

TRANSPORT ADMINISTRATION AMENDMENT (TAHE) BILL 2023

STATEMENT OF PUBLIC INTEREST

Tabled, by leave,
Ms Shyne
Staffell
for
Clerk of the Parliaments
28 / 11 / 23

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Transport Asset Holding Entity of NSW (TAHE) is established under the *Transport Administration Act 1988* and is a state owned corporation (SOC) under the *State Owned Corporations Act 1989*.

Inquiries and analysis of TAHE undertaken by both the Public Accounts Committee of the Legislative Council¹ and the Auditor General of NSW² suggest that TAHE's status as a SOC is challenged by the extent to which it relies on public funds. The predominant users of the assets owned by TAHE are Sydney Trains and NSW Trains which, under the current model, must be funded by the Government to pay a commercial rate to TAHE for access to those assets.

If the current operating model were continued, the Government would have to pay a further \$615 million in funding in 2023-24 for the access contracts. It would also need to borrow more than \$4 billion the former government intended for TAHE.

It is inappropriate to continue to require TAHE to focus on commercial outcomes at the expense of its role as holder and manager of the state's rail related assets. Maintaining a high level of asset management, with a focus on safety and reliability of the assets and their value to the state and its community, is more important than keeping TAHE out of the general government budget.

Objectives: What is the policy's objective couched in terms of the public interest?

The assets held, maintained and managed by TAHE are rail related – tracks, tunnels, bridges, rolling stock, stations, and related assets and infrastructure. These assets are the fundamental building blocks of the rail services provided to the community and businesses of NSW. TAHE holds these assets on behalf of the people of NSW and makes them available to transport operators and users.

This Bill will ensure a move in an orderly fashion towards a new operating model for the strategic management and assurance of the State's transport assets, which is vital to ensure the ongoing delivery of safe and reliable transport services as well as realising social objectives such as expanding housing supply.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Consideration was given to three options: removing the SOC status of TAHE with it becoming a non-commercial public non-financial corporation; re-integrating TAHE's functions into Transport for NSW; or maintaining the SOC status of TAHE.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The first option is preferred. TAHE would remain a separate corporate entity under the Transport Administration Act, but as a non-commercial PNFC it would no longer have the statutory imperative to achieve a 'commercial' rate of return, providing more scope to pursue social objectives such as investment in social housing, alongside its investment in rail assets. As a non-commercial PNFC, it would still be a business and have the capacity to invest and borrow and generate revenue for

¹ <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2819#tab-reportsandgovernmentresponses>

² <https://www.audit.nsw.gov.au/our-work/reports/design-and-implementation-of-the-transport-asset-holding-entity>

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ongoing investment in transport assets. There is merit in maintaining a separate entity to provide strategic oversight and assurance of the planning, procurement and maintenance of the State's transport assets, leaving Transport for NSW responsible for the overall planning and standard setting for rail assets.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill represents one stage in the transition to a non-commercial operating model for TAHE.

It will take some time to fully develop and plan for the commencement of a robust non-commercial model, with TAHE, Transport and Treasury already working together on this project. This effort will culminate in the removal of TAHE's status as a SOC in mid-2024. This will require further legislation.

In the meantime, even though TAHE continues to be a SOC at present, the Treasurer has directed that TAHE, to the extent possible, operate more like any other non-commercial Government business and less like a SOC. The Minister for Transport has issued a formal Direction to TAHE under the SOC Act to assist it to make this change. This Bill supports and strengthens that interim position.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The Bill takes account of the views of the key stakeholders: Transport for NSW, NSW Treasury and TAHE.