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28 February 2022

Mr David Shoebridge, MLC
Chair
Public Accountability Committee
Parliament House, Macquarie Street
Sydney, NSW 2000

Via email: Public.Accountability@parliament.nsw.gov.au

Dear Chair,

Public Accountability Committee Inquiry into the Transport Asset Holding Entity

Thank you for your correspondence dated 11 February 2022 and for the opportunity to respond to the matters raised by Mr Brendan Lyon in his submission entitled "AQON - Mr Brendan Lyon - received 19 January 2022 - REDACTED" published on the Public Accountability Committee's **(the Committee)** website on 11 February 2022 **(the Document)**.

KPMG Australia **(KPMG)** has consistently sought to support the work of the Committee and its Inquiry into the Transport Asset Holding Entity **(TAHE)**. We respect the important role of this Inquiry and the serious policy matters being examined by the Committee.

KPMG asserts that some information in the Document is not accurate or may be misleading. For the benefit of the Committee, we have outlined a number of the inaccuracies in the Document in the appendix.

KPMG TAHE engagements

As it relates to KPMG, the focus of the Inquiry has been on two reports issued in November 2020 (the Operating and financial model report and the Accounting report, defined below). In addition to these engagements, KPMG had been assisting the NSW Government, including both NSW Treasury and Transport for NSW **(TfNSW)**, in the establishment of TAHE, in a collaborative and constructive manner for a number of years prior to these engagements. The two reports issued in 2020 were in addition to the TAHE cost and access pricing model **(CAPM)** engagement, which KPMG delivered in 2016-17 and subsequently updated in February 2021, and the TAHE Financial Model engagement, which was delivered in August 2017, as well as other engagements undertaken in 2020, outlined below.



In February 2020, KPMG commenced work providing services to NSW Treasury regarding the fiscal risk management strategy for TAHE. Ms Heather Watson was the lead partner on this engagement.

In April 2020, KPMG entered into an agreement with TfNSW to provide TAHE with Operational and Accounting Advice. This engagement brought together the expertise of former KPMG partner Mr Lyon and Ms Watson.

Mr Lyon was responsible for maintaining the primary relationship with TfNSW and led the engagement, whereas Ms Watson provided accounting expertise. In May 2020, Mr Lyon delivered this report to TfNSW. Later that month, TfNSW sought further advice from Mr Lyon. Ms Watson was not involved in the development of this report. However, Ms Watson continued to be retained to provide ongoing accounting advice to NSW Treasury on TAHE matters.

In late May 2020 it was clear that KPMG would be asked to provide ongoing services under existing contracts with each of TfNSW and NSW Treasury to address the complexities relating to TAHE. In response, KPMG established a Conflicts Oversight and Governance Committee (**COGC**), and its first meeting was held in early June 2020. The COGC was led by three KPMG partners with the express aim of effectively and proactively managing the risk of real or perceived commercial conflicts which may emerge through work undertaken by KPMG teams working with different NSW government agencies on the creation and operationalisation of TAHE.

In June 2020, KPMG was engaged by TfNSW to assist in developing a future long-term operating and financial model for TAHE (**Operating and financial model report**). Mr Lyon led this engagement and KPMG's Lead Partner for Planning and Infrastructure Economics, Mr Paul Low, was later appointed by the COGC as the engagement quality control review partner. This step that was taken in observation of the particularly complex circumstances the TAHE engagements presented, and is consistent with our approach towards complex engagements across the firm. The role of the engagement quality control partner is to objectively evaluate the significant judgments and conclusions reached by the engagement team in formulating the report or other output of the engagement.

In October 2020, KPMG's CFO Advisory services team was engaged by NSW Treasury to assist in the development of a Financial Impact Statement for TAHE (**Accounting report**). This included providing accounting advice in line with the Government's framework for budgetary reporting, as well as an assessment of the reasonableness of the NSW Treasury assumptions as they related to TAHE. Ms Watson was the engagement partner and was supported by Partner-in-Charge, Sydney CFO Advisory, Mr Andrew King, as the engagement quality control partner.

The Accounting report was provided to NSW Treasury on 3 November 2020. The Operating and financial model report was provided to TfNSW on 8 November 2020.



Following their delivery, KPMG was asked to clarify how the reports operated together. The two engagements had different scopes, were for different purposes and were addressing different issues. KPMG confirmed that both reports provided objective information, with the Operating and financial model report providing a long-term operating model and financial model for TAHE and the Accounting report providing advice in relation to the reasonableness of the assumptions used in preparing the Financial Impact Statement for budgetary reporting purposes.

Reflections on our TAHE engagements

KPMG strongly stands by the quality, independence and integrity of the work completed by KPMG partners Ms Watson and Mr Lyon over the course of the TAHE engagements. Both Ms Watson and Mr Lyon produced high-quality work under challenging circumstances. Our decision to place an additional senior partner on each of the projects reinforced our focus on ensuring the quality of our work.

We submit that both reports were completed accurately, within scope, and independent of client influence. KPMG firmly rejects any suggestion that there was a conflict of interest from the two engagements, as well as any suggestion that either client unduly interfered in the findings of the reports. We refer the Committee to our prior submission for a detailed explanation of how the engagements were managed.

Both November 2020 reports reference different Return on Equity rates and denominators. While the difference is explained by the purpose and subject of each report, KPMG also explained its position after the reports were issued. In summary, the Accounting report prepared by KPMG considered whether NSW Treasury's judgement to use a benchmark of 1.5% to assess sufficiency of return was reasonable at that point in time. This work considered Treasury's basis for determining their benchmark when applying the Australian Bureau of Statistics Government Finance Statistics framework. The Operating and financial model report involved different considerations relevant to a long-term operating model for TAHE as a commercial entity, hence the reference to a different Return on Equity rate (1-3 per cent from FY23 to FY27 and 4 per cent thereafter). We note that the accounting treatment in the 2021 Total State Sector Accounts was not the subject of either KPMG report.

A post-engagements review found that KPMG did not get everything right. We wrongly had a mindset throughout the engagements that two departments within the same government represented a single client, and we failed to clearly communicate with our clients about the vast complexities involved in these engagements, as they were emerging. Additionally, we should have stepped in earlier and more decisively to address personal differences and views between colleagues.

This has contributed to the complexity of TAHE matters, and for that we apologise.



We have since made operational changes to our Commercial Conflict Resolution Committee and increased the Committee's reporting to our National Executive Committee and our National Board.

In response to the document

Throughout this Inquiry we have upheld the position the Chair has articulated - that the Committee's work should focus on the important matters of public policy and not that of the personalities involved.

We fully acknowledge the benefits of the Inquiry hearing evidence from current and former KPMG partners about the nature of their work and advice to the government regarding TAHE matters. We also respect the powers of the Committee to call for the production of relevant documents and to review those documents.

However, we find it regrettable and unfortunate that the Document moves beyond these parameters and makes personal reflections on individuals.

The Document includes emails, private text messages and commentary that for the most part, provide very little by way of probative information for the Committee and are an assertion of personal views with which we strongly disagree.

References to KPMG partners and employees

Throughout the Document there is evidence of inappropriate and derogatory messages. The messages include referring to individuals as a "liar", a "bully" or worse. Whilst KPMG had taken steps to counsel the people involved about the need to be respectful of others, more should have been done at the time.

The Document provided to the Committee refers to several skilled professionals at KPMG. These include experienced industry leaders and experts such as Ms Watson, Mr Low, Mr King and Mr James Hunter; and other respected members of KPMG's partnership and leadership. It also refers to specialists in our business support function (across Risk Management, Legal, and People & Inclusion).

These individuals all performed the roles expected of them at KPMG in delivering high-quality services to the NSW Government. We are confident in the work they delivered, and it is regrettable that they have been the subject of adverse comment and inference in the Document.



Bullying and harassment allegations

No one should be subjected to bullying at work. KPMG takes all allegations of bullying and harassment very seriously. Complaints of bullying at KPMG are properly investigated, and where complaints are substantiated, action is taken. We fully understand our responsibility to provide a safe workplace.

We strongly encourage our people to speak up when they see something that isn't right. This is important in ensuring we maintain a high level of integrity in the work we do.

The TAHE engagements were complex, significant and stressful for Mr Lyon and all of the professionals who worked on them. The firm recognised this and proactively moved to support those involved. On multiple occasions KPMG offered all partners on both engagements access to extensive support, which included support services.

The Document outlines that there was a formal investigation of a bullying complaint made against Mr Lyon. The Committee may have the impression that this complaint related to the conclusions of the work KPMG completed for TfNSW or that it was retaliatory. We can assure the Committee that the complaint was in no way related to either.

We note that Mr Lyon has alleged in the Document that he was bullied whilst working for KPMG and is dissatisfied with how he was treated. We are deeply disappointed and concerned to learn that anyone feels they were treated poorly at KPMG. Whilst he was at KPMG, Mr Lyon was invited to provide the detail of his concerns through our established channels, including anonymous or third-party processes.

We remain committed to addressing any inappropriate behaviour at KPMG and would investigate any allegation of inappropriate conduct by KPMG partners or employees. Over the past year KPMG has announced and undertaken several significant reforms to culture, accountability, transparency and care for our people, as publicly disclosed in our recent Impact Report - ([Our Impact Report 2021 \(assets.kpmg\)](#)). Additionally, the KPMG Board now has more fulsome processes relating to conduct matters and regularly reviews the policies and procedures that the firm's National Executive Committee has put in place to deal with behaviours and ethics within the firm.

Conclusion

In conclusion, KPMG strongly stands by the quality, independence and integrity of the work, but we acknowledge that we did not get everything right in respect to the TAHE engagements. The technical matters being considered and the associated relationships were complex and stressful. We remain committed to looking back and learning from any mistakes we may have made. KPMG will continue to introduce ongoing



improvements to the way we work to ensure we always act with ethics, transparency, and integrity.

We again thank you for the opportunity to respond to the Committee. We remain fully committed to assisting the Committee in a constructive manner, given the important nature of the Inquiry.

Yours sincerely,

Andrew Yates
Chief Executive Officer



Appendix - Factual matters

For the benefit of the Committee, we believe it is necessary to bring to the Committee's attention some factual matters relevant to the Document in addition to points raised in the body of this submission:

- At no time was an attempt made to remove anyone from the engagement for TfNSW. Mr Low was appointed as a second partner in a role of support only, to maintain the high standards of our work. It was never proposed that Mr Low would have a different role. KPMG refutes that Mr Lyon was “forced” from his employment at KPMG.
- KPMG denies any suggestion of a personal relationship and/or collusion between the former Treasury Secretary Mike Pratt and Andrew Yates. As Mr Pratt told the Committee in December, Mr Lyon's suggestions were “entirely incorrect” and during more than three decades with the firm, Mr Yates recalls meeting Mr Pratt once.
- Any reference to Mr Yates being CEO or CEO-elect prior to late March 2021 is incorrect. At the time of the TAHE engagements he was the National Managing Partner of the Audit Assurance & Risk Consulting (**AARC**) division. He was interviewed by the Board of KPMG Australia on 22 March 2021 with another candidate for the role of CEO. On 29 March 2021, the Chairman of KPMG Australia recommended to the Board that he be appointed to the role of CEO. And on 30 March 2021, the KPMG Chairman announced Mr Yates' appointment as CEO, effective from 1 July 2021.
- Mr Lyon was a Partner in KPMG's Deals, Tax and Legal division. Mr Lyon retired from the Partnership on 30 June 2021. At no time did Mr Lyon either directly or indirectly report to Mr Yates, and suggestions to the contrary are incorrect. While Mr Lyon was not a member of Mr Yates' AARC division, Mr Yates did have infrequent communications with Mr Lyon. Mr Yates responded to emails and calls from Mr Lyon - as confirmed by the source documents provided to the Committee.
- The report which Mr Lyon worked on for TfNSW was issued in November 2020 and remains unamended. No attempt to amend the report was ever undertaken by KPMG. Mr Lyon worked for a significant period after that and retired from the partnership on 30 June 2021.
- David Linke was one of the three partners leading the COGC and is an internationally respected tax professional with over 20 years' experience. At the time, Mr Linke was the National Managing Partner to whom Mr Lyon reported and to whom Mr Lyon would raise his concerns. Acknowledging Mr Linke's role and need to rely on the expertise of others to answer questions of conflict, he sent the



email at page 139 of the Document that called for an independent review by individuals with relevant specialist expertise. This review was undertaken and is the 'rapid review' mentioned in KPMG's Submission dated 11 November 2021. The conduct is evidence that KPMG was alert to concerns of conflict and of the need to appropriately consider them.

- In late May 2020, KPMG established the COGC, and its first meeting was held in early June 2020. The COGC was led by three KPMG partners with the express aim to effectively and proactively manage the risk of real or perceived commercial conflicts which may emerge through work undertaken by one or more KPMG teams working with different NSW Government agencies on the creation and operationalisation of TAHE. The communications with, and by, a committee overseeing conflict risk naturally make references to that conflict risk. They indicate an awareness of the issue and that steps were being taken to manage the risk. The COGC was also established to provide personal support to the partners leading the engagements.