29 be amended by inserting 'existing' before 'power of the Energy Minister' and 'a change to' before 'these powers,'.

Mr Searle moved: That the following new paragraph be inserted after paragraph 3.30:

'The legislation presented to Parliament and passed by the Legislative Assembly [FOOTNOTE: Electricity Network Assets (Authorised Transactions) Bill 2015, Item [19] of Schedule 7] does not provide much more information and the key driver is the content of the operator license which the

> Committee, and the wider community, do not know. In the public interest, this should be fully disclosed before any transaction is entered into.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Dr Kaye: That paragraph 3.32 be amended by omitting '$2 billion from Restart NSW funds.' [FOOTNOTE: NSW Government, *Rebuilding NSW: Update on Electricity Networks*, 18 December 2014, p 1.] and inserting the following new paragraph at the end:

> 'In addition, the government is transferring $2 billion from Restart NSW funds'. [FOOTNOTE: NSW Government, *Rebuilding NSW: Update on Electricity Networks*, 18 December 2014, p 1.]

Resolved, on the motion of Mr Searle: That paragraph 3.33 be amended by omitting 'confirmed' and inserting instead 'stated', and by inserting at the end 'As this committee has no knowledge of what the 'preferred structures presented by the State' [FOOTNOTE: Premier's Answers to Supplementary Questions, Question 1] to the Australian Taxation Office are, we cannot determine how likely they are to achieve the aim of protecting State revenues.'

Mr Searle moved: That paragraph 3.33 be amended by inserting at the end: 'However, the Premier provided no basis for the claim and so it cannot be evaluated by this Committee.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That paragraph 3.47 be amended by inserting ', it was asserted,' before 'would allow the'.

Mr Searle moved: That the following new paragraphs be inserted after paragraph 3.49:

> 'The quantum for each project outlined by INSW is, at best, an estimate based upon the work done on each to date, as revealed in the evidence of Mr Betts:
>
> > The Hon. ADAM SEARLE: Throughout the document but particularly from page 154 onwards you have a summary of all the projects with a description and your recommendation of how much should be allocated. I think you recommend something just under $19 billion worth of spending from Rebuilding NSW Fund. Were those dollar figures suggested to you by the Government or by anyone in the Government or were they independently reached and verified by your organisations?
> >
> > Mr BETTS: They were reviewed by our organisation on the basis of analysis which had been undertaken by government departments. So whilst the Premier identified initially in his commissioning letter some broad orders of magnitude for us to consider, particularly around schools and hospitals investments, for instance in relation to a project like Sydney Rapid Transit the documentation that we looked at to arrive at the dollar figure which we recommend was a preliminary business case undertaken by Transport for NSW. We examined the assumptions in that business case. We reviewed the documentation that the Department of Transport had prepared and we arrived at our own independent conclusion about what an appropriate recommendation was, recognising that more work needs to be done to finalise the dollar figures associated with each of those major projects or programs.

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>
> The Hon. ADAM SEARLE: You do not say those figures are accurate, you just reviewed what the departments had done, you looked at their methodology and you have said it is more or less in the ballpark in terms of the methodology?
>
> Mr BETTS: Certainly we are not saying that they are accurate to every last dollar but they look like the most reasonable estimates that can be developed on the basis of the work that has been done to date, and that is why we recommend further work being done before final investment decisions are being taken.:
>
> The Hon. ADAM SEARLE: You do not say those figures are accurate, you just reviewed what the departments had done, you looked at their methodology and you have said it is more or less in the ballpark in terms of the methodology?
>
> Mr BETTS: Certainly we are not saying that they are accurate to every last dollar but they look like the most reasonable estimates that can be developed on the basis of the work that has been done to date, and that is why we recommend further work being done before final investment decisions are being taken. [FOOTNOTE: Transcript 11 May 2015, p 67]

From the evidence, it is clear that INSW have not independently verified the amounts set against each project, but have performed a methodology check against what is known of the project. The evidence was that INSW also did not perform the cost-benefit analysis in connection with these projects. [FOOTNOTE: Transcript 11 May 2015, p 77]

Furthermore:

> Mr BETTS: We were not asked to critically examine the assumptions underlying the $20 billion; we were asked to provide advice to the Government on how the $20 billion should be expended. [FOOTNOTE: Transcript 11 May 2015, p 68]

The evidence regarding how well-developed the proposals were was also revealing:

> The Hon. ADAM SEARLE: In your chairman's letter you mentioned that many projects since 2012 have moved from the concept of business case to planning approval and, in some cases, to construction. Looking through the list of your recommendations, and I am happy for you to take this on notice, which ones have scoping studies done for them, which ones have detailed plans or what level of detailed planning has been done for each one in that list, just so we can get a sense of how firmly established these particular projects are or whether some of them are really just concepts?
>
> Mr BETTS: We are happy to respond to that. I would hope that as you go through the report you get a sense of the work that has been done and the work that remains to be done,

> and in many cases we recommend further work. But we are happy to provide you with that. I guess the range of definitiveness and the range of levels of development are from early concept design through to being placed at the completion of a business case. But we are happy to provide you with an analysis. It varies project by project.' [FOOTNOTE: Transcript 11 May 2015, Pp 68-69]

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That the following paragraphs 3.50-3.69 be omitted:

'Infrastructure for regional New South Wales

The NSW Government plans to allocate $6 billion for regional infrastructure projects, representing in excess of 30 per cent of the $20 billion dollars available through Rebuilding NSW. A substantial proportion of regional funds, $3.7 billion, will be used to improve roads in regional New South Wales, making it easier for regional producers to access their markets.

According to the NSW Government, freight movements will double by 2031. To respond to this, $2 billion of regional funding will be allocated to the Regional Road Freight Corridor Program. Several highways linking regional New South Wales would be upgraded including the Newell Highway, the major freight route between Queensland and Victoria. In addition, $400 million will be invested in rail freight infrastructure.

Mr Betts commented on the need to invest in regional roads to improve their capacity and support regional population growth:

> That includes programmatic investment, for instance, to improve the capacity of major regional arterials like the Newell Highway, the Great Western Highway, the New England Highway and the Golden Highway to improve north-south and east-west connections. That is so that our primary producers, whether they are in mining or in agriculture, can get their goods efficiently to market. Sometimes it is about investment in major highways—the Pacific Highway, the Princes Highway—and it is about meeting the needs of population growth in regional areas, whether that is in the Hunter, Central Coast, North Coast or the Illawarra. Sometimes it is about local investments in the last mile to enable trucks to get to the grain silos or to the dairy production facilities.

Regional New South Wales will also have access to funding of $1 billion which has been reserved to improve water security and supply. Initiatives proposed by the Government for further consideration include installation and upgrade of pipelines and investment in waste water services.

The remaining funds allocated for regional New South Wales will be used to improve infrastructure for schools and hospitals, and sporting, cultural and environmental initiatives.

Infrastructure for metropolitan New South Wales

A significant portion of Rebuilding NSW funding will be directed to projects designed to improve traffic congestion and public transport services for metropolitan New South Wales. The State Infrastructure Strategy noted that the current level of congestion in Sydney comes at a cost of at least $5 billion per annum, which is predicted to increase to $8 billion by 2020 if left unchecked.

The Premier outlined to the committee the importance of addressing congestion in the city:

> In 2016 the cost is expected to be $6.5 billion. By the time we get to 2036 if we do nothing the problem gets worse and worse. There is an exponential impact and it will increase to just under $30 billion. It is a significant cost and drag on the economy. That does not take into account

> quality of life. As the population grows, if we are not investing in this infrastructure to relieve congestion there is also a significant increase in costs for the economy. Doing nothing is not acceptable.

Urban roads

Several projects to improve roads in and around Sydney have been earmarked for funding through Rebuilding NSW with a total allocation of $2.4 billion reserved for this purpose. One of the most significant of these is the extension of the WestConnex construction project that will ultimately link the M4 and M5 motorways. The NSW Government has directed the WestConnex Development Authority to examine the expansion of the project to include a southern and northern extension to create a new link from the Sutherland Shire in Sydney's south northwards to the Anzac Bridge and Victoria Road.

Another significant urban roads project is the planned Western Harbour Tunnel which will provide a new route under Sydney Harbour from the WestConnex extension located at Rozelle in the western suburbs of Sydney to northern Sydney. The tunnel will provide a means for travelers to bypass the Sydney central business district.

The NSW Government has reserved $1.1 billion of Rebuilding NSW funds for investment in both the WestConnex extension and the Western Harbour Tunnel.

Urban public transport

Sydney's urban public transport will receive $8.9 billion in funding through Rebuilding NSW. The planned rail projects have been described by the NSW Government as providing 'a once in a generation transformation of Sydney's rail network'.

The Sydney Rapid Transit project, earmarked to receive $7 billion of funding, will extend the North West Rail Link Service under Sydney Harbour, through the Sydney central business district and on to Bankstown.

The importance of this project in addressing problems with the current public transport network was outlined by Mr Betts:

> The problem with the 'more trains' argument is that in many cases our networks are already reaching the limits of their capacity. If you think about the western line out to Parramatta, without significant upgrades to that line, significant improvements to power supply and significant improvements in station capacity we will very soon reach the limits where we can no longer put more trains on that network. Sydney Rapid Transit is such an important project because it breaks that nexus and frees up capacity in the centre of the city. More and more investment is required as we reach limits… At least in Sydney now we are ahead of the curve and we have the capacity to invest before congestion really hits our rail system.

Funding will also be provided to enhance services and improve capacity on the Western and Northern train lines.

The NSW Government claimed that the rail infrastructure planned under Rebuilding NSW will increase train capacity to the centre of Sydney by 60 per cent during peak hour and allow for an additional 100,000 passengers to travel every hour.

Other urban public transport initiatives targeted to receive funding are the Parramatta Light Rail project and the Bus Rapid Transit project.

Other programs for metropolitan Sydney

Like regional New South Wales, metropolitan Sydney will receive funding from Rebuilding NSW for health, education, cultural and sport initiatives. Metropolitan health services will receive $600 million in funding which will be directed at improving hospital infrastructure services and reforming health services delivery models.

Education funding will be directed at addressing the predicted growth in student numbers, particularly in Western and South Western Sydney. The 10 year Future Focused Schools Program will provide funding for the development of new school models and more efficient utilisation of existing infrastructure.

Sporting infrastructure will receive $600 million which will be used to upgrade Allianz Stadium. In addition options for new infrastructure will be assessed, including rectangular stadia at Parramatta and Sydney Olympic Park and new facilities in outer Western Sydney.

The NSW Government will develop a cultural infrastructure plan which will focus on establishing an arts precinct in the Sydney central business district, and an Indigenous cultural centre at Barangaroo. A cultural precinct at Parramatta is also planned.'

and inserting instead:

'Hon. ADAM SEARLE: My sense is that none are close to completion in terms of the detailed planning work.

Mr BETTS: No, I do not think that is fair. Obviously the more complex and the larger certain projects are the more time needs to be invested to make sure that they are appropriately assured. But in some cases—for instance, more targeted projects around the road network—they are very close to being investment ready.

This was confirmed later in the evidence:

The Hon. ADAM SEARLE: Can you identify which of the projects listed in your document are investment ready decisions?

Mr BETTS: More than $60 billion worth of infrastructure is already programmed into the forward estimate period—projects which will be delivered in the next four years. Those projects are investment ready. Most projects in our report, if not all of them, merit further work. We have said that that work can take place before the earliest date on which the proceeds from the poles and wires will hit the Government's books. In some cases work has been done since our report was published, which is more than six months ago. For instance, work has been done around individual investments in the road system. However, when we respond to the question on notice you asked you will be able to see the investments that are ready to go now and those that require more work. In some cases that may be a couple of months more work but in others it may be as much as 12 months.

The Hon. ADAM SEARLE: When you provide that feedback, please identify the horizons, to the extent that you know them.

Mr BETTS: Certainly. We make these comments about business cases because in the past New South Wales did not always take investment decisions on the back of rigorous business cases. One of the purposes of establishing Infrastructure NSW was to provide a bit of assurance to the community that government was not going to spend large amounts of taxpayers' funds without an upfront analysis having been done. On the one hand, you could criticise our report on the basis that it requires that more work be done, and it makes great play of the fact that more work needs to be done. On the other hand, that is far preferable to a scenario in which projects are plucked out of the air and taxpayers' dollars committed without appropriate due diligence up front.

The Hon. ADAM SEARLE: I am simply trying to understand where things are up to. The Government campaigned not only on the notion of this particular privatisation proposal but also on the matters listed in the document. From what you have said, I think most of the matters listed here are not currently investment decision ready.

The Answers to the Questions on Notice taken by INSW are equally revealing. Of the 30 programs listed, 27 were still at the business case development stage, two were to undergo the 'process for applications for funding to be arranged' and only 1 had finalised the business case and gateway review stage and was at the 'pre-tender' stage.

In short, despite the program forming the entire basis of the NSW Government's infrastructure program, not one program was investment decision ready. This is a matter of serious concern, given that the need to fund the projects contained in the NSW Infrastructure Plan is the foundation for the proposal for the lease transactions.

The committee finds that in its present form the NSW Infrastructure Plan is not a sound basis for the proposed lease transactions. The proposed lease transactions should not proceed until the plan is ready to proceed.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Phelps moved: That chapter 3, as amended, be adopted.

Question put.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Noes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Question resolved in the affirmative.

Chapter 4.

Resolved, on the motion of Mr Searle: That paragraph 4.4 be amended by omitting 'and argued that '[y]ou cannot sell income-earning assets and replace them with non-income-earning assets without leaving a budget hole that needs to be filled in one way or another'. Mr Egan nevertheless made the point that: … any excess in the sale price over the retention value is a windfall and, no matter how modest, it will still be of some benefit and will enable a commensurate expansion of the State's public works program.' and inserting instead:

'…the Government was happy to convey the impression that by selling the poles and wires it would get a windfall of around $13 billion. That, too, is wrong. To the extent that there is a windfall, and I believe there will be, it will be a fraction of the expected net sale price of $13 billion. That is because the $13 billion is not all new money plucked from a newly discovered money tree. Most of it will simply be the current value of the dividend stream that is to be sold off. In other words, the real windfall will simply be the difference between the sale price and the retention value. To the extent that any new public works expenditure exceeds that windfall or what is already funded in the budget, it will involve an additional cost that needs to be funded by cutting other expenditures, increasing debt or increasing taxes. You cannot sell income-earning assets and replace them with non-income-earning assets without leaving a budget hole that needs to be filled in one way or another. Nevertheless, any excess in the sale price over the retention value is a windfall and, no matter how modest, it will still be of some benefit and will enable a commensurate expansion of the State's public works program.' [FOOTNOTE: Evidence, Hon Michael Egan AO, former NSW Treasurer, 18 May 2015, p 34.]

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted after paragraph 4.19:

'Nevertheless the power of the Treasurer to direct that the State-owned electricity businesses made dividend and tax equivalent payments is well-established in legislation, in the *State Owned Corporations Act 1989* at s 20S (Dividends) and 20T (Tax equivalents). The *Public Finance and Audit Act 1983* also deals with the Treasurer being able to direct statutory bodies to pay tax-equivalents: see ss 58B, 59B and 58C, with the latter provision setting out how the Treasurer-appointed Tax Assessor sets the amount to be paid.'

Mr Searle moved: That the following new paragraph be inserted after paragraph 4.22:

'These claims are, however, quite misleading. From the evidence before the Committee, including the Treasurer's Answers to Supplementary Questions Q&A 1-4 it is clear that while the Total General Government Sector's net debt will be temporarily removed by the lease proceeds, there will be no retirement of debt. The debt elimination will last only until the Government commences spending from the Restart NSW fund, at which point the State debt will again grow by the same amount as is spent. At the end of the process, while there will be new infrastructure there will also be new running and maintenance costs associated with them, which will negatively impact the State Budget, together with the loss of the revenues currently received from the electricity businesses.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Dr Kaye: That paragraph 4.23 be amended by

a) omitting 'three' and inserting 'four'
b) omitting 'total price' and inserting instead 'gross sale price'
c) inserting 'The three network businesses that are the subject of the proposed transactions carry debt that is estimated at approximately $15 billion.' [FOOTNOTE: Evidence, Emeritus Professor Bob Walker, 22 May 2015, p 22.] after '2014-15'
d) omitting 'will therefore be' and inserting instead 'would therefore be required to be'.

Mr Searle moved: That the following new paragraphs be inserted after paragraph 4.27:

'The Government claims that the loss of the loan guarantee payments should not be factored into the calculation of the retention value of the businesses, and should not be factored in as losses to State revenue, because they only reflect risk of guaranteeing the loans (which risk will be removed) and that relate to the State's role as a financier and not the owner of the businesses.]FOOTNOTE: See Treasurer's Answers to Supplementary Questions Questions 26-31.] However, the Committee finds this reasoning unconvincing and rejects it.

This source of revenue has not been set aside to meet any 'risk' but has been spent each year, by successive governments of both major parties, like any other source of revenue. The Committee believes this revenue loss should be factored in as a negative impact on the State Budget and as part of the retention value calculation. The committee agrees with Emeritus Professor Bob Walker that failure to do so would lead to a significant undervaluation of the businesses to be leased.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That paragraph 4.32 be amended by inserting at the end: 'This calculation relies on an assumption that the state's economy is homogeneous so that a boost to one aspect of the economy provides the same return that a boost to the entire economy would. The Committee notes that this assumption has not been justified by any witness nor has it been tested.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That paragraph 4.39 be amended by omitting the words 'some disconnect' and inserting instead 'a contradiction', and by omitting the words 'yet is confident' and inserting instead 'and their confidence'.

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That the following paragraph 4.40 be omitted: 'The committee also believes that many of the criticisms concerning the impact of the Government's proposal on the budget fail to adequately account for the long-term revenue that can be expected as a result of the economic boost that the infrastructure investment will generate.'

Resolved, on the motion of Mr Khan: That paragraph 4.41 be amended by omitting 'as robust as the Government has claimed' and inserting instead 'robust'.

Mr Searle moved: That paragraph 4.41 be amended by inserting:
a) ',if it occurred, be likely to' before 'benefit the budget'
b) at the end 'Furthermore, the Committee is very concerned that there has been no modelling undertaken or commissioned by the NSW Government about the impact of the transactions on the State Budget and regards this as negligent given the scale and importance of the transactions proposed.'
c) the following new paragraph at the end:

   'Claims by the Premier and Treasury Secretary regarding expected growth in revenue is an extrapolation of historical correlations between GSP and revenue only and does not involve any examination of expected growth in specific, existing sources of government revenue. There is no evaluation of whether any stimulation of the economy associated with the proposed infrastructure spending would increase activity in those areas of the economy from which the NSW Government derives revenue. The Committee is of the view that this work must be undertaken before any transaction is entered into.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That paragraph 4.41 be amended by inserting 'in some measure' before 'the budget through'.

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That the following new paragraphs be inserted after paragraph 4.41:

> 'The committee is particularly sceptical about the assumptions that lead to the conclusions that:
> • the long term leasing of the networks would result in the claimed increases in the efficiency of the electricity networks
> • an improvement in the productivity of the electricity networks would lead to the claimed
> • increase in GSP, and
> • population would increase to the extent forecast as a result of improved infrastructure
>
> As each of these conclusions is critical to the forecast gain in GSP, the Deloitte report lacks credibility.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Khan moved: That paragraph 4.42 be amended by omitting 'A peer review of the Deloitte report by a qualified, independent authority prior to the introduction of the governing legislation into Parliament will achieve this.'

Question put.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Noes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 4.43:
'There may also be other firms with appropriate expertise'.

Mr Khan moved: That paragraph 4.44 be amended by:
a) omitting 'before any legislation is enacted'
b) omitting 'either ACIL Allen Consulting or the Centre of Policy Studies to conduct and publish'.
c) inserting 'by a suitably qualified modelling expert before any legislation is enacted, with the results to be published when complete' after 'Rebuilding NSW'.

Question put.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Noes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Question resolved in the affirmative.

Mr Searle moved: That the following new paragraph and recommendation be inserted after paragraph 4.44:

> 'The committee recommends that before any legislation is enacted, the NSW Government commission a suitable and independent body to undertake an analysis of the impact of the proposed transactions on the NSW State Budget.
>
> **Recommendation**

> That before any legislation is enacted, the NSW Government commission a suitable and independent body to undertake an analysis of the impact of the proposed transactions on the NSW State Budget.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That Recommendation 1 be omitted 'That before any legislation is enacted, the NSW Government commission either ACIL Allen Consulting or the Centre of Policy Studies to conduct and publish an independent review of the Deloitte Access Economics report entitled 'Economic Impact of State Infrastructure Strategy – Rebuilding NSW' and the following recommendation inserted instead:

> 'That the NSW Government commission an independent review of the Deloitte Access Economics report entitled 'Economic Impact of State Infrastructure Strategy – Rebuilding NSW by a suitably qualified modelling expert before any legislation is enacted, with the results to be published when complete.'

Dr Kaye moved: That the following new paragraph and recommendation be inserted after paragraph 4.44:

> 'The committee notes that the government's assertion that state government revenue would not be adversely affected by the transactions rests on the assumption that the boost to GSP provided by the transaction and consequent infrastructure spending would result in a boost to the state budget at the claimed rate of 12.8%. This rests on the assumption that NSW has a perfectly homogeneous economy where a boost to any aspect of economic activity has the same impact on state revenue. This is clearly untrue, given that taxes and charges collected by the state are limited to certain types of activity.
>
> The committee also notes that the putative boost to GSP relies in large measure on population growth which would require greater budget to services.
>
> The committee further notes that much of the infrastructure proposed in the Rebuilding NSW package to be financed by the asset leases would incur increased government expenditure.
>
> The committee finds the analysis provided by the government to support the assertion that the budget would not suffer under the proposed privatisation is simplistic and riddled with assumptions that are unlikely to prove to be correct.
>
> **Recommendation**
>
> That before legislation is further considered by the Parliament, the NSW Government commission and publish an independent report to ascertain the impacts on state budget of the proposed transactions, net of any gain from the infrastructure gain, using realistic and sophisticated models of the economy and revenue collection and that accounts for increased state costs arising from population growth and increased state recurrent costs associated with the new infrastructure.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Phelps moved: That chapter 4, as amended, be adopted.

Question put.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Noes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Question resolved in the affirmative.

Chapter 5.

Resolved, on the motion of Dr Kaye: That the introduction to chapter 5 be amended by omitting 'other stakeholders disputed this for various reasons' and inserting instead 'other stakeholders provided a number of arguments that disputed this assertion'.

Mr Borsak left the meeting.

Dr Kaye moved: That paragraph 5.6 be amended by omitting 'the Public Interest Advocacy Centre and the Council of Social Service of NSW (NCOSS)'.

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Dr Kaye: That paragraph 5.7 be amended by deleting 'an independent think tank' and inserting instead 'a think tank'.

Resolved, on the motion of Dr Kaye: That paragraph 5.9 be amended by omitting 'beyond the control of the network' and inserting instead 'beyond the control of the governance of the network'.

Mr Borsak joined the meeting.

Mr Searle moved: That paragraph 5.10 be omitted:

> 'Mr John Pierce, Chairman of the Australian Energy Market Commission, also noted that while customer electricity prices are higher in South Australia than compared to Victoria or New South Wales, the main reason for this is the differences in fuel sources, geography and the nature of the networks across the jurisdictions:
>
> > The relativities between the jurisdictions that we observe now are comparable to how they have been for many decades and, in the main, that is a reflection of differences in fuel sources, geography, the nature of the networks in those jurisdictions.'

and that the following paragraphs be inserted instead:

> 'A closer examination of the Uniting Care material relied upon by the NSW Government At Annexure "F" to its submission reveals that the network costs in South Australia are higher than for Ausgrid and Endeavour Energy and comparable to Essential Energy, and are higher than Energex in Queensland. [FOOTNOTE: UnitingCare Australia, Network tariffs applicable to households in Australia: empirical evidence, February 2015, p 18, Figure 6] That material also discloses that while Victorian network costs are lower than for NSW (and Queensland) the overall end-user electricity cost on a cents per kilowatt basis are higher in SA and Victoria. [FOOTNOTE: UnitingCare Australia, Network tariffs, p 19, Figure 7]
>
> The Ernst Young report relied upon by the NSW Government as Annexure A to its submission found at p6 that while the networks in NSW and Queensland have invested heavily in their networks, 'the businesses in Victoria are approaching a stage in their life cycle which may require substantial further

investment. South Australia May also have recently entered a similar stage in their investment life cycle as is the case in Victoria'.

In the evidence from the Australian Energy Market Commission, Mr John Pierce, the former NSW Treasury Secretary, the following exchange occurred:

The Hon. ADAM SEARLE: I am happy for anyone to answer this. The fact is that the prices chargedof customers at the point of sale or point of use in Victoria are comparable to those here in New South Wales, and in South Australia they are significantly higher than customers here in New South Wales. Those are the facts, are they not, Mr Pierce?

Mr PIERCE: When I started in this sector in January 1979 it was the case that retail prices in South Australia were higher than in New South Wales and that the prices in Victoria were comparable to New South Wales. I am not sure that anything has changed since.

The Hon. ADAM SEARLE: My question was directed to the actual prices that customers are paying.

Mr PIERCE: I think that is exactly what I am referring to. The relativities between the jurisdictions that we observe now are comparable to how they have been for many decades and, in the main, that is a reflection of differences in fuel sources, geography, the nature of the networks in those jurisdictions. So it is not particularly surprising that you would observe, particularly, South Australian prices being higher than New South Wales. I think it has always been thus.

The Hon. ADAM SEARLE: But the fact is that both South Australia and Victoria have smaller network sizes than New South Wales and customers do not pay a network bill and a retail bill; they just pay their electricity bill. The fact is that South Australian customers are paying a total electricity bill that is higher than the average customer here in New South Wales. That is the fact, is it not, Mr Pierce?

Mr PIERCE: It is and it has always been thus.

The Hon. ADAM SEARLE: So privatisation of the South Australian industry has not led to prices in that State being the same as, or lower than, the publicly owned customer service here in New South Wales.

Mr PIERCE: I think we have both made clear that it is not our role to attribute outcomes to particular types of ownership, that both the rules that we administer and the way these networks are regulated are done in the same way irrespective of whether they are publicly or privately owned. [FOOTNOTE: Evidence, Mr John Pierce, Chairman, Australian Energy Market Commission, 15 May 2015, p 25-26]

The evidence to the committee is that, while electricity prices went down in Victoria after privatisation, they went back up again as the market found its equilibrium. Whatever benefits may come from private ownership and operation of electricity businesses, the committee finds that lower overall end-user electricity prices are not among them.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Dr Kaye: That paragraph 5.19 be amended by inserting 'The committee notes, however, that the setting of reliability standards is not now a function of ownership.' before 'Mr Kieran Donoghue, General Manager, Policy, Energy Supply Association of Australia, explained further:'.

Resolved, on the motion of Dr Kaye: That the following paragraph be inserted after paragraph 5.19: 'The committee notes that regulation of network reliability and investment changed dramatically in the mid-2000s'.

Resolved, on the motion of Mr Searle: That paragraph 5.27 be amended by inserting '[for capital investment costs]' after 'paying twice the amount per kilowatt hour'.

Resolved, on the motion of Dr Kaye: That paragraph 5.28 be amended by inserting 'network control, switching' after 'Operating costs include items like'.

Dr Kaye moved: That paragraph 5.29 be amended by omitting 'put forward the view' and inserting instead 'put forward his personal view'.

Question put and negatived.

Mr Searle moved: That:

a) paragraph 5.29 be amended by inserting at the end: 'Given his management of the enterprises concerned [FOOTNOTE: Mr Graham has been Chief Executive of Endeavour Energy since 2008 and Ausgrid and Essential Energy since 2012] including negotiating and agreeing to the terms of the industrial instruments governing the workforces, this is a curious admission.'

b) paragraphs 5.30 and 5.31 be omitted:

> 'Mr Graham also argued that although the NSW distribution networks had improved their efficiencies over the last three years, there was a danger of these efficiencies going backwards if they remain in public ownership, particularly in terms of operating costs:
>
> > … I have some criticisms of the public sector culture of these organisations. I have some criticism in that article of the ongoing union shadow management of these organisations that has seriously restricted management prerogative—middle and supervisory managers getting on and doing the job in the interests of the consumers of New South Wales. I hold a firm personal view that that union shadow management creates a fundamental conflict within the employees, and I believe there is an ever present danger of recidivism under public sector ownership.
>
> Mr Graham also observed that, notwithstanding the recent efficiency improvements, '[t]here should not have been the extent of that inefficiency for us to pull out over the past three years'.'

c) the following paragraphs be inserted instead:

> 'However, Mr Graham also stated that the NSW distribution networks had improved their efficiencies over the last three years:
>
> > … In July 2012 the New South Wales Government initiated a Network Reform Program in response to consumer concern over four years of double digit increases in network electricity charges. The objectives of that reform program were to improve safety performance, maintain network reliability and contain any increases in network charges within CPI. The first three years of that continuing reform program are nearing completion and our objectives are being met. By 30 June this year we will have cut more than $3 billion of capital and operating expenditure approved by the regulator, safely and progressively removed approximately 3,700 jobs, removed 2000 vehicles from our road fleet and cut the annual overtime bill by $100 million per annum. Average network charges have been contained within CPI for the 2013 and 2014 financial years. [FOOTNOTE: Evidence, Mr Vince Graham, Chief Executive Officer, Ausgrid, Essential Energy and Endeavour Energy, 11 May 2015, p 56.]
>
> Mr Graham also observed that these significant changes had occurred under public ownership and management:
>
> > The Hon. ADAM SEARLE: Mr Graham, in your presentation you outlined some of the achievements of your stewardship of the organisation: a significant reduction in jobs, significant reduction in operating expenditures, $100 million reduction in overtime and the like—$3 billion

> of expenditure reductions. They have all occurred under your management in the context of a publicly owned and publicly regulated system, have they not?
>
> Mr GRAHAM: They have. [FOOTNOTE: Evidence, Mr Vince Graham, Chief Executive Officer, Ausgrid, Essential Energy and Endeavour Energy, 11 May 2015, p 59.]'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That paragraph 5.30 be amended by omitting 'Mr Graham also argued that although the NSW distribution networks had improved their efficiencies over the last three years, there was a danger of these efficiencies going backwards if they remain in public ownership, particularly in terms of operating costs' and inserting instead:

> 'Mr Graham, in evidence that appears to contradict his assertions about the culpable role of unions, amenable management and 'public sector culture', also stated that the NSW distribution networks had improved their efficiencies over the last three years. He, however, asserted that there was a danger of these efficiencies going backwards if they remain in public ownership, particularly in terms of operating costs'.

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That:

a) paragraph 5.35 be amended by omitting:

   'The Commissioner's role is essential twofold:

   - Pre-transaction: Professor Fels will review the proposed lease transactions to ensure they will not put upward pressure on prices in the short, medium and long term. In his evidence before the committee, the Premier confirmed that the transactions would not proceed without Professor Fels' sign-off, effectively giving him a veto-power. In performing his review, Professor Fels will be given access to all relevant documents, including those that are commercial-in-confidence.

   - Post-transaction: Professor Fels will be provided with the network businesses' annual statement of compliance with the price guarantee, namely the guarantee that network charges will be lower in 2019 than they were in 2014, and that savings from greater efficiency will be passed on to consumers. Professor Fels will have the power to 'refer any concerns' to the Australian Energy Regulator or the Australian Competition and Consumer Commission.

b) paragraph 5.35 be amended by inserting at the end: 'The Commissioner's role is dealt with above at [insert paragraph] as is the analysis of the shortcomings of the legislation presented to Parliament and passed by the Legislative Assembly.'

c) paragraph 5.36, which reads 'The Treasurer informed the committee that Professor Fels will be supported by a secretariat staffed by officials from the Department of Premier and Cabinet.' be omitted.

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That paragraph 5.35 be amended by omitting 'prices' and inserting instead 'total revenue collected'.

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That paragraph 5.35 be amended by omitting:

> '• Post-transaction: Professor Fels will be provided with the network businesses' annual statement of compliance with the price guarantee, namely the guarantee that network charges will be lower in 2019 than they were in 2014, and that savings from greater efficiency will be passed on to consumers. Professor Fels will have the power to 'refer any concerns' to the Australian Energy Regulator or the Australian Competition and Consumer Commission.'

and inserting instead:

> '• Post-transaction: Professor Fels will be provided with the network businesses' annual statement of compliance with the price guarantee, namely the guarantee that network revenue will be lower in 2019 than they were in 2014. Professor Fels will have the power to 'refer any concerns' to the Australian Energy Regulator or the Australian Competition and Consumer Commission, although their capacity to provide a remedy to consumers would be limited by the relevant laws.'

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Dr Kaye: That paragraph 5.38 be amended by omitting 'noted' and inserting instead 'asserted', and by inserting '[ministerial]' before 'council'.

Mr Searle moved: That:

a) paragraphs 5.42 to 5.45 which read:

> 'The committee is persuaded that factors like network span and geography do play a role in determining a network's capital investment and operating costs. However, even taking this into account, the committee believes that the weight of the evidence shows that privatised electricity networks are more efficient, and hence have lower costs, than publicly owned networks.
>
> Given the regulatory framework is incentive-based, the committee accepts that private companies will have a greater incentive to reduce its costs than publicly owned companies, leading to lower network prices and lower retail prices in the long run.
>
> It is evident to the committee that the privatisation of the 'poles and wires' in other States has led to lower network prices. In reaching this conclusion the committee notes that this evidence comes

not only from reports commissioned by the Government, but from independent, consumer-focused bodies like the Public Interest Advocacy Centre and NCOSS.

The committee is also confident that competition between electricity retailers will ensure that network price reductions will be passed on to consumers.' be omitted, and

b) the following paragraphs be inserted after 5.41:

'The committee is persuaded that factors like network span and geography do play a crucial role in determining a network's capital investment and operating costs. Taking this into account, the committee concludes that the weight of the evidence does not show that privatised electricity networks are more efficient, and hence have lower costs, than publicly owned networks.

Given the regulatory framework, the committee does not accept that private companies will have a greater incentive to reduce its costs than publicly owned companies, leading to lower network prices and lower retail prices. Even where reductions in cost are achieved, they are likely to be pocketed by the operating companies for the balance of the regulatory period rather than passed on immediately to consumers, due to a lack of competition for these monopoly businesses there being no requirement on retail electricity companies to pass on reductions in network costs.

It is evident to the committee that the experience in Victoria, where lower network costs are more than offset by higher end-user charges by retailers is a very significant risk if the proposed transactions take place. It is also significant that the Energy and Water Ombudsman in NSW has in its latest annual report identified that the retail market in NSW has not operated competitively. [FOOTNOTE: EWON Annual Report 2013-2014, p 32]

As a result, the committee is not confident that competition between electricity retailers will ensure that network price reductions will be passed on to consumers.'

c) Finding 1 be amended by inserting 'not' before 'expected to lead to a decrease'.

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That:

a) paragraphs 5.42 to 5.45 which reads:

'The committee is persuaded that factors like network span and geography do play a role in determining a network's capital investment and operating costs. However, even taking this into account, the committee believes that the weight of the evidence shows that privatised electricity networks are more efficient, and hence have lower costs, than publicly owned networks.

Given the regulatory framework is incentive-based, the committee accepts that private companies will have a greater incentive to reduce its costs than publicly owned companies, leading to lower network prices and lower retail prices in the long run.

It is evident to the committee that the privatisation of the 'poles and wires' in other States has led to lower network prices. In reaching this conclusion the committee notes that this evidence comes not only from reports commissioned by the Government, but from independent, consumer-focused bodies like the Public Interest Advocacy Centre and NCOSS.

The committee is also confident that competition between electricity retailers will ensure that network price reductions will be passed on to consumers.' be omitted, and

b) the following paragraphs be inserted after 5.41:

'The committee is persuaded that factors like network span and geography do play a highly significant role in determining a network's capital investment and operating costs.

Noting that the regulatory framework is incentive-based and that there are significant pressures on publicly-owned utilities to maximise returns on capital, the committee accepts that private companies will have more or less the same incentive to reduce its costs than publicly owned companies,

The evidence presented to the committee on network price changes and privatisation of the 'poles and wires' in other States is inconclusive and cannot be used to conclude that private ownership leads to lower network prices. In reaching this conclusion the committee notes that the evidence is sufficiently complex to allow it to be manipulated by the advocates of privatisation by selectively choosing base line dates to suit their case.

It is the committee's view that all of the empirical evidence used to support the proposition that network prices would be lower under private ownership is tainted by either:

• Comparisons between networks with vastly different geography and density of consumer connections;

• Comparisons across time where the impacts of changes in technology, the average age of the network infrastructure or changes in regulatory arrangements would confound any effects of ownership and governance.

It appears to the committee that almost all of the studies conducted by the supporters of privatisation are ideologically motivated and lack objectivity.

The committee is also not confident that competition between electricity retailers will ensure that network price reductions will be passed on to consumers. The Committee forms this view based on concerns raised by the ACCC about the lack of competition within the NSW electricity retail market where three retailers, AGL, Origin and Energy Australia, have 85 per cent of the overall retail market in NSW and 95 per cent of the mass market. It is not realistic to expect that an effective triopoly operating in an unregulated market would pass any reductions in network charges on to consumers.'

c) Finding 1 be amended by inserting 'not' before 'expected to lead to' and by inserting at the end: 'and might be associated with a substantial upward pressure after 2019, when the current regulatory reset period ends'.

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That:

a) the following paragraph be inserted after Finding 1:

'The committee believes that the so-called price guarantee, namely that total network charges (i.e. revenue collected) will be lower in 2019 than they were in 2014, is entirely without substance. The AER's revenue determination for the current regulatory period ensures that this will occur. While the AER's determination might become the subject of a errit challenge, it is unlikely that there will be a substantial change that would see revenues for any of the regulated entities higher in 2019 than in 2014.'

b) paragraph 5.46 which reads 'The committee supports the appointment of Professor Fels as Electricity Price Commissioner. The committee is confident that his role reviewing the transactions before they proceed will provide assurance that electricity network prices will not be negatively affected in the short, medium and long term.' be omitted, and

c) the following paragraphs be inserted instead:

'The committee consequently does not support the appointment of an Electricity Price Commissioner, unless the guarantee is extended beyond 2019. The committee is confident that the Commissioner's role in reviewing the transactions before they proceed will provide no assurance that electricity network prices will not be negatively affected after the existing regulatory offset.

The committee further notes that provisions within the Electricity Network Assets (Authorised Transactions) Bill 2015 (see clause 8) provides a guarantee of an 'authorised network operator's total network charges' that is, revenue that can be collected. In the event that total demand for electricity falls over the regulatory period, the unit price charged could increase dramatically while the revenue remains lower than the guaranteed amount. Despite the guarantee individual low income households who, for example, are unable to reduce their energy usage will face escalating bills.'

d) paragraph 5.47 be amended by omitting 'However, the committee has some reservations about Professor Fels' role once the transactions are completed' and inserting instead 'The committee has further reservations about the Commissioner's role once the transactions are completed', and by inserting at the end: 'It is not clear what either of these bodies could do to rectify a network charges increase.'

d) paragraph 5.49 be amended by omitting 'within 12 months of the leasing of electricity infrastructure' and inserting instead 'before any leasing of electricity infrastructure'

e) Recommendation 2 be amended by inserting 'role and' before 'powers' and by omitting 'within 12 months of the leasing of electricity infrastructure' and inserting instead 'before any leasing of electricity infrastructure'.

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That:

a) paragraphs 5.46 to 5.49 which reads:

'The committee supports the appointment of Professor Fels as Electricity Price Commissioner. The committee is confident that his role reviewing the transactions before they proceed will provide assurance that electricity network prices will not be negatively affected in the short, medium and long term.

However, the committee has some reservations about Professor Fels' role once the transactions are completed. These reservations arise from the lack of detail the Government has provided about how exactly the Commissioner's powers will work in practice. All the committee has been told is that the Commissioner can 'refer any concerns' about networks' compliance with the price guarantee to the Australian Energy Regulator or the ACCC.

While the committee was assured that the details will be spelt out in the legislation governing the transactions, we are concerned about the Government's apparent failure to consult with key stakeholders about whether this is the best model for enforcing the price guarantee, and more broadly, for ensuring consumers' interests are protected. In the committee's view, the detail should have been provided and consultation undertaken before the legislation was introduced.

Given that the enabling legislation has already been introduced into Parliament, we recommend that the NSW Government undertake, in consultation with key stakeholders, a review of the powers of the Electricity Pricing Commissioner, with this review conducted within 12 months of the leasing of electricity infrastructure.' be omitted, and

b) the following paragraphs be inserted instead:

'While the committee supports the appointment of Professor Fels as Electricity Price Commissioner, it is not confident that his role reviewing the transactions before they proceed will provide assurance that electricity network prices will not be negatively affected in the short, medium and long term. This is due to the deficiencies identified above in the legislation presented to Parliament and passed by the Legislative Assembly.

The committee also has some reservations about Professor Fels' role once the transactions are completed. These reservations arise from the lack of detail the Government has provided about how exactly the Commissioner's powers will work in practice. All the committee has been told is that the Commissioner can 'refer any concerns' about networks' compliance with the price guarantee to the Australian Energy Regulator or the ACCC. This does not appear to be provided for in the legislation.

While the committee was assured that the details would be spelt out in the legislation governing the transactions, it has not been. The committee is also concerned about the Government's apparent failure to consult with key stakeholders about whether this is the best model for enforcing the price guarantee, and more broadly, for ensuring consumers' interests are protected. In the committee's view, the detail should have been provided and consultation undertaken before the legislation was introduced.

Given that the enabling legislation has already been introduced into Parliament, we recommend that the NSW Government seek to amend the legislation in the Legislative Council to set out in full the powers of the Price Commissioner, including broadening the factors to be looked at in clause 8(2)(a) of the Authorised Transactions Bill to include all those that bear on the potential to increase price.

The committee also recommends that the NSW Government undertake, in consultation with key stakeholders, a review of the powers of the Electricity Pricing Commissioner, with this review conducted within 12 months of the leasing of electricity infrastructure.'

c) the following new recommendation be inserted before Recommendation 2:

'**Recommendation x**
That the NSW Government amend the legislation in the Legislative Council to set out in full the powers of the Price Commissioner, including broadening the factors to be looked at in clause 8(2)(a) of the Authorised Transactions Bill to include all those that bear on the potential to increase price.'

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Khan moved: That paragraph 5.48 which reads 'While the committee was assured that the details will be spelt out in the legislation governing the transactions, we are concerned about the Government's apparent failure to consult with key stakeholders about whether this is the best model for enforcing the price guarantee, and more broadly, for ensuring consumers' interests are protected. In the committee's view, the detail should have been provided and consultation undertaken before the legislation was introduced.' be omitted.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan, Dr Phelps.

Noes: Mr Borsak, Dr Kaye, Revd Nile, Mr Primrose, Mr Searle.

Question resolved in the negative.

Dr Phelps moved: That chapter 5, as amended, be adopted.

Question put.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Noes: Mr Borsak, Dr Kaye, Mr Primrose, Mr Searle.

Question resolved in the affirmative.

Chapter 6.

Dr Kaye moved: That paragraph 6.1 be amended by inserting 'and on their families and the communities in which they live and work' after 'the impact it will have on electricity workers'.

Question put and negatived.

Resolved, on the motion of Dr Kaye: That paragraph 6.8 be amended by inserting 'and TransGrid has a substantial number of employees in rural and regional NSW' after 'Lithgow'.

Dr Kaye moved: That paragraph 6.16 be amended by omitting:

> 'Mr Butler, from the Electrical Trades Union, disagreed that the regulator's determination meant that there had to be loss of jobs. He felt that there are other ways to achieve the necessary reduction in costs. He also appeared critical of Mr Graham's recent wage freeze offer:'

and inserting instead: 'Mr Butler, from the Electrical Trades Union, disputed Mr Graham's interpretation of the wage negotiations, stating that:'

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primrose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Ms Cusack: That paragraph 6.16 be amended by omitting 'recent wage freeze offer' and inserting instead 'proposal'.

Resolved, on the motion of Dr Kaye: That the following new paragraph be inserted after 6.16:

> 'Mr Butler also disputed the number of jobs that needed to be deleted as a result of the AER determination, citing the ability of the network operators to return to bidding for work in contestable activities that are outside of the AER's jurisdiction. Mr Butler said:
>
>> The organisations were in an area that they call 'contestable work'. That is work that is open to the full market. Instead of, for example, Ausgrid having a monopoly, contractors can bid on the work so that the customer gets the best price. Ausgrid withdrew completely from the contestable market. It has all the trucks, people and gear; it is ready to go. However, it withdrew from the contestable market and left it to private contractors. …. We said that the organisation should re-enter that contestable market. It is an area in which it can make money and as a result keep more jobs. [FOOTENOTE: Evidence, Mr Steve Butler, Secretary, Electrical Trades Union, NSW Branch, 15 May 2015, pp 19-20]'

Resolved, on the motion of Mr Searle: That paragraph 6.21 be amended by inserting '• no forced transfers to the private sector' after '• recognition of prior service'.

Mr Searle moved: That:

a) paragraph 6.26 be amended by inserting at the end: 'This does not address the terms and conditions of employment, including rates of pay and employment security'.

b) paragraph 6.28 be amended by inserting at the end: 'However, this has not been provided for in the legislation passed by the Legislative Assembly.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Revd Nile, Mr Primrose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Dr Phelps.

Question resolved in the affirmative.

Resolved, on the motion of Dr Kaye: That paragraph 6.30 be amended by inserting: 'This uncertainty comes on top of the threat of large scale job losses resulting from the AER's determination.' after 'proposal to lease the network businesses.', and by omitting 'It' and inserting instead 'The committee'.

Resolved, on the motion of Dr Kaye: That paragraph 6.32 be amended by omitting 'The committee acknowledges the importance of the Government in supporting electricity workers' and inserting instead 'The committee acknowledges the important role that the Government can play in supporting electricity workers'.

Mr Searle moved: That:

a) paragraph 6.33 be amended by inserting at the end 'The committee also believes that other arrangements need to be out in place to address the loss of employment security, in a way that has occurred with previous like events such as occurred with the Generators in 2012'

b) paragraph 6.35 be amended by omitting 'Therefore the committee recommends that the NSW Government ensure that the following employment protection guarantees are included in any enabling legislation: at least five years continued employment with the new employer; transfer of all accrued employee entitlements, including annual, long service and sick leave; recognition of prior service; and a sufficient number of apprenticeship opportunities' and inserting instead 'Therefore the committee recommends that the NSW Government ensure that the employment protection guarantees sought by Unions NSW and the ETU to this committee similar to the Generators package in 2012 are included in any enabling legislation: including at least five years continued employment with the new employer; transfer of all accrued employee entitlements, including annual, long service and sick leave; recognition of prior service; job location guarantees; a sufficient number of apprenticeship opportunities; a payment on transfer from the public sector and only consensual transfers to a new employer'.

c) Recommendation 3 be omitted and the following recommendation be inserted instead:

'**Recommendation x**

That the NSW Government ensure the employment protection guarantees sought by Unions NSW and the ETU to this committee and outlined at paragraph 6.21 are included in any enabling legislation, including:

- at least five years continued employment with the new employer
- transfer of all accrued employee entitlements, including annual, long service and sick leave
- recognition of prior service;
- job location guarantees;

- sufficient number of apprenticeship opportunities;
- a payment on transfer from the public sector and
- only consensual transfers to a new, private sector employer.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Revd Nile, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan and Dr Phelps.

Question resolved in the affirmative.

Dr Phelps moved: That:

a) paragraph 6.35 be amended by omitting 'Therefore the committee recommends that the NSW Government ensure that the following employment protection guarantees are included in any enabling legislation: at least five years continued employment with the new employer; transfer of all accrued employee entitlements, including annual, long service and sick leave; recognition of prior service; and a sufficient number of apprenticeship opportunities' and inserting instead 'Therefore the committee recommends that the NSW Government ensure that the following employment protection guarantees are included in any enabling legislation: sufficient protections for continued employment with the new employer that can be funded as a result of the AER's determination; transfer of all accrued employee entitlements, including annual, long service and sick leave; recognition of prior service; and a sufficient number of apprenticeship opportunities'.

b) Recommendation 3 be amended by omitting the first bullet point 'at least five years continued employment with the new employer' and inserting instead 'sufficient protections for continued employment with the new employer that can be funded as a result of the AER's determination'.

Question put.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan and Dr Phelps.

Noes: Mr Borsak, Dr Kaye, Revd Nile, Mr Primose, Mr Searle.

Question resolved in the negative.

Dr Kaye moved: That the following new paragraph be inserted following paragraph 6.33:

'The legislation as drafted allows for the forced transfer of employees to the private sector, with or without the consent of the employee. Clause 20 appears to provide protections for superannuation entitlements and accrued sick leave, annual leave, extended or long service leave. It also appears to protect continuity of service. The committee notes however that it has not had time to comprehensively analyse these provisions, nor has it had the opportunity to test the provisions by means of taking evidence from witnesses.'

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Dr Phelps and Revd Nile.

Question resolved in the negative.

Dr Kaye moved: That the following new recommendation be inserted after paragraph 6.34:

Recommendation x

> That the Government develop strategies that will ensure that sufficient numbers of apprenticeships are offered by the new operators of the electricity network businesses, to meet the needs of the electro-technology industries of New South Wales.

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Revd Nile, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan and Dr Phelps.

Question resolved in the affirmative.

Mr Searle moved: That:

a) the following new paragraphs be inserted following paragraph 6.44:

> 'However, Ernst and Young in its report which is Annexure A to the NSW Government submission to this inquiry stated at p10 that "Measures of electricity reliability should be interpreted with some care, as reliability standards can differ between States and a short time series may not present the most accurate."
>
> While the HoustonKemp research which is Annexure B to the NSW Government submission found that the reliability of the privately operated systems is "quite high" compared to in NSW, their reliability performance is typically reported after excluding 'abnormal' events such as those attributable to extreme weather events (at p23) and that care must be taken in interpreting figures because the business across jurisdictions are subject to different reliability standards (at p25).
>
> However, the Grattan Institute research which is attachment C to the NSW Government submission found that investment had led to reliability standards in NSW being higher than in the privately owned and operated States (at pages 2-4, 51 and elsewhere).'

b) paragraph 6.45 be amended by omitting 'These observations were echoed by' and also omitting 'who' following 'NCOSS'.

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Revd Nile, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan and Dr Phelps.

Question resolved in the affirmative.

Mr Searle moved: That the following paragraph 6.47 be omitted:

> 'In addition, the committee notes evidence which suggests that private operators perform better than publically owned networks in terms of reliability, regardless of their levels of capital investment and maintenance expenditure. This may be attributed to the fact that reliability standards are contained within the regulatory framework. Essentially, the standards will continue to apply, regardless of who is operating the business.'

Question put and negatived.

Dr Kaye moved: That the following new paragraph be inserted following paragraph 6.45:

> 'The Electrical Trades Union pointed in their submission to a report that a Victorian utility had engaged private contractors to maintain the electricity network flown from the Philippines and 'employed these workers on illegal contracts which included the threat of sending workers home if they did not comply with their illegal employment contract . This type of behaviour can be expected in NSW should this transaction proceed'. Mr Butler identified the safety concerns that could arise for other line workers and the public from this employment practice:

> I guess it leads to those other impacts rather than just the financial impacts. You first talk about someone who may be under pressure or stress working on the network and whether their skills are at the appropriate level, and even if they are whether being under threat of being back home if they did not do something that their employer asked. Well that puts all sorts of things at risk, there is absolutely no doubt. … If my employment is at risk, then also my residency in Australia might be at risk. They are pretty big motivators. I am going to do what that boss says. The reality is that a lot of people die working in this industry. It is a hazardous area of occupation and I have a number of friends, past friends, who have been electrocuted. They have died as a result of working on the network. But it is clear that the pressure that could be applied by an unscrupulous employer—and they are in the minority, but they are there—is so great that it would lead to—and could lead to—significant safety breaches.[FOOTNOTE: Evidence, Mr Butler, 15 May 2015, p 15.]'

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Dr Phelps and Revd Nile.
Question resolved in the negative.

Dr Kaye moved: That paragraph 6.46 be amended by:

a) inserting 'and safety' following 'reliability'
b) omitting 'While some participants are worried about increased outages and delays in network repairs, the committee is persuaded by evidence that privatised electricity businesses in other jurisdictions maintain high reliability standards' and inserting instead 'Some participants are worried about increased outages and delays in network repairs and, the committee is not persuaded by evidence assertions that indicates privatised electricity businesses in other jurisdictions maintain high reliability standards'.

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That paragraph 6.47 be amended by omitting 'In addition, the committee notes evidence which suggests that private operators perform better than publically owned networks in terms of reliability, regardless of their levels of capital investment and maintenance expenditure. This may be attributed to the fact that reliability standards are contained within the regulatory framework. Essentially, the standards will continue to apply, regardless of who is operating the business' and inserting the following paragraph instead:

> 'The committee notes suggestions that private operators perform better than publicly owned networks in terms of reliability, but believes that this is largely the result of factors that are beyond the control of network operators, such as geography and the density of connections. While reliability standards are contained within the regulatory framework and will continue to apply, regardless of who is operating the business, those standards are usually expressed as averages across the business. Longer duration outages on customers who are more geographically dispersed, of which there are relatively more in NSW than Victoria, could be lost in the averaging process.'

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That:

a) paragraph 6.48 be amended by omitting 'The NSW Government has also provided assurance that the licensing conditions they intend to introduce will help to ensure reliability is not compromised as a result of the leasing arrangement. While the committee has not received extensive details about this aspect, it is satisfied that the regulatory framework will operate to ensure reliability is maintained' and inserting instead 'The committee has not received any details of the NSW Government's stated intention to impose licensing conditions to putatively ensure reliability is not compromised as a result of the leasing arrangement'

b) Finding 2 be amended by omitting 'That the leasing of electricity infrastructure by the NSW Government is expected to have a neutral impact on safety and reliability of the services provided by the leased network businesses' and inserting instead 'That the leasing of electricity infrastructure by the NSW Government is likely to have a negative impact on safety and on reliability of the services for some consumers provided by the leased network businesses'.

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That paragraph 6.48 and Finding 2 be amended by:

a) Omitting 'The NSW Government has also provided assurance that the licensing conditions they intend to introduce will help to ensure reliability is not compromised as a result of the leasing arrangement. While the committee has not received extensive details about this aspect, it is satisfied that the regulatory framework will operate to ensure reliability is maintained' and inserting instead 'The NSW Government has provided assurances that the licensing conditions they intend to introduce will help to ensure reliability is not compromised as a result of the leasing arrangement. As the committee has not received any details about this aspect, it is not satisfied that the regulatory framework will operate to ensure reliability is maintained'.

b) Omitting Finding 2 which states 'That the leasing of electricity infrastructure by the NSW Government is expected to have a neutral impact on safety and reliability of the services provided by the leased network businesses' and inserting instead 'That there is insufficient evidence upon which to determine the impact of leasing of electricity infrastructure by the NSW Government is expected to have on safety and reliability of the services provided by the leased network businesses. However, we note that the reliability standards in NSW are higher than in the privately owned and operated States'.

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That:

a) paragraph 6.56 be amended by omitting 'It also recognises the important role played by the Foreign Investment Review Board in scrutinising foreign investment transactions' and inserting instead 'However it recognises the limited role played by the Foreign Investment Review Board in constraining foreign investment transactions that pose specific risks'.

b) The following new paragraph be inserted after paragraph 6.56:

'The committee expresses its concern that assets that are critical to the economic and social wellbeing of the state could end up under the control of a foreign government. This concern would be exacerbated if the actions of that government were not constrained by a functional democratic system or if it were authoritarian. While the objectives of a multinational corporation purchasing the leases would mostly be profit making, a foreign government could be seeking other strategic advantages that could over time be to the detriment of NSW. The committee is also concerned about any corporation, multinational or Australian, with a track record of corrupt dealings purchasing critical assets.'

c) paragraph 6.57 be amended by omitting 'The committee believes that, should the leasing of the electricity infrastructure proceed, the Government has a responsibility to ensure that the transaction is effected in a manner that maximises the return to the state. Closing the door to any investor, whether domestic or international, may affect the price the state receives for these assets and as such, is not supported by the committee' and inserting instead 'The committee further notes the extensive powers that transmission and distribution network service providers can exercise under the Electricity Supply Act and that some of those powers interfere directly with the rights of private land owners'

d) the following new finding and recommendations be inserted after paragraph 6.57:

'**Finding x**

That the purchase of the leases by a corporation with a track record of corrupt dealings or by a corporation that is controlled by a foreign government poses specific risk to the wellbeing of NSW.

Recommendation x

That the legislation should rule out selling any or part of the leases to a corporation controlled by a foreign government.

Recommendation x

That the legislation should specify probity tests for potential purchasers of leases and rule out those corporations, multinational or Australian, that fail.'

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Borsak, Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That paragraph 6.57 be amended by:

a) omitting 'Closing the door to any investor, whether domestic or international, may affect the price the state receives for these assets and as such, is not supported by the committee' and inserting instead 'Closing the door to an investor, whether domestic or international, may affect the price the state receives for these assets. However, the committee also recognises that investment by foreign governments, or their commercial arms, may carry risks as well as opportunities. Nations and their governments not only have commercial interests and motivations in business, but they also have strategic and diplomatic interests. For this reason, the committee recommends that any successful purchaser of any lease be subject to ratification by each house of the NSW Parliament before the transaction can be completed. This should also extend to any sale, assignment of transfer by any name of the lease or the operation of any electricity distribution or transmission business to another party.'

b) Inserting the following new recommendation after paragraph 6.57:

'**Recommendation x**

That any successful purchaser of any lease be subject to ratification by each house of the NSW Parliament, before the transaction can be completed. This should also extend to any sale, assignment of transfer by any name of the lease or the operation of any electricity distribution or transmission business to another party.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That the following new paragraph be inserted after paragraph 6.64:

'This is a very technical, legal defence of the actions of the NSW Government. The lack of willingness to be as open and transparent as possible about such an important matter as this is troubling.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Dr Kaye: That paragraph 6.62 be amended by inserting 'by the Premier' following 'The committee was informed'.

Dr Kaye moved: That:

a) the following new paragraph be inserted after paragraph 6.74:

'Events subsequent to the Premier's evidence have provided that adequate time has not been available to considered the detail of the two bills. The first opportunity for members of parliament and the public to scrutinise the bills was when they were read fir a first time by the Treasurer on Tuesday 26 May 2015. The vote in the Legislative Assembly was taken just two days later, on Thursday 28 May 2015. It appears that they will be debated in the NSW Legislative Council on Wednesday 3 June 2015'.

b) paragraph 6.77 be amended by omitting 'Mr Lyon that there would be full' and inserting instead 'Mr Lyon that there should be full'

c) paragraph 6.78 be amended by omitting 'like' following 'certain information' and inserting instead 'including possibly certain sensitive parts of'

d) inserting the following two new recommendations after paragraph 6.79:

'**Recommendation x**

That before legislation is further considered by the Parliament, the government release critical documents, including a suitably redacted version of the UBS and Deutsche Bank scoping study.

Recommendation x

That an additional two weeks be provided to the NSW Legislative Council and the public before the legislation is progressed.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That:

a) paragraph 6.77 be amended by omitting 'However, the committee believes that this should not come at a cost to the state'

b) paragraph 6.78 be amended by inserting at the end 'However, this would not have prevented the Government from sharing this information on a strictly confidential basis to this committee, in order to assist us in evaluating whether the proposed transactions are on balance beneficial for the State. As with many aspects of this matter, the absence of this material has hampered our ability to fulfil the task given us by the Legislative Council'

c) the following new paragraphs and finding be inserted following paragraph 6.79:

> 'There are a range of matters about which the committee is also troubled. This includes the lack of information regarding how quickly and at what cost the debt of the State-owned electricity companies can be discharged, and whether the timeframe to achieve this will cause the value if any lease sale to be decreased. The lack of detail regarding "matching interest rate exposures" to meet this challenge is also of concern.
>
> The committee is concerned about the impact of the transactions on the State Budget, not only regarding the loss of valuable revenue but also the multiple adverse impacts occasioned by the NSW Government's plan to spend all of the lease sale proceeds, rather than only the true 'windfall' (and the consequent impact on State debt). The committee is also concerned about the spending of the lease proceeds on assets that not only won't make money but will require ongoing maintenance and running costs, causing a further drain on the Budget. The absence of any detail about how State revenues will be increased to meet these challenges is a further concern.
>
> Accordingly, the committee finds that without this information being available the NSW Government proposal is irresponsible and unsound.
>
> **Finding x**
>
> That without this information being available the NSW Government proposal is irresponsible and unsound.'

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Khan moved: That paragraph 6.79 be amended by omitting 'However, there are other matters on which the committee believes that the NSW Government has not been forthcoming, for example, about the governance structure, powers of the Electricity Price Commissioner and employment protection provisions in the legislation'.

Question put.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan and Dr Phelps.

Noes: Mr Borsak, Dr Kaye, Revd Nile, Mr Primose, Mr Searle.

Question resolved in the negative.

Mr Khan moved: That paragraph 6.79 be amended by omitting 'Not providing this information to the public, or this committee, has undermined the NSW Government's transparency and it is difficult to accept that the rationale for this is simply about protecting the interests of the state.'

Question put.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan and Dr Phelps.

Noes: Mr Borsak, Dr Kaye, Revd Nile, Mr Primose and Mr Searle.

Question resolved in the negative.

Dr Phelps moved: That chapter 6 of the report, as amended, be adopted.

Question put.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Noes: Mr Borsak, Dr Kaye, Mr Primose, Mr Searle.

Question resolved in the affirmative.

Chapter 7

Resolved, on the motion of Dr Kaye: That the introduction paragraph for chapter 7 be amended by:

a) Omitting '$20 billion' and inserting instead '$13 billion'

b) Inserting '$20 billion of' before 'key infrastructure projects across the state'.

Resolved, on the motion of Dr Kaye: That paragraph 7.2 be amended by omitting the words 'That risk' and inserting instead 'The scale of the changes'.

Mr Searle moved: That paragraph 7.11 be amended by:

a) Omitting 'agrees' and inserting instead 'does not agree' before 'that these threats and opportunities are best faced'

b) Omitting 'and' and inserting instead 'or' before 'that this is one of the most compelling reasons'

c) Inserting at the end of the paragraph 'The committee is also concerned about what concessions may be made to any purchaser of the lease(s) to protect their investment in the network assets. This is yet another reasons why the committee does not believe the transactions should occur unless or until all the information necessary to properly inform this committee, the Parliament and the people of NSW, is available and able to be properly evaluated'.

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That:

a) paragraph 7.11 be amended by omitting 'agrees' and inserting instead 'does not agree' and inserting at the end of the paragraph 'To achieve the full economic, social and environmental benefits of the possibilities of distributed generation network investment and operation decisions will be required that might not be in the best commercial interests of the businesses that control them. Examples include investment in the smart grid, energy management that reduces total utilisation of the network infrastructure and the creation of minigrids that allow households and businesses to trade between themselves'.

b) the following new paragraphs and findings be inserted after paragraph 7.11:

'There is a further risk, as identified by a number of witnesses, that technological change could result in significant proportions of the infrastructure to become stranded assets. Under private ownership, there would be no desire to write off these assets but rather to ensure that consumers continued to pay. Such a scenario could lead to significant numbers of high income households disconnecting, increasing the burden on lower income households and renters to service the capital needs of the network owners.

Under public ownership there exists the potential for democratically elected to use the provisions of the State Owned Corporations Act to order the boards of the network businesses to make decisions that are not in the best commercial interests of the corporation. While this power has not always been used constructively, as the opportunities and threats of technological change become more immediate, the capacity to make democratic decisions about the future of the grid will become increasingly important.

Public ownership creates the ability to write down the value of the assets without seeking to recover losses from consumers. Extracting $13 billion from the assets by way of privatisation makes real the value and will render it much more difficult to manage change.

The public sector is better placed economically and politically to manage change in a way that protects low income households and renters and encourages economically and environmentally beneficial use of renewable energy and storage. This is one of the most compelling reasons for the government to divest their interest in them.'

Finding x

That continued public ownership of the network is essential to maximise the economic, social and environmental benefits of changes in technological change and to control the risks as existing assets become less valuable.

The committee believes that if technological change creates risks under public ownership then it will also create risks to profitability under private leases. It is obvious that potential bidders for the leases would understand and have quantified this risk. The committee accepts evidence that this risk could place substantial downward pressure on the price.

Finding x

That potential bidders for the leases would be aware of and have quantified and factored into their bid the risk that technological change would create stranded assets in the electricity distribution and transmission system and reduce profitability or require substantial additional investment in new distribution and transmission technology. The Committee finds that the proposed transactions will not reduce the overall economic and financial risk to the state and will in some cases substantially increase it.

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That the following new committee comment and findings be inserted following paragraph 7.30:

'**Committee comment**

Based on the evidence presented to it, the Committee has found no justification for either a lease or a long term sale or for the effective privatisation of two of the distribution undertakings while the third is kept in public hands.

Finding x

That there is no sound justification for effectively selling of two of the distribution undertakings while the third is kept in public hands.

Finding x

That the proposed 99 year leases are the same in effect as privatisation.'

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That the following new committee comment, finding and recommendation be inserted after paragraph 7.47:

'**Committee comment**

On the balance of evidence presented to it, the committee accepts the argument that there are alternative ways to raise capital to build new infrastructure that would have an acceptable impact on the long term economic health of the state.

The committee notes that the government did not present any analysis of alternative proposals other than to assert that they would damage the state's credit rating.

Finding x

That the proposed leasing transactions are not required to increase spending on infrastructure.

Recommendation x

That the government commission and publish independent research into alternative mechanisms for raising capital for infrastructure spending.'

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Searle moved: That:

a) paragraph 7.56 be amended by omitting 'While this inevitably provokes arguments both for and against privatisation, the committee acknowledges that both the Premier and Treasurer have put forward the case that the leasing of the network businesses is vital in raising funds for infrastructure investment'.

b) paragraph 7.57 be amended by omitting 'The committee accepts that the Government has made an informed decision on this matter, taking into account the State's fiscal position, the need to maintain a triple-A credit rating and the economic benefits arising from significant investment in infrastructure.' and inserting instead:

'The committee is unable to determine whether the Government has made an informed or appropriate decision on this matter. This is due to the lack of information regarding the impact of the transaction on the NSW State Budget; the structure and governance arrangements of the proposed leases; the deficiencies in the legislation regarding the price guarantee and the role and powers of the Electricity Price Commissioner; the lack of detail regarding paying out of the debt of the existing State-owned electricity companies and what impact this may have on deteriorating the value if any lease sale; the lack of information about the licensing conditions; and the lack of information about the content of the lease arrangement regarding the precise obligations on the lessees and what concessions, if any, are to be made to them. The committee is also concerned about the refusal of the NSW Treasurer to directly answer the question about whether, at the end of the leases, the NSW Government would have to make any payment before the assets and business revert to State control.[360] This reluctance strongly suggests this will in fact be the case and that as well as making money from the assets and businesses over the lease, and that the operators will have to be paid a premium on top of these profits. The committee is also concerned about the very real economic risks associated with these matters, and of not discharging government debt with the proceeds, outlined elsewhere in this report.' Before 'Given this, and the based on the weight'.

c) paragraph 7.57 be amended by omitting 'Given this' before 'and based on the weight of the evidence' and inserting instead 'Given these factors'

d) paragraph 7.57 be amended by omitting 'supported by this committee. Therefore, the committee recommends that in view of the economic benefits arising from the significant investment in infrastructure, the NSW Government implement its proposal to lease 100 per cent of Transgrid and 50.4 per cent of each of Ausgrid and Endeavour Energy' and inserting instead 'not supported by this committee'.

e) recommendation 4 be amended by omitting 'That in view of the economic benefits arising from the significant investment in infrastructure, the NSW Government implement its proposal to lease 100 per cent of Transgrid and 50.4 per cent of each of Ausgrid and Endeavour Energy' and inserting instead 'That in view of the economic risks of the proposed transactions and the failure of the NSW Government to provide adequate detail regarding its proposals, the lease of the electricity transmission and distribution businesses is not supported by this committee.'

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Moved by Dr Kaye: That:

a) paragraph 7.56 be amended by omitting 'the committee acknowledges that both the Premier and Treasurer have put forward the case that the leasing of the network businesses is vital in raising funds for infrastructure investment' and inserting instead 'the committee notes that both the Premier and Treasurer have failed to put forward a convincing case that the leasing of the network businesses is vital in raising funds for infrastructure investment'

b) paragraph 7.57 be amended by omitting 'The committee accepts that the Government has made an informed decision on this matter, taking into account the State's fiscal position, the need to maintain a triple- A credit rating and the economic benefits arising from significant investment in infrastructure.' and inserting instead 'The committee believes that the Government has made an ideological decision on this matter, and has justified it using false, exaggerated and irrelevant arguments about the State's fiscal position, the need to maintain a triple-A credit rating and the economic benefits arising from significant investment in infrastructure.'

c) paragraph 7.57 be amended by inserting 'not' before 'supported by this committee', and omitting 'Therefore, the committee recommends that in view of the economic benefits arising from the significant investment in infrastructure, the NSW Government implement its proposal to lease 100 per cent of Transgrid and 50.4 per cent of each of Ausgrid and Endeavour Energy' and inserting instead 'Therefore, the committee recommends that in view of the economic, social and environmental risks arising from the transaction, the NSW Government not implement its proposal to lease 100 per cent of Transgrid and 50.4 per cent of each of Ausgrid and Endeavour Energy.'

d) recommendation 4 be amended by omitting 'that in view of the economic benefits arising from the significant investment in infrastructure, the NSW Government implement its proposal to lease 100 per cent of Transgrid and 50.4 per cent of each of Ausgrid and Endeavour Energy' and inserting instead 'That in view of the economic, social and environmental risks arising from the transaction and the availability of economically efficient and low risk alternatives to fund infrastructure, the NSW Government not implement its proposal to lease 100 per cent of Transgrid and 50.4 per cent of each of Ausgrid and Endeavour Energy.'

e) paragraph 7.58 be amended by omitting 'However, the committee encourages the NSW Government to continue to be flexible and to consider market conditions and ongoing expert advice on these issues, as the best return for the State is paramount. In regard to any sale being offered through an initial public offering, the committee acknowledges the evidence of On-Market BookBuilds, and encourages the Government to further investigate utilizing this method of sale.' and inserting instead 'However, the committee encourages the NSW Government to not waste further public resources on consideration of this matter.'

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Moved by Dr Phelps: That chapter 7, as amended, be adopted.

Question put.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Noes: Dr Kaye, Mr Primose, Mr Searle.

Question resolved in the affirmative.

Chapter 8

Moved by Mr Searle: That:

a) paragraph 8.47 be amended by omitting 'The committee acknowledges the response from UBS that its research business issued an amended note without interference from either the UBS advisory team or staff from the Premier's office.' and inserting instead 'The committee acknowledges the evidence given by each of the witnesses from UBS, both in person and in answering supplementary questions submitted in writing. The committee finds it inherently implausible that persons in the position of Mr Grounds and Mr Fowler would have no idea at all of the value of the UBS engagement with the NSW Government, as they claimed at the hearing. The committee could understand their reluctance to provide that information in open hearing, but not their professed lack of information. This impacts adversely on the committee's view of the reliability of their evidence. '

b) the following new paragraphs be inserted after paragraph 8.47:

‘The committee also finds that the fact the answers to its supplementary questions did not come from the individual witnesses to whom they were directed, but from a corporate employee, the sameness of the language in which the responses are expressed and the high degree of co-ordination revealed in preparing for the original hearing and the questions on notice, strongly suggests interference in the evidence given by the witnesses by UBS and that the written answers supplied may not have been their own evidence. This deprives that material of reliability.

The committee does not accept the explanation given by Mr Williams regarding why the heading of the original research note did not accurately reflect the body of the document. We find the document speaks for itself and that its heading and body were in clear conformity. Mr Williams' position on this is hard to understand and causes us to doubt the reliability of other parts of his evidence.

The fact Mr Leitch did not accept in questioning that those parts of his original research note that were removed from the second note were included by him in error does not sit comfortably with his stated views regarding why he said he believed the note needed to be changed. Hid evidence regarding his exchange with Mr Williams leaves us with the clear impression that at least impliedly Mr Williams let Mr Leitch know what was required of him in this situation; namely that the original note needed to be changed, and the substance of the way in which it ought be changed.

The combination of these factors leads this committee to doubt the version of events provided by and on behalf of UBS at this inquiry regarding how the original research note came to be changed and the "addendum" document, which was in substance a new and different document, was released.

The committee finds that the text message exchange between the Premier's Chief of Staff and Mr Grounds establishes that there was at least an implied threat by the Premier's Office to UBS that if the issue arising from the original research was not satisfactorily dealt with the Government might have to 'distance itself' from its adviser. This suggests in our view, a possible range of responses by the Government from public criticism to possible termination of the financial arrangement with UBS. Either one would cause reputation and/or financial damage to UBS and, given the stakes, would certainly provide a keen incentive on the part of UBS to resolve the issue to the satisfaction of this client.

The committee finds that the text exchange also strongly suggests that, contrary to evidence given at the hearing, Mr Fowler was "working on" having the original research report replaced. What else was he "working on"? The media issue arose from the original report. Given the situation UBS was in, the only real solution (and the one adopted) was to replace the note with another. Mr Grounds confirms Mr Warburton's understanding that Mr Fowler was "working on" addressing the issue of the note release. Either this information was not correct, and was provided to the client to convey a sense of action being taken when it was not, or the information was correct, suggesting that Mr Fowler was involving himself in a matter properly only the province of the research arm of UBS. The potential legal and reputational damage to UBS and those concerned, were this to be firmly established, is significant and clear.’

c) paragraph 8.48 be amended by omitting ‘These matters are the subject of an investigation by the Australian Securities Investment Commission. Therefore there is no need for this committee to investigate this matter any further’ and inserting instead ‘As these matters are the subject of an investigation by the Australian Securities Investment Commission, we take the matter no further and look forward to that body finalising its investigation into this matter.’

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Kaye moved: That:

a) paragraph 8.47 be amended by inserting 'claims that' before 'its research business'

b) the following new paragraphs and finding be inserted following paragraph 8.48:

> 'The committee raises its concerns that contact between the Premier's office and UBS can be perceived to be an attempt to influence the content of an independent research report. The extent to which that was successful cannot be deduced from the evidence before the committee given the reluctant nature of some witnesses to provide a complete account of events that occurred on 17 March 2015 and the failure of all UBS witnesses to answer questions on notice, deferring instead to their legal personnel.
>
> The committee does however finds that the Premier's office, in the heat of an election
>
> campaign, attempted to exert influence through its network of acquaintances and the business that it offers to UBS, on an independent research report that contained materials that could have been electorally damaging.
>
> **Finding x**
>
> That the Premier's office attempted to exert influence on an independent research report that contained materials that could have been electorally damaging.'

Question put.

The committee divided.

Ayes: Dr Kaye, Mr Primose, Mr Searle.

Noes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Question resolved in the negative.

Moved by Dr Phelps: That chapter 8, as amended, be adopted.

Question put.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Noes: Dr Kaye, Mr Primose, Mr Searle.

Question resolved in the affirmative.

Dr Phelps moved: That the draft report, as amended, be the report of the committee and that the committee present the report to the House.

The committee divided.

Ayes: Mr Clarke, Ms Cusack, Mr Khan, Revd Nile, Dr Phelps.

Noes: Dr Kaye, Mr Primose, Mr Searle.

Question resolved in the affirmative.

Resolved on the motion of Dr Phelps: That:

a) That the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry be tabled in the House with the report;

b) That upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

c) That upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

d) That the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

e) That the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

f) That dissenting statements be provided to the secretariat by 4.00 pm on Monday 1 June 2015;

g) That the report be tabled on 2 June 2015.

6. Adjournment

The committee adjourned at 1.39 pm, *sine die.*

Stewart Smith
Committee Clerk

Appendix 6 Dissenting statements

By Dr John Kaye MLC, The Greens

The key findings and recommendations in this report are not justified by the evidence that was placed before it.

Further, the committee found largely in favour of the government's proposed long term lease of the state's electricity transmission and distribution infrastructure without sufficient time for consideration of the critical issues and without access to the legislation itself until three days prior to writing the final report.

Impacts on the budget

The government asserts that the sale of leases on income-bearing assets will not adversely affect money available in the budget for recurrent spending on critical services, claiming that:

- the Deloitte Access Economics report (*Economic Impact of State Infrastructure Strategy – Rebuilding NSW*, November 2014) argues that Gross State Product (GSP – the total economic activity of the state) will increase by $300 billion over the years to 2035/36, and

- Treasury officials claim that the ratio of state tax receipts to GSP has remained constant at 12.8 per cent.

Even if the Deloitte report is correct, and there are reasons to suggest that it is not, there remain serious threats to the state's budget:

- The transactions are based on selling income bearing assets and replacing them with infrastructure that can impose recurrent costs on the state budget;

- Deloitte's claimed gain in GSP is largely based on population growth as a result of new infrastructure attracting and keeping people in NSW. The additional 260,200 people beyond the baseline will require additional recurrent expenditure from the state's budget; and

- Relying on an historical ratio of tax receipts to GSP to predict the impacts of a specific stimulus is simplistic and dangerous. The individuals attracted to NSW might, for example, gamble less than the average, thus returning less revenue through poker machine and wagering taxes.

The government's analysis is unsound and proceeding with the transactions is very likely to impose a long-term cost on the recurrent budget.

Further there is a clear contradiction between the government's claim that revenue streams from the grid companies will diminish over time and the Premier and Treasurer's confidence in a robust sale price.

Network Prices

Data comparing power prices between states and pre and post-privatisation is sufficiently complex to allow it to be manipulated.

The advocates of privatisation extracted conclusions from the data of downward pressure placed on prices by transfer of ownership. These are ideologically motivated, lack objectivity and in each case tainted by either:

- Comparisons between networks with vastly different geographies and densities of consumer connections; or
- Comparisons across time where the impacts of changes in technology, the average age of the network infrastructure or changes in regulatory arrangements would confound any effects of ownership.

Further, the so-called price guarantee, that total revenue collected will be lower in 2019 than in 2014, is entirely without substance. The AER's determination for the current regulatory period ensures that revenues will be lower, regardless of ownership or price guarantees.

Safety and reliability

The majority ignored serious concerns raised about the potential impacts of the leases on the safety of the community and employees.

The Electrical Trades Union cited an example of one privatised Victorian utility engaging a contractor who illegally employed workers from overseas. They would be under extreme pressure to complete the job rapidly and at the direction of the contractor, without the ability to question an order that might compromise the safety of other line workers and the public.

While this is just one instance, it highlights the risks created by the use of unscrupulous contracts. Public ownership has provided the community and unions the capacity to limit dangerous outsourcing of critical work. Under privatisation, this capacity would be reduced.

New technologies

The Greens do not agree that private ownership would be better placed to handle the threats and opportunities of new technologies.

To achieve the full economic, social and environmental benefits of distributed generation, network investment and operation decisions will be required that might not be in the best commercial interests of the businesses that control them. Examples include investment in the smart grid, energy management that reduces total utilisation of the network infrastructure and the creation of mini-grids that allow households and businesses to trade between themselves.

There is a further risk, as identified by a number of witnesses, that technological change could result in significant proportions of the infrastructure becoming stranded. Private owners would be unwilling to write off these assets. They would ensure that consumers continue to pay. Such a scenario could lead to significant numbers of high income households disconnecting, increasing the burden on lower income households and renters to service the capital needs of the network owners.

Under public ownership there exists the potential for democratically elected governments to use the provisions of the State Owned Corporations Act to order the network businesses to make decisions that are not in the best commercial interests of the corporation.

Public ownership creates the ability to write down the value of the assets without seeking to recover losses from consumers. Extracting $13 billion from the assets by way of privatisation makes real the value and will render it much more difficult to manage change.

The public sector is better placed economically and politically to manage change in a way that protects low income households and renters and encourages economically and environmentally beneficial use of renewable energy and storage.

Other matters of dissent:

- The evidence before the inquiry suggests that the Premier's office, in the heat of an election campaign, attempted use its network of acquaintances and the business that it offers to UBS to exert influence on an independent research report that contained materials that could have been electorally damaging to the Coalition parties and their flagship policy proposal;

- The government has failed to explore and analyse alternative capital raising mechanisms that do not involve loss of control over the future of the state's electricity industry.

Conclusion

The Greens find because of the economic, social and environmental risks and the availability of economically efficient alternatives to fund infrastructure, the NSW Government should not implement its proposal.

By Hon Adam Searle MLC, Australian Labor Party

The Labor members dissent from the recommendation to approve the proposed transactions, and other matters outlined in the minutes of the Committee proceedings.

We do not believe the proposal to lease the electricity businesses and assets is desirable or in the public interest. According to the uncontradicted evidence of the AEMC and the AER, any claimed benefits that can be derived from private ownership or operation can be achieved in public control under the regulatory determination made by the AER.

The Government has failed to make the case that its proposal is economically sound, or that it adequately protects the public interest. Although the issue of the transaction was a centrepiece of the recent election, comparatively few of the details are available to the Committee, the Parliament or the wider community. In this circumstance, it is unsafe and unwise to approve of the transactions.

We are concerned that there has been no modelling about the impact of the transactions on the State Budget and regard this as negligent, given the scale and importance of the transactions proposed. Claims made by the Premier and the Treasury Secretary regarding expected growth in revenue were simply an extrapolation of historical correlations between Gross State Product and revenue, and does not involve any examination of expected growth in specific, existing sources of government revenue. There is no evaluation of whether any stimulation associated with the proposed infrastructure spending would increase activity in those areas of the economy from which the NSW government derives revenue. Before legislation is enacted, and certainly before any transaction is entered into, there must be a rigorous analysis of the impact of the proposed transactions on the NSW State budget.

According to evidence received by the inquiry, the proposed transaction will negatively impact of the Budget. There will be the loss of valuable revenues, of over $1 billion a year to the Budget. The Government claims the sale will result in the upfront payment of this revenue stream in one lump sum. However, these revenues are presently applied to recurrent expenditure. The Government proposal to spend the proceeds on infrastructure, or capital items only, means that money currently used on recurrent spending will disappear from the Budget altogether, creating a significant hole in State revenues. Presently, these assets pay their own way and provide a significant additional return to the State. The sale proceeds will be spent on assets that will require additional money from the Budget for operating costs as well as maintenance and repair across their lifespans, constituting an ongoing financial loss for the Budget which has not been prepared for: a second Budget hole. The third negative impact will be through debt.

The whole of any sale proceeds will be spent on paying out the debt of the electricity companies and leveraging the Government's infrastructure plan. This is economically irresponsible as it will leave the State with the same level of total debt it currently has, more assets for which it will have ongoing liabilities and less revenue. This situation will be worsened when interest rates increase.

The true windfall from any sale will only be the amount received over and above the retention value. Evidence to the inquiry was that this amount would only be a small fraction of the total sale proceeds. To be financially responsible, the retention value should not be spent but used to retire State debt. Instead, the Government proposes to park the proceeds in Restart NSW, temporarily reducing net State debt, then spending the totality of the proceeds, returning State debt to present levels, with less revenues to meet that debt.

The Government claims that revenues from these businesses will significantly decline. It also claims the proposed transactions will yield a significant sale price. As any sale price of a business is a multiple of the revenue that can be extracted from it, these two propositions are inconsistent. Despite the decline in revenue caused by the recent AER determination, these businesses are likely (on the evidence we have seen) to remain very profitable for the foreseeable future.

The equivalent of company tax is currently paid by the electricity companies to the NSW Government. That exemption from Commonwealth company tax only applies to an entity that is 100% owned by a State Government. Evidence to a recent Senate inquiry suggested that this proposal would lead to the total loss of the tax equivalent payments. The Premier offered no evidence to support his claim that NSW will able to keep a proportionate share of tax-equivalent payments.

The Government does not factor the loss of the loan guarantee payments by the electricity companies to Treasury Corporation into the calculation of the retention value of the businesses. This revenue has been spent each year, by successive governments of both major parties, like any other source of revenue. We agree with Emeritus Professor Bob Walker that failure include this lost revenue from the retention value calculation will lead to a significant undervaluation of the businesses to be sold.

The proposed sale is to fund the NSW Infrastructure Plan. The uncontradicted economic evidence before the Committee was that this conflation of two matters – whether or not to sell the assets and, secondly, whether or not to build the proposed infrastructure - was financially unsound. The evidence was also clear that Infrastructure New South Wales has not independently verified the costs of any project, nor did it perform any of the cost benefit analyses. The evidence was that not one project was "investment decision ready.” In its present form, the infrastructure plan is not a sound basis on which to base the transactions.

Emerging technology, such as the Tesla battery, may constitute a significant threat not only to the network but to the value of the investment of any purchaser or lessee of the assets. All benefits conferred on any purchaser/lessee should be fully disclosed to the public before the transaction is entered into.

By Hon. Peter Primrose MLC, Australian Labor Party

The Premier claimed that the detail of the transactions would be included in the legislation, but the Bills fail to disclose important aspects of the transactions, including how they will be structured and governed.

Key details like the new licensing conditions for network operators, and the terms of the leases to be entered into, have not been made available. The effectiveness of these measures will depend entirely upon their drafting, not their stated intent. The failure of the Government to provide these crucial details, while inviting the Parliament to pass the authorising legislation, is troubling.

The Government claims the "price guarantee" and the Price Commissioner will protect consumers, but the legislation does not live up to the hype. While network charges will have to be lower at 30 June 2019 than they were at 30 June 2014, the Bill does not say by how much. Even $1 would satisfy this proposal. There is nothing in the legislation about charges by the transmission and distribution businesses between 2015 and 2019. There is nothing in the Bill that requires savings from greater efficiency to be passed on to consumers.

And, of course, if the Government wanted prices to households and small businesses to be lower it would not be taking legal action to block the price reductions that arise from the Australian Energy Regulator's determination.

One of the tasks set for the Price Commissioner is to report on whether the private investment to acquire an interest in the electricity network assets is likely to increase in network charges. However, it is not the borrowing costs to invest alone that may put upward pressure on network prices, there are a range of factors including the commercial pressure to provide restless investors with what they perceive to be an adequate return. The legislation fails to address the wider factors that may cause network prices to increase under a private operator and should be amended.

Despite the claims of the Premier, the legislation does not provide the Price Commissioner the power to refer concerns to the Australian Energy Regulator or the Australian Competition and Consumer Commission.

These provisions adds nothing to the protections already in place through the existing federal regime. The proposals are mere political gimmickry, without real substance.

The evidence was that network costs in South Australia are higher than for Ausgrid and Endeavour Energy and comparable to Essential Energy. While Victorian network costs are lower than NSW, the overall end-user electricity cost on a cents per kilowatt basis are higher in both SA and Victoria.

While electricity prices went down in Victoria after privatization this was only because the Kennett Government had substantially increased prices sale to realise a higher sale price. Prices soon adjusted as the market found its equilibrium. Whatever benefits may come from private ownership or operation of electricity businesses, lower overall end-user electricity prices are not among them.

The weight of the evidence does not show that privatised electricity networks are more efficient than publicly owned networks. Given the regulatory framework, we do not accept that private companies will have a greater incentive to reduce costs than publicly owned companies, leading to lower network prices and lower retail prices. Even where reductions in cost are achieved, they are likely to be pocketed by the operating companies for the balance of the regulatory period rather than passed on immediately to consumers, due to a lack of competition for these monopoly businesses and there being no requirement on retail electricity companies to pass on reductions in network costs.

It is evident that the outcome in Victoria, where lower network costs are more than offset by higher end-user charges by retailers, is a significant risk if the proposed transactions take place, given the lack of real competition among NSW retailers found by the NSW Energy and Water Ombudsman. Accordingly, the powers of the Price Commissioner should include reviewing all factors that bear on the potential to increase price.

Labor supports investment in NSW, including from overseas. But investment by foreign governments, or their commercial arms, carries risks as well as opportunities. While private investors have only commercial interests, nations and their governments also have strategic and diplomatic interests. Any authorised transaction, or any subsequent transfer of a lease, should be subject to ratification by each House of the NSW Parliament.

The evidence given by UBS was highly orchestrated and contrived. The supplementary answers given appear to not have been from the individual witnesses themselves; they are not only strikingly similar, but use the very same words and phrases. The combination of these, and other factors arising from the evidence (such as Messrs Grounds and Fowler having no idea of the value of the UBS State Government contract), creates doubt about the version of events provided by UBS regarding how the original research note came to be changed and the "addendum" document, which was in substance a new and different document, was released.

The Premier’s evidence that no pressure was placed on UBS by the Government is also contradicted by evidence given of text messages from his office. The text exchange between the Premier's Chief of Staff and Mr Grounds establishes that there was at least an implied threat by the Premier's Office to UBS, ranging from public criticism to possible termination of the financial arrangement. Either one would cause reputational and/or financial damage to UBS. Given the stakes, this would provide a keen incentive on the part of UBS to resolve the issue to the satisfaction of this client. Recent information regarding the $34 million so far paid to UBS from its government contract reinforces this.

The text exchange also strongly suggests that, contrary to evidence given at the hearing, Mr Fowler, from the investment arm of UBS, was involving himself in a matter properly only the province of the research arm. The potential legal and reputational damage to UBS and those concerned is significant and clear.