

INQUIRY INTO THE APPOINTMENTS OF JOSH MURRAY TO THE POSITION OF SECRETARY OF TRANSPORT FOR NSW AND EMMA WATTS AS NSW CROSS-BORDER ASSISTANT COMMISSIONER - HEARING – THURSDAY 31 AUGUST 2023

SUPPLEMENTARY QUESTIONS

Peter Duncan, Former Acting Secretary of Premier's Department

1. In the Evaluation Panel Report you finalised and signed on 28 June 2023 was Benedicte Colin given a higher rating than Josh Murray?

Mr Murray was described as “Very Suitable” and the other candidate described as “Highly Suitable”.

Please also see my previous evidence regarding this matter on the 31 August.

2. Other than the email you received from Minister Haylen on the afternoon of Saturday 1 July 2023 did you receive any other feedback from Minister Haylen about her view on Mr Murray?

I recall that prior to the email I had a telephone conversation with the Minister and the email is a summary of that conversation.

3. Other than the email you received from Minister Haylen on the afternoon of Saturday 1 July 2023 did you receive any other feedback from Minister Haylen regarding her view on Ms Colin?

I recall that prior to the email I held a telephone conversation with the Minister and the email is a summary of that conversation.

4. What decision making process, apart from undertaking probity checks, did you undertake between receiving Minister Haylen’s email and beginning the process of appointing Mr Murray?

The decision-making process as I outlined in the hearing included the results of the interviews, the evaluation report, results of the psychometric tests, reference checks and the feedback from the consultation with the Minister as summarised in her email.

5. What other inputs, beside probity advice, did you receive between receiving Minister Haylen’s email on 1 July 2023 and commencing the process to appoint Mr Murray?

Other inputs besides the probity advice included Mr Murray’s responses to NGS Global’s queries regarding potential conflicts of interest and the comments of the Public Service Commissioner regarding the probity advice.

6. When did you inform Mr Murray that he was to be appointed as Secretary?

Mr Murray was informed by telephone immediately prior to sending the letter (11 July 2023) of offer and once I had made the decision.

7. When did you inform Ms Colin that she was unsuccessful in her application for the position of Secretary?

The unsuccessful applicant was informed as soon as I received confirmation of Mr Murray's acceptance of the offer.

8. Did you convey to Ms Colin Minister Haylen's hope that she would stay on as CEO TAHE?

I advised her as stated in my previous evidence, provided high level feedback, offered a further debrief and that the Minister highly regarded her performance as a CEO.

9. In Q and A prepared by Minister Haylen's office and circulated to several people in the Premier's office it states: "The Minister was then asked by the panel chair to interview the final two candidates and make the final decision." Did you ask Minister Haylen to "make the final decision"?

The letter dated 29 June 2023 invited the Minister to meet the two candidates and put her views in writing to me for my consideration before I made a final decision.

10. What steps have you taken to correct Minister Haylen's repeated public statements that she made the final decision to appoint Mr Murray?

I have provided evidence to this Inquiry on the 31 August which provides a complete statement of my position.

11. Is the relative seniority of ministers correctly reflected in the order they are listed in the Administrative Arrangements (Minns Ministry—Administration of Acts) Order 2023?

Regarding questions 11, 12, 13 and 14 I am advised that:

The senior Minister to whom the Department of Transport is responsible is the Minister for Transport.

The senior Minister to whom a Department is responsible is the Minister to whom the appropriation for the relevant Department is made under the Appropriation Act.

The Appropriation Act 2022 appropriated moneys to the Minister for Infrastructure for the services of the Department of Transport for the year 2022-2023.

Clause 7 of the Administrative Arrangements (58th Parliament) Order 2023 provides that a reference in the Appropriation Act 2022 to the Minister for Infrastructure is to be read as a reference to the Minister for Transport.

The Minister for Transport is therefore the senior Minister to whom the Department of Transport is responsible.

This is reflected in the Governance Arrangements Chart, prepared by the Cabinet Office (available at <https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/resources/governance-arrangements-chart>), which provides that the Minister for Transport is the lead Minister for the Department of Transport.

As set out in clause 1 of Schedule 1 to the Administrative Arrangements (Public Service agencies and Ministers) Order 2023, the Department of Transport is responsible to:

- *Minister for Transport*
- *Minister for Roads*
- *Minister for Planning and Public Spaces*
- *Minister for Regional Transport and Roads.*

12. In that Order is the Minister for Roads listed as senior to the Minister for Transport?

See answer above.

13. Is Transport for NSW responsible to the Minister for Roads as stated on its website at <https://www.transport.nsw.gov.au/about-us/who-we-are/our-ministers> ?

See answer above.

14. Was your report to the Premier on the appointment of Mr Murray prepared after consultation with the Minister for Roads as the senior Minister to whom Transport for NSW is responsible? If not, why not?

See answer above.

15. Before signing the Evaluation Panel Report on 28 June 2023, what steps, if any, did you take to verify each of the following claims by or about Mr Murray as set out in that report or in the Confidential Candidate Report on Mr Murray?

- “He was seen as a good decision-maker who had taken difficult decisions early in the initial stage of the COVID pandemic. These decisions enabled the business to restart more quickly than competitors.”
- “The outcome [of actions taken by Mr Murray] was the family’s decision to keep the business in private hands.”; and
- “In his Chief of Staff roles ... in the Transport portfolio [Mr Murray played a] key role ... in landing the Sydney Metro scheme.”

In signing the evaluation report, I relied on the work of the NGS Global, the Public Service Commission, both of whom were involved in preparing the report, and also the deliberations of the Evaluation Panel.

16. In your evidence you state “Look, in the process, I was at pains to say we would not be ranking—that we'd be deciding whether we had suitable candidates or not and that it was my view that we would at least have one or two candidates to go forward to the Minister for consideration and comment back.” How is not ranking candidates compatible with the requirement to conduct a comparative assessment of candidates under Rule 17 of the Government Sector Employment (General) Rules 2014?

I am advised that:

*Whilst Part 3 of the Government Sector Employment (General) Rules 2014 (**GSE Rules**) regarding merit-based employment applies to the appointment of public service senior executives, under section 52(4) of the GSE Rules, Part 3 does not apply to the Secretaries of Departments.*

Therefore, the merit-based employment process (and therefore a comparative assessment of candidates) does not need to be conducted when appointing Secretaries of Departments.

17. Given the Brief approved by you on 26 April 2023 specifically requires that candidates be given one of three ratings by the Evaluation Panel – “Highly Suitable”; “Suitable” and “Not Suitable for Appointment” was it properly a matter for either the panel, NGS Global or even yourself to belatedly invent a new rating of “Very Suitable” without a prior revision of the approved Brief?

See answer to Question 16, which explains that a merit-based employment process is not required for the appointment of Secretaries of Departments, which indicates there is a degree of latitude involved in the recruitment and appointment process. See also my evidence on page 66 of the draft transcript of evidence from the 31 August 2023.

18. What aspects of Mr Murray’s assessment resulted in him failing to be given the top rating available to the Evaluation Panel of “Highly Suitable”?

A Very suitable candidate is appropriate to take forward. See also my evidence as above on page 66 of the transcript.

19. Before you signed the Evaluation Report on 28 June were you already cognisant of the results of the psychometric tests and the referee checks?

NGS Global provided a copy of the draft Selection Report including reference checks for Ms Colin and Mr Murray on 27 June 2023 (i.e. the day before the Selection Panel Report was signed).

The EQ assessments were not sent until the day after, i.e. 29 June 2023

20. When and how did you inform the Minister for Transport, or her office, that Mr Murray was to be appointed as Secretary?

To the best of my recollection, I was in contact with the Minister's Office in the week of 3 July about my intention to make an offer of employment to Mr Murray.

21. At any times prior to Mr Murray's appointment as Secretary, did you discuss the possibility of his appointment to this role with (i) Dr Michael Knight AO or (ii) Mr Morris Iemma?

No.