



The Hon. Matt Kean MP
Treasurer
Minister for Energy

The Hon. Rob Stokes MP
Minister for Infrastructure
Minister for Cities
Minister for Active Transport

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Mr David Blunt
Clerk of the Parliaments
NSW Parliament House

Dear Mr Blunt, *David,*

Please find enclosed the NSW Government's response to the Public Accountability Committee's Final Report on its inquiry into the Transport Asset Holding Entity (TAHE) to be tabled in the Legislative Council.

Yours sincerely,

The Hon. Matt Kean MP
Treasurer
Minister for Energy

The Hon. Rob Stokes MP
Minister for Infrastructure, Cities,
and Active Transport

Encl. NSW Government response to the inquiry into the Transport Asset Holding Entity

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NSW GOVERNMENT RESPONSE

Inquiry into the Transport Asset Holding Entity

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INTRODUCTION

The establishment of the Transport Asset Holding Entity (TAHE) is one of the most significant reforms to the NSW Transport sector in decades. It improves the management of the State's rail transport assets and improves commuter experience. It will deliver better economic outcomes for NSW taxpayers and is consistent with transport and other critical infrastructure asset management practices adopted in many places around the world.

The NSW Government is committed to fulfilling TAHE's purpose by delivering positive financial outcomes for the State through more effective asset management. TAHE's 2023 Budget and Financial Plan to 2031-32 reflects the significant progress that TAHE has made over the last 12 months.

NSW Treasury has received the report of the independent assessment of NSW Treasury's processes regarding the preparation of the 2021 State Financial Statements by Mr Stephen Sedgwick AO. The report suggests ways to improve Treasury's culture and practices but makes no adverse findings against individuals. Treasury has accepted all the recommendations and has shared a copy of the Assessment report with the Committee.

The creation of TAHE maintains the established governance and assurance frameworks, which outline the rules, relationships, systems, and processes within, and by, which each entity's safety accountabilities and obligations are exercised and controlled. The overall framework remains under the oversight of the Office of the National Rail Safety Regulator. Day-to-day operational management, safety and maintenance have and continue to be primarily the responsibilities of the rail operators, including Sydney and NSW Trains.

The NSW Government thanks the Committee for its detailed examination of the above issues. Our response to the final report's recommendations is addressed in the following section.

RESPONSE TO RECOMMENDATIONS

RECOMMENDATION 1

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

Not supported

The NSW Government does not support this recommendation as the premise of this recommendation is inherently flawed. The establishment of the Transport Asset Holding Entity (TAHE) is one of the most significant reforms to the NSW transport sector in decades. This reform introduces a raft of benefits, including strengthening safety, improving the management of the state's rail transport assets, improving commuter experience and community outcomes and unlocking the value of the rail system's significant asset base. This will deliver materially better financial outcomes for NSW taxpayers and is consistent with transport and other critical infrastructure asset management practices across Australia's largest states and around the world.

Due to the complex nature of this reform, time is needed to allow the benefits of these changes to come to fruition. However, the many social and economic benefits to be realised from the creation of TAHE are significant, span across generations and will deliver positive outcomes for years to come and warrant the effort of the government to ensure the success of TAHE into the future.

TAHE's unique position as a state-owned corporation—with significant land holdings—enables it to value add through developments and engage in commercial arrangements, beyond the previous 'divestment only' model used by RailCorp. As a result, the returns possible to the NSW taxpayers are greater and more sustainable, with the creation of more diversified revenue, ensuring more consistent returns over time. TAHE can ultimately own assets and receive ongoing revenue, rather than just divest sites and receive a one-off purchase price with no future benefit. TAHE's 2023 Budget reflects the inclusion of a sound property strategy, which balances between divestment and development plans, along with funding for further analysis, without overcommitting on revenues.

In addition, TAHE has introduced access and licence charges to the public sector rail operators for access to, and the use of, its asset base. These charges also facilitate prioritisation of investment and add to the transparency of the costs of public transport. TAHE is also pursuing opportunities for growth of its core revenue streams in freight and property leasing, as well as development of ancillary revenue opportunities for its extensive asset base. These activities will increase the commercial returns that TAHE can provide back to the NSW Government and taxpayers.

TAHE's 2023 Budget and Financial Plan to 2031-32 reflects the significant progress TAHE has made over the past 12 months. Access and licence fees have been updated in line with the commitments from the December 2021 Heads of Agreement and are in the process of being signed off and finalised. TAHE's budget provides for a strong cash balance to support further investment in strategic growth opportunities.

The benefits TAHE can deliver are not limited to returns from the more effective management of assets; TAHE can also undertake commercial projects, which provide substantial social benefit for New South Wales. For example, the construction of affordable housing to address the broader issue of housing affordability. TAHE presents an invaluable opportunity to use a significant, and valuable, asset base to deliver returns to the people of New South Wales while adhering to a strong social remit. TAHE has also focused on preservation of New South Wales' rail heritage for future generations, through funding the restoration, upgrade and revitalisation of regional railways stations in Gunning, Tarana and Blayney. TAHE will continue to undertake projects focusing on social benefit in the future.

Throughout the hearings, the Committee repeatedly raised the issue of safety. The safety of its rail infrastructure across the state remains the highest priority for TAHE, Transport for NSW and every organisation in the NSW rail system. The creation of TAHE does not change the robust safety framework that has governed rail safety since the responses to the inquiries in the tragedies at Glenbrook and Waterfall. The overall framework remains under the oversight of the Office of the National Rail Safety Regulator.

Day-to-day operational management, safety and maintenance have and continue to be primarily the responsibilities of the rail operators, including Sydney and NSW Trains. TAHE's Operating Licence specifically precludes it from carrying out railway operations or maintenance.

What TAHE does do is provide an additional layer of governance and assurance, given that as asset owner it is required to assure itself that the assets are safe, reliable and fit-for-purpose.

Since its creation, TAHE has established its asset safety due diligence roadmap that includes, among other things, an asset management and assurance framework and associated governance and assurance formal arrangements that support TAHE, its Board and officers to discharge safety accountabilities.

TAHE has established an Asset Safety and Environment Committee that assists the TAHE Board in the effective discharge of its obligations, governance and oversight responsibilities across its assets, undertakings and third-party operations. This Committee includes an independent committee member with subject matter expertise and in-depth knowledge of technical asset standards and systems applicable for the safe operation and management of heavy rail assets, infrastructure and property.

TAHE, Transport for NSW (TfNSW), Sydney Trains, NSW Trains and the Country Regional Network rail operators have governance and assurance frameworks that detail the rules, relationships, systems, and processes within, and by which, each entity's safety accountabilities and obligations are exercised and controlled. TAHE's assets safety assurance program verifies and tests that these entities are meeting their safety due diligence obligations and compliance with safety legislation and contractual requirements.

TAHE was also reviewed by the NSW Office of Transport Safety Investigations (OTSI) to determine if TAHE's governance arrangements are sufficient to manage potential conflict between TAHE's commercial objectives and the safe management of the rail assets. OTSI's review concluded that TAHE's governance arrangements, assurance mechanisms and associated frameworks to support legislated accountabilities are fit for purpose and will benefit from being effectively operationalised.

RECOMMENDATION 2

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

Supported

The Audit Office of NSW is predominantly self-funded from charging government entities, councils and universities for conducting audits and other activities, and receives a government contribution to performance and compliance audits, and Auditor-General's Reports to Parliament.

As part of the 2022-23 Budget, the Government has implemented new funding arrangements for the NSW Audit Office and other integrity agencies.

Key features of the new arrangements include:

- Safeguarding independence: integrity agencies are now exempt from efficiency dividends and cluster financial processes. Integrity agencies may request, from the Treasurer, the expenditure of contingency funds, with the request and response provided to the relevant Parliamentary Oversight Committee.
- Enhancing transparency: integrity agencies are invited to comment on Treasury's advice to the Cabinet Expenditure Review Committee (ERC) and provide their own advice to ERC. The Treasurer will provide the integrity agencies, and the relevant Parliamentary Oversight Committees, with written decisions on funding bids, and, if relevant, reasons for variation from an integrity agency's funding bid.
- Improving recognition: Treasury representatives will receive specialist training to ensure that the independence of the integrity agencies is not compromised during the budget process.

A Charter of Independence, drafted in consultation with the integrity agencies and issued under a Treasurer's Direction, will codify the new arrangements.

A comparison of the existing and proposed arrangements is at **Attachment A** and flowchart summarising the new arrangements is at **Attachment B**.

Treasury will shortly commence a review to 're-baseline' the level of funding provided to integrity agencies to better reflect their funding needs following completion of the 2022-23 Budget.

The integrity agencies will be closely consulted throughout the process.

RECOMMENDATION 3

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

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

Supported in principle

In 2017, NSW Procurement established a significantly improved commercial model for the Performance and Management Services Scheme. The Standard Commercial Framework commenced for major suppliers on 8 January 2018 and was progressively adopted by other suppliers during 2018 and then, subsequently refreshed in January 2020.

NSW Procurement reports to the Minister for Finance and Employee Relations annually. This report includes a comparative analysis across clusters on trends in the number of engagements, total spend, use of the Standard Commercial Framework and other insights regarding use of professional services suppliers.

In March 2021, the NSW Procurement Board approved a revision to Procurement Board Direction (PBD 2021-03) relating to the engagement of professional services suppliers. The PBD notes the consultant's role is to provide recommendations or professional advice to assist decision-making by management. NSW Government templates for the procurement of consultancy services, available on buy.nsw (for example, request for quotation template, statements of work template), prompt agencies to set out a clear engagement scope and other conditions which support the provision of independent advice.

In the devolved model of government, different agencies within NSW Government operate and manage multiple schemes for the engagement of consultants. For the Performance & Management Services prequalification scheme (Scheme 0005), the NSW Government gathers data from the top 18 business advisory firms as part of the scheme's reporting requirements. This data is refreshed every four weeks and shared by NSW Procurement Analytics through data dashboards with agencies. There are different forums for cross government collaboration where information is shared by agencies working on shared policy development, but there are also limitations on sharing consultant reports given commercial-in-confidence and cabinet-in-confidence considerations relating to external advice that may be used to inform recommendations to government from different agencies.

The Performance & Management Services prequalification scheme rules, under which specific consultancy suppliers provide services to NSW Government, contain conflict of interest provisions. Specifically, suppliers undertake that no conflict of interest exists or is likely to arise in the performance of the services and the advisory firm must notify the principal, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest. The primary responsibility for disclosing and managing conflicts of interest

should be with the consultancy firm, as they have greater visibility on a potential conflict of interest than individual agency customers within the devolved model.

During July 2022, the Auditor General commenced a performance audit on the use of consultants in NSW Government and the role of NSW Procurement in providing guidance and advice. The Auditor General's findings may lead to further recommendations for measures and controls to improve the management of consultant engagements. The NSW Government will therefore await the Auditor General recommendations to guide implementation of appropriate actions.

RECOMMENDATION 4

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

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

Supported

The Secretary of the NSW Treasury commissioned former Commonwealth departmental secretary and Public Service Commissioner, Mr Stephen Sedgwick AO, to conduct an independent assessment of Treasury's processes for the preparation of the 2021 State Financial Statements ('the Assessment').

The Assessment was commissioned in response to concerns raised by the Auditor General in her Report on State Finances 2021 in February this year. The terms of reference for the Assessment were developed in consultation with the Auditor General. The Assessment report was provided to the Treasury Secretary on 30 June 2022.

While the Assessment was not established as a formal code of conduct review, the terms of reference explicitly provided for recommendations to be made for such a review (or reviews) if considered necessary by the Independent Assessor.

After an extensive examination of documents, and interviews with officers across Treasury, the Audit Office, Transport for NSW, TAHE and other individuals, Mr Sedgwick made no such recommendation, noting that he had been 'generally impressed by the high standards and commitment by those with whom we spoke'. The focus of the Assessment was therefore on finding options to improve Treasury's systems, processes, and culture.

While the Assessment found no evidence that Treasury has deliberately withheld documents, it recommended improvements in Treasury's knowledge transfer protocols to ensure that insights can be better captured, retained, and shared. Moreover, it recommended that Treasury, like all NSW Government agencies, should operate on the basis that the Audit Office is entitled to access the full range of documents necessary to enable the Auditor-General to form a view about the matters before her.

The Assessment found that while Treasury made some errors, it recognised that there was considerable scope for professional disagreement in the interpretation of accounting standards.

The Assessment recommended fostering a culture of greater professional curiosity among Treasury officials and a greater willingness to both, reassess the appropriateness of policy positions over time, and to examine issues from the perspective of their counterparty in any dispute.

Following consultation with the Auditor General, Treasury has accepted all the recommendations in the Assessment report and will be actively responding to the findings around its approach and culture.

Comparison of existing and new integrity agency funding arrangements

	Existing	New
Cluster arrangement	Designated as being in the Premier and Cabinet cluster.	No change. However, integrity agencies will be removed from usual cluster financial management processes, as set out below.
Recognition of independence	N/A	Charter of independence issued under a Treasurer's Direction.
Carry forward of underspend	Requested from Treasury and assessed pursuant to guidelines in Treasury Circular TC15-08 <i>Agency Carry Forwards</i> .	No change.
Submission of funding bids	Submitted to Treasury. No transparency for integrity agencies regarding Expenditure Review Committee (ERC) consideration.	Submitted to Treasury and DPC. All integrity agencies bids are presented to ERC with integrity agency advice which could address any concerns with the Treasury advice.
Engagement	Integrity agencies engage with Treasury officers on bids.	Integrity agencies engage with specialist unit within Treasury who are trained on the independence of integrity agencies. Senior DPC official also involved. Integrity agencies meet with Premier and Secretary of DPC to discuss funding bids and may attend ERC to brief members if requested by the Premier.
Preparation of advice to ERC	ERC receives Treasury advice.	Treasury advice to ERC provided to integrity agencies. Integrity agencies respond, which is also provided to ERC. DPC provides separate advice to the Premier.
Communication of reasons for ERC decision	N/A	The Treasurer writes to integrity agencies, copying the relevant Parliamentary Committee, with confirmation of ERC's decision in writing and, if relevant, reasons for variation from an agency's bid.
Funding level	-	'Re-baselined' to better reflect resourcing needs.
Appropriations	Made to the Premier who delegates expenditure of appropriated funds to the integrity agencies.	No change.
Efficiency dividends	May be imposed.	Government agrees not to.
Requests for supplementary funding	No formalised process.	Annual Appropriations Acts include a contingency for integrity agencies. Expenditure of contingency funds may be approved by the Treasurer at the request of the integrity agencies, with the request and response also provided to the relevant Parliamentary Committee.

**Role of
Parliamentary
Committee**

Prepares reports on the annual reports of the integrity agencies.

Considers reasons for ERC funding decisions and the Treasurer's supplementary funding decisions.

Existing role reviewing performance and annual reports continues.

Attachment B - Process flowchart summarising new integrity agency funding arrangement

