

Supplementary question: Contradictions in evidence concerning KPMG's professional and ethical conduct on TAHE.

Question on notice: Do Big Four firms attach themselves to political parties during election campaigns?

***NSW Legislative Council Public Accountability & Works Committee:
Inquiry into the NSW Government's use and management of
consultants***

**Professor Brendan Lyon
18 October 2023**

Contents

| | |
|---|----|
| Contextual remarks regarding my work on TAHE | 5 |
| Submission regarding new evidence of Mr Pratt’s undisclosed relationships with KPMG | 5 |
| Was there a pattern of misconduct between KPMG and Mr Pratt? | 8 |
| Recommendations: | 9 |
| Supplementary question on notice: my response. | 10 |
| Structure of my evidence in response: | 10 |
| Supplementary question on notice: documentary evidence | 12 |
| Evidence 17 July 2020: text discussion reporting safety risks of KPMG’s advice by Ms Watson is ‘100 per cent pre waterfall. People would go to gaol if was brought in’..... | 12 |
| Evidence 27 July 2020: text discussion where Paul Low acknowledges the ill-treatment by Ms Watson, expresses ‘professional’ concern but most worried about ‘personal impacts’; has ‘no sense of how this will unfold yet i.e., where Heather...and Andrew Yates have gotten today’; but did not report or act. | 13 |
| Evidence 26 August 2020: Mr Low informs me incoming CEO Andrew Yates is ‘getting his head around things’ and will be ‘important for any tail on this one’ given internal conflicts..... | 14 |
| Evidence 13 September 2020: David Linke agreeing to set up an introduction to outgoing CEO Gary Wingrove – now KPMG International COO – that meeting did not occur, and I first met Mr Wingrove at my dismissal meeting..... | 15 |
| Evidence 13 September 2020: email to NSW Treasury Secretary Mike Pratt and TAHE Chair Bruce Morgan over safety, request unprofessional attacks by Treasury and TAHE staff cease..... | 16 |
| Evidence 15 September 2020: Text informing Paul Low an intention to email outgoing CEO Gary Wingrove to report that KPMG is a ‘pathetic organisation with pathetic controls and pathetic leadership’; Mr Low asks me not to report it. | 17 |
| Evidence 15 September 2020: Paul Low acknowledges bullying and observes CEO Andrew Yates needs to ‘stiffen up’, to stop it..... | 18 |
| Evidence 16 September 2020: David Linke emails Paul Low advising TfNSW – my client- reject NSW Treasury & James Hunter attempting to control findings of my report. | 19 |
| Evidence 16 October 2020: Correspondence to David Linke & Paul Low where I forecast vexatious complaints from Ms Watson & Mr Hunter in retaliation of my forthcoming TAHE findings. | 19 |
| Evidence 16 September 2020: Email to KPMG CEO Andrew Yates, James Hunter and leadership reveals scale of KPMG/Treasury errors on budget..... | 20 |
| Evidence 16 September 2020: James Hunter cancels KPMG’s scheduled conflict oversight meeting after seeing scale of budget error; says to get ‘greater clarity’ about arrangements inside government – note Mr Hunter’s email footer identifying himself as a NSW Treasury official; presumably with knowledge of Mr Pratt..... | 21 |
| Evidence 11 October 2020: Revelation James Hunter’s ‘greater clarity’ is an email from him advising Treasury and Transport for NSW that I am no longer leading my work on TAHE. | 22 |

| | |
|--|----|
| Evidence 10 October 2020: Paul Low reports David Linke & David Heathcote ‘holding the line’ on not allowing Treasury insist on changes to my work (contradicting Mr Yates later false evidence my work was free of interference). | 23 |
| Evidence 14 October 2020: Paul Low and David Linke discuss the ‘ <i>difficult circumstances</i> ’ and ‘ <i>intense scrutiny</i> ’ applied to me and my team..... | 24 |
| New Evidence 4 November 2020: On learning of Ms Watson’s secret and directly conflicting work agreed by Mr Yates I make a formal, internal whistleblowing report of corruption and unresolved conflict to ethics partner Joel Lucas and Paul Low. | 27 |
| Evidence 5 November 2020: Formal report of the various direct conflicts in the secret work commissioned from Ms Watson in October 2020 and accepted by Mr Yates and KPMG’s senior leadership at a secret meeting of KPMG’s conflict oversight committee. | 28 |
| New Evidence 5 November 2020: My formal internal whistleblowing report of unethical behaviour, bullying and reprisals ethics Partner Christine Wilcox. | 29 |
| Evidence 6 November 2020: I formally report CEO Andrew Yates overruling the clarification demanded by TfNSW of Ms Watson’s directly conflicting and undisclosed work for Treasury..... | 30 |
| Evidence 6 November 2020: David Linke reviews Ms Watson’s scope and reports a direct, unreconcilable conflict with the undertakings he had given TfNSW over KPMG’s conflict management approach..... | 31 |
| Evidence 6 November 2020: Louise Capon responds to my formal report of conflict, corruption and consequential bullying and reprisals against me – advises Jeff Cook will investigate..... | 32 |
| Evidence 8 November 2020: Email to my team and Mr Low discussing bullying and bad treatment by KPMG and Treasury personnel..... | 33 |
| Evidence 8 November 2020: Email from Paul Low acknowledges the ‘challenging’ internal and external pressures applied..... | 34 |
| Evidence 19 November 2020: Treasury Deputy Secretary San Midha instructs me to change my now final advice, copies in KPMG leadership. | 35 |
| Evidence 19 November 2020: Treasury Secretary Mike Pratt AM emails six minutes later, copying in KPMG’s leadership and also demanding I change my report findings. | 35 |
| Evidence 19 November 2020: My email response two minutes later, advising Mr Pratt that ‘ <i>I am sick of being bullied by you</i> ’. | 36 |
| Evidence 19 November 2020 Mr Pratt’s response nine minutes later, instructing KPMG leadership ‘ <i>I expect you to take action</i> ’ against me. | 36 |
| Evidence 20 November 2020: My formal report to Mr Low about the content of my call to Mr Pratt the evening prior..... | 37 |
| Evidence 25 November 2020 text to Mr Low advising of Mr Yates and Mr Pratt banning me from working in reprisal for my report being lodged with Cabinet. | 38 |
| Evidence 2 December 2020: Jeff Cook writes to advise no evidence of misconduct or corruption; General Counsel advises I should not make a corruption report ICAC; does not act on bullying allegations instead invites me to ring Ben Lawler if worried..... | 39 |
| Evidence 11 March 2021: Ben Lawler writes to me, advising KPMG are investigating a conduct complaint by NSW Treasury Secretary Mike Pratt, for my refusal to (improperly) alter my results, as per Mr Pratt’s demand. | 40 |

| | |
|---|----|
| Evidence 24 March 2021: Jeff Cook issues two more conduct warnings, includes one for failing to undertake KPMG’s <i>‘we do what is right: acting with integrity training’</i> | 41 |
| Evidence 26 March 2021: email to my lawyer Rebekah Giles discussing Mr Low’s explicit knowledge and stated view of the unfairness of the reprisals over TAHE | 43 |
| Evidence 29 March 2021: My letter to KPMG requesting disciplinary processes are paused until I return from leave for my wedding..... | 48 |
| New Evidence 29 March 2021: Letter advising me of new investigation over allegations I bullied Ms Watson by raising questions of ethics and professionalism; Kate Gatti declines request to delay disciplinary action until after my wedding..... | 49 |
| New Evidence 23 April 2021: I return from my wedding and email CEO Andrew Yates requesting he remove the prohibition on my professional work agreed with Mr Pratt in November in consequence of the finalisation of my report. | 52 |
| New Evidence 28 May 2021 email to my lawyers regarding my dismissal and KPMG’s cynical insistence on removing liability for any impacts of their bullying. | 53 |
| Evidence 20 January 2022: NSW Parliament publishes my detailed, evidenced 162-page answer on notice detailing wrongdoing by Mr Yates and KPMG’s senior leadership; and Mr Pratt and senior NSW Treasury officers..... | 54 |
| Evidence 14 February 2022 letter KPMG General Counsel Louise Capon <i>‘condemns in the strongest terms’</i> Parliament’s publication of evidence; demands Parliament <i>‘improve’</i> practices; attempts to refer Inquiry to privileges committee for sanction..... | 55 |
| Evidence 28 February 2022: CEO Andrew Yates <i>‘firmly rejects’</i> bullying and misconduct saying Yates, Hunter, Watson & KPMG leadership <i>‘all performed the roles expected of them at KPMG’</i> .. | 57 |
| Question on notice: my response | 62 |

Contextual remarks regarding my work on TAHE

As the Committee might appreciate, my work for the NSW Government on the Transport Asset Holding Entity was personally impactful and life-defining, in ways I could not have anticipated.

Senior NSW Treasury officers, KPMG's CEO and its leadership engaged in contemplations about control of public rail assets that ranged from the foolhardy, to the outright dangerous.

Only some 20 years ago, NSW abandoned TAHE-like structures in public rail, because of the tragic and avoidable deaths in the Glenbrook and Waterfall rail accidents.

The NSW Auditor General has already testified and published on KPMG's loss of professional independence and involvement in the unprecedented obstruction of her annual review of the state's finances.

The Parliament should acknowledge those Transport officials who withstood substantial pressure within government to ensure Cabinet received honest advice which detailed the true costs and (very) real safety risks introduced by the TAHE policy.

Despite the high personal impacts and professional costs, I am proud of the small part I played supporting good public servants to maintain safety in public rail services and integrity in public administration.

Finally, I thank the chairs and members of the PAC and PAWC inquiries for your decency during my appearances before you.

Faithfully,

Brendan Lyon

Submission regarding new evidence of Mr Pratt's undisclosed relationships with KPMG

1. In response to questions by the Chair on 5 September, I note with interest that KPMG has disclosed that the former Treasury Secretary Mike Pratt AM was an employee of that firm.
2. The relevant excerpt of their submission is provided below.

5 Mr Pratt's employment at KPMG

The CHAIR: Are you able to tell us if Mr Pratt ever worked for KPMG?

PAUL LOW: I'm not aware of Mr Pratt working for KPMG.

The CHAIR: Could you double-check your records? There is certainly a media report that refers to him as having worked at KPMG.

PAUL LOW: I'm not aware of that, but I'm happy to take that on notice.

KPMG Response:

From 2 March 2009 to 26 June 2009, Mr Pratt worked as a contractor to KPMG on a specific, short-term project.

Source: KPMG answers to supplementary questions, PAWC, 2023.

3. Mr Pratt's prior employment at KPMG has not previously been disclosed; is not on his publicly available profiles or CV; and was not common knowledge within KPMG, Transport for NSW, Treasury or the NSW public sector.
4. KPMG's answer presents Mr Pratt as 'contractor' working on a short-term project.
5. Contemporary media reports instead describe Mr Pratt as holding senior business development roles for KPMG, including that:

*'[Mike Pratt]...guided the business development strategy for KPMG in Australia.'*²

Asian Banking & Finance, <https://asianbankingandfinance.net/retail-banking/people/michael-pratt-appointed-standard-chartered-board>



Michael Pratt appointed to Standard Chartered board

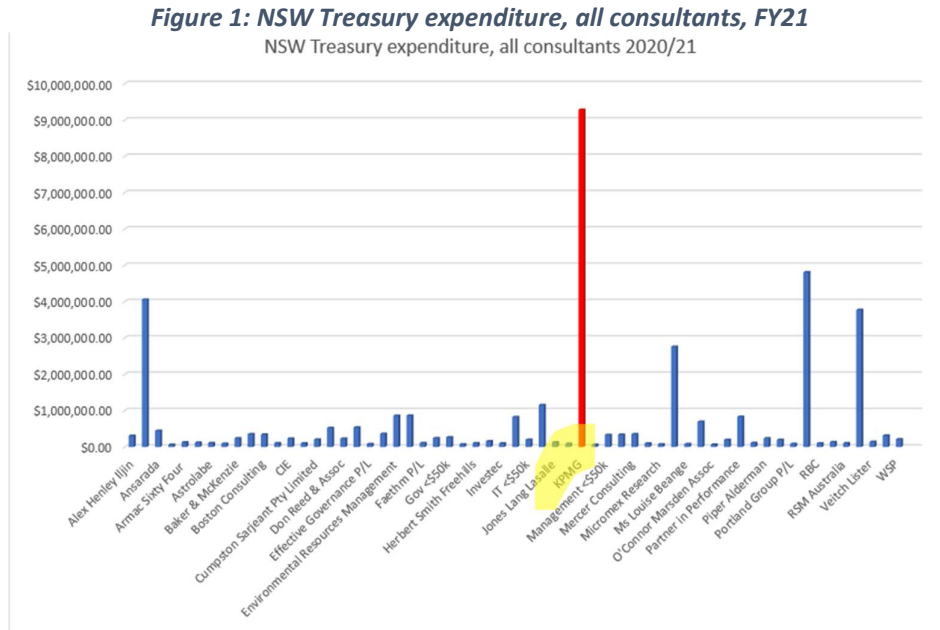
Michael Thomas Pratt will succeed Stefano Paolo Bertamini as Director of Standard Chartered Bank Hong Kong effective 1 February.

Mr Pratt joined Standard Chartered Bank in June 2009 as Head of Consumer Banking, China and Regional Head of Consumer Banking, North East Asia.

Before his appointment at Standard Chartered, Mike has been consulting to the financial services industry and guided the business development strategy for KPMG in Australia. He was appointed CEO of Bank of New Zealand in 1998 and CEO, Australian Financial Services, National Australia Bank in 2000. He joined Westpac in 2002 as Group Executive for New Zealand and Pacific Banking becoming Group Executive for Business and Consumer Banking later that year.

² : Asian Banking & Finance, <https://asianbankingandfinance.net/retail-banking/people/michael-pratt-appointed-standard-chartered-board> access date 16 October 2023

6. Mr Pratt's tenure as a senior NSW public servant correlate strongly with KPMG's rapid rise in fortune, to become the largest consultant to NSW taxpayers.
7. For illustrative example, the chart below shows NSW Treasury's total consultant expenditure in the last full year of Mr Pratt's tenure.
8. The red column is the expenditure on KPMG in that year, while the blue columns are all other consultants.



Source: NSW e-tender data, accessed 6 February 2022.

9. I also recall calls for papers during the Legislative Council's inquiry into iCare revealed Mr Pratt issued KPMG a special waiver to avoid State procurement rules and processes, something of a 'green light' to bill the taxpayer beyond normal process.
10. KPMG has been the majority supplier to NSW Treasury during Mr Pratt's tenure with much of that work untendered.
11. KPMG also became a dominant supplier to iCare during Mr Pratt's tenure as the deputy chair and later, as the proxy shareholder; also with much of that work undisclosed and untendered.
12. It is also relevant to note that Ms Heather Watson who led KPMG's advice to the NSW Treasury on TAHE has left KPMG this year, to work directly for Mr Pratt in the private sector.

Figure 2: Mike Pratt now directly employs Ms Heather Watson, ex KPMG.

Michael Pratt AM

SF Fin, GradDip (Org Beh), FAICD, FIML, FAHRI, AMP (Harvard), D.Litt (Honoris Causa)

Non Executive Chairman

Michael Pratt is the Chairman of Bangarra Family Office. Prior to his appointment as Chairman, Michael held various positions in the NSW State government including his role as the 27th Secretary of NSW Treasury where he was responsible for strategic management of the entirety of the State's finances, budget, assets and liabilities, and before that as the NSW Customer Service Commissioner where he revolutionised the way the Government delivers services.

Michael has extensive experience in the banking industry where he held senior executive positions as Regional Head of Consumer and SME Banking, North East Asia, with Standard Chartered Bank, former President of the Australian Institute of Banking & Finance and was the inaugural Joint President of Finsia. Previous roles also include senior executive positions as Group Executive of Westpac Business & Consumer Banking, CEO of National Australia Bank in Australia, CEO of Bank of New Zealand and CEO of Bank of Melbourne. Michael previously held the role of Chairman of Bennelong Funds Management.



Heather Watson

B.Com FCA

Chief Executive Officer

Heather Watson is the Chief Executive Officer of Bangarra Family Office.

Prior to joining Bangarra Family Office, Heather was a partner at KPMG. She has also held senior roles in the NSW public sector and a variety of governance positions. She brings a broad experience and strong track record of results.

Heather has a long-held passion for building high performance teams focussed on driving outcomes. She leads the team in delivering on the Bangarra Family Office purpose to make an impact and create positive lasting change within the communities the Bangarra Group operates.



Was there a pattern of misconduct between KPMG and Mr Pratt?

13. With the passage of time, it is interesting to reflect on striking similarities between the TAHE and iCare scandals.
 - a. TAHE and iCare were both the responsibility of Mr Pratt;
 - b. KPMG authored reports later revealed to have hidden major costs;
 - c. KPMG was paid millions and many millions more in other untendered contracts from those entities and NSW Treasury.
14. Mr McDougall KC found in his independent review of KPMG and iCare that:

- 331 On receiving the complaints, icare commissioned KPMG to carry out an independent review of the claims files. When KPMG was preparing drafts of and finalising its report, icare's employees had direct input into the report's contents and conclusions.
- 332 The changes made between various versions, apparently as a result of icare's input, had the effect of weakening some of the conclusions that had been expressed into the draft. Most notably, the report moved from a finding that QBE was complicit with the Department (the employer) to a finding of no evidence of fraud or collusion. SIRA noted, in its report, that icare 'may have compromised KPMG's independence and therefore impacted the findings of its investigation.'¹⁶¹
- 333 icare, for its part, notes that the claim review was intended to be independent of QBE, not independent of icare, and that it was appropriate that its employees had input into the report. Mr Nagle stated that the changes arose because icare asked for matters of 'conjecture' (which as I understood to him meant hearsay) to be disregarded.¹⁶² icare has since commissioned an independent review of the actions of its employees. That review found no breach of icare's code of conduct.

Source: McDougall, R, iCare and State Insurance and Care Governance Act 2015 Independent Review, 30 April 2021.

15. While Mr Pratt and KPMG provided (at times, ferocious) testimony of their independence of one another, this is not being borne out by either evidence or observed reality.
16. With the context of time, I observe a pattern where KPMG issues work that hides Mr Pratt's failures, in return for preferential treatment in government contracts.

Recommendations:

17. I submit the Public Accountability Committee should require the attendance of KPMG's CEO Mr Andrew Yates and KPMG International Partner Mr James Hunter, to explain themselves.
18. I submit that the Public Accountability Committee require former NSW Treasury Secretary Mike Pratt AM and his employee Ms Heather Watson, to appear and explain themselves.
19. If the Inquiry finds evidence of contempt or other wrongdoing, I submit that:
 - a. KPMG should be subject to financial penalties and excluded from NSW Government work for a suitable period.
 - b. The Committee would also be at liberty to request Government House reconsider Mr Pratt's membership of the Order of Australia; should you consider consequences appropriate.
20. Finally, I request this response is published to answer the false evidence by KPMG and others, over the past two years.

Supplementary question on notice: my response.

21. The Committee's sole supplementary question on notice asks:

"A number of pieces of evidence provided by you at our hearing was in contradiction to evidence provided by KPMG on 5 September 2023.

"What is your response to the evidence presented by KPMG on 5 September 2023?"

Supplementary question, Public Accountability and Works Committee, Legislative Council, 2023

22. In response I submit that:

- a. KPMG's evidence of 5 September was deliberately and knowingly false and perjurious.
- b. KPMG's Head of Government Paul Low, CEO Andrew Yates and senior leadership have misled the NSW Parliament, in each stage of investigation into TAHE.
- c. KPMG's flawed advice and deliberate ethical and professional misconduct risked passenger rail safety and resulted in taxpayer valuation losses exceeding \$20 billion.
- d. Even more seriously, TAHE reveals KPMG's leadership complicit in unprecedented obstruction of the NSW Auditor General to hide those losses; almost resulting in the State failing audit.

23. I further submit that:

- a. Mr Low perjured himself because honesty would confirm the deliberate wrongdoing of CEO Andrew Yates and much of KPMG's leadership
- b. Honest admissions would also expose Mr Low's own failure and lack of courage to 'call out' clear and repeated misconduct at the most senior levels.
- c. [It is relevant to your inquiry that Mr Yates and Mr Low demonstrated their willingness and comfort to lie under oath during their Senate testimony of 27 September 2023.](#)
- d. This footage alone suggests KPMG's assurance of strong ethical leadership should be treated with scepticism.
- e. As with my earlier submission, I submit that Mr Yates and KPMG International Partner James Hunter ought be compelled to appear and explain the firm's continuing contempt of NSW taxpayers and the Parliament of NSW.

Structure of my evidence in response:

24. To avoid a lengthy (and hence, boring) repudiation of various slights and negative allusions in evidence by Mr Low, I have instead sought to distil the material areas of divergence relevant to your inquiry, which I consider are:

- a. **I was not sacked from KPMG but left voluntarily with KPMG's 'support'.**
- b. **KPMG has sophisticated whistle-blowing systems and protections, leading to a strong 'call it out' culture.**
- c. **Mr Low did not see anything unethical.**
- d. **Mr Low did not see evidence of my ill-treatment.**
- e. **Mr Low and KPMG offered me appropriate 'care' at all times.**

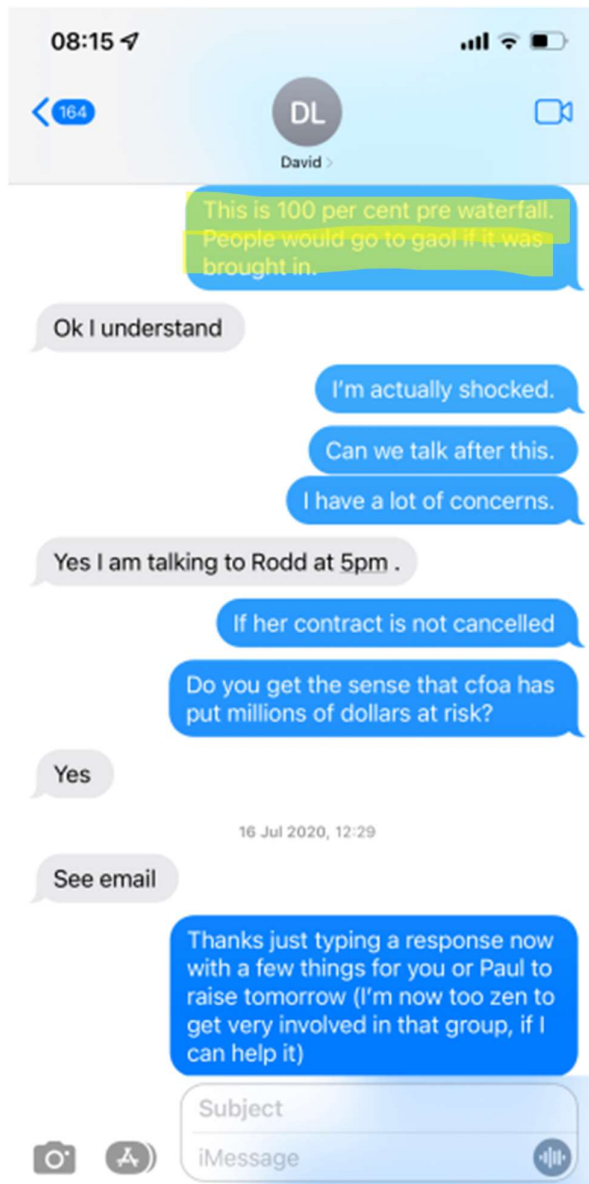
25. In the sections which follow I provided irrefutable documentary evidence shows that:

- f. **I was sacked in direct reprisal for refusing to falsify my results.**

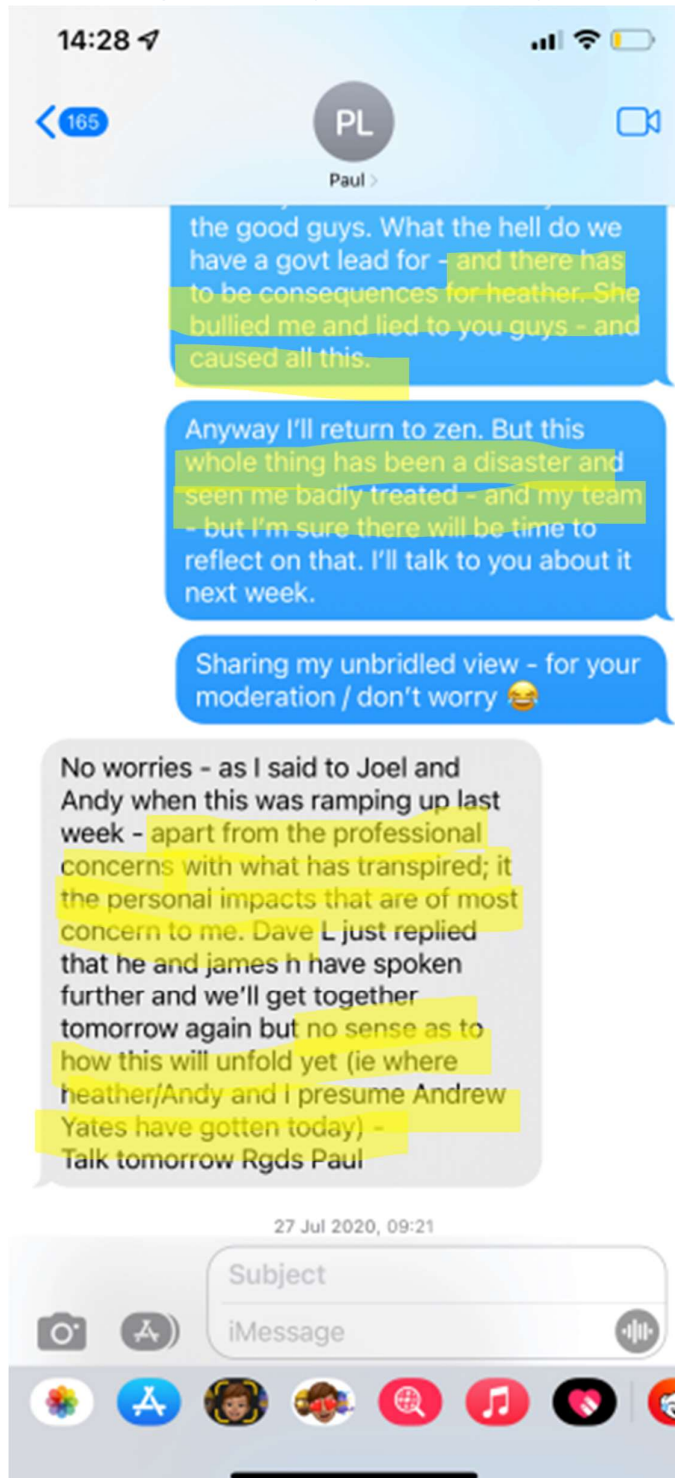
- g. I was repeatedly disciplined, ostracised and ultimately dismissed for reporting unethical behaviour by KPMG's CEO and senior leadership.**
 - h. Mr Low was (very) aware of the improper state of affairs within KPMG.**
 - i. Mr Low witnessed repeated and accelerating mobbing and bullying but did nothing to either report or stop that treatment.**
 - j. KPMG had no regard for my wellbeing and even cynically excluded liability for harm in my (forced) exit deed from the firm.**
26. The attached documentary evidence shows such compelling repudiation of KPMG's false evidence that I have elected not to provide a narration beyond the contextual headings for each document.
27. I trust this detailed response continues to assist the Committee in its important work restoring integrity in the selection and use of consultants by the NSW Government.

Supplementary question on notice: documentary evidence

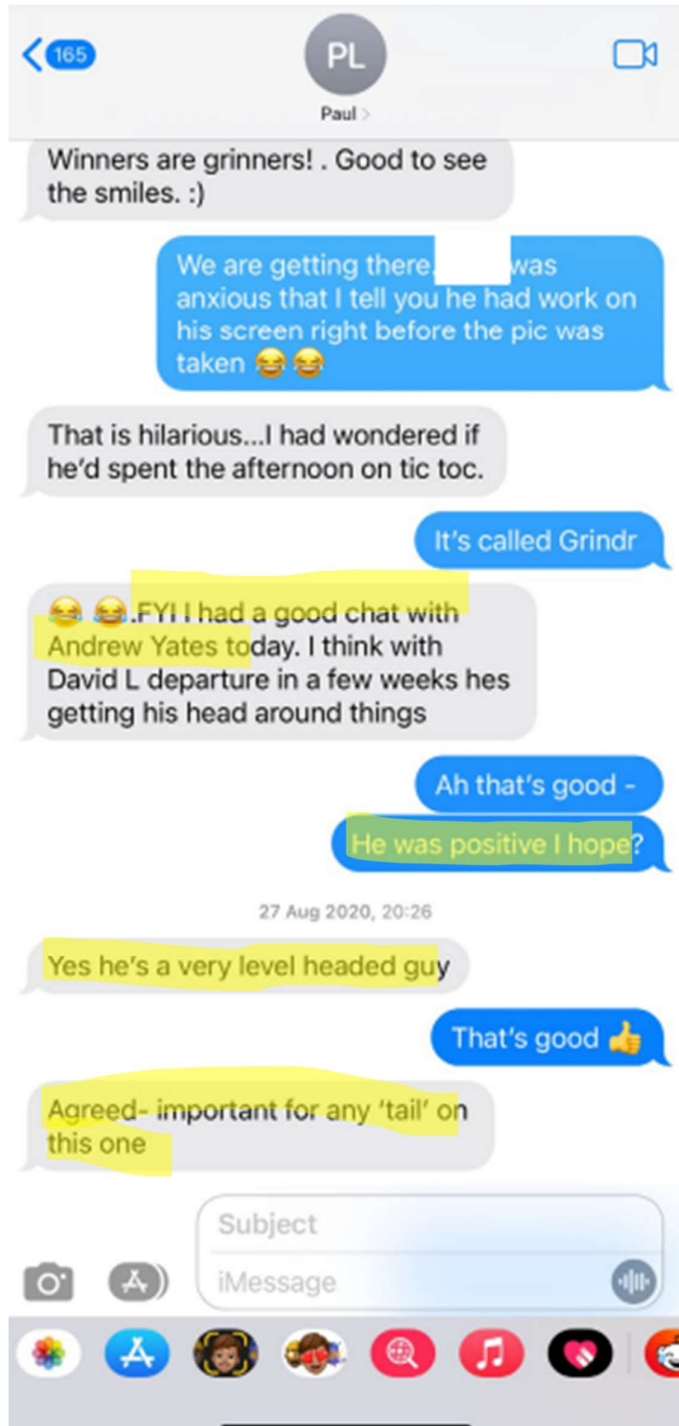
Evidence 17 July 2020: text discussion reporting safety risks of KPMG's advice by Ms Watson is '100 per cent pre waterfall. People would go to gaol if was brought in'.



Evidence 27 July 2020: text discussion where Paul Low acknowledges the ill-treatment by Ms Watson, expresses 'professional' concern but most worried about 'personal impacts'; has 'no sense of how this will unfold yet i.e., where Heather...and Andrew Yates have gotten today'; but did not report or act.



Evidence 26 August 2020: Mr Low informs me incoming CEO Andrew Yates is 'getting his head around things' and will be 'important for any tail on this one' given internal conflicts.



Evidence 13 September 2020: David Linke agreeing to set up an introduction to outgoing CEO Gary Wingrove – now KPMG International COO – that meeting did not occur, and I first met Mr Wingrove at my dismissal meeting.



Evidence 13 September 2020: email to NSW Treasury Secretary Mike Pratt and TAHE Chair Bruce Morgan over criminal safety accountabilities; ask directly that unprofessional attacks by Treasury and TAHE staff cease.

From: Lyon, Brendan
Sent: Sunday, 13 September 2020 3:27 PM
To: Michael Pratt ; San Midha
Cc: Rodd Staples ; Low, Paul ; bruce morgan
Subject: RE: Preliminary view on TAHE Business Rules filenote
importance: High

Thanks Mike and nice to hear from you – albeit on an increasingly unpleasant matter.

I do not agree that San's email is a good summary; and told him as much – whereupon he noted he'd not actually read the file note.

Whoever suggested to you that it questioned where or not TAHE should exist or operate is wrong. Moreover, we have sought to allocate TAHE all the powers it needs to meet the accounting tests.

The draft file note does precisely as you say – identifies and cures problems. It is a key input to an agreed operating model and it needs calm reflection and response so it can be finalised for Cabinet. As Bruce would be aware, the ConOps is the basis for the safety opinion that is needed to give the TAHE board comfort about their level of criminal safety liabilities – and a key input to the discussions with ONRSR – as well as the basis for agreement on an operating model pre-cabinet.

As with other points over the past few months, some of your people thought calls to complain to my Partners about a supposed lack of professionalism was an appropriate response. I understand there's a lot riding on TAHE for all involved; but this is not a helpful or professional way to respond to a thorough draft.

Interestingly, by late Friday the tone from TAHE and Treasury officers toward the draft file note had changed quite markedly; with only minor edits suggested.

Mike – I think it would be good to get together in person to discuss TAHE - I will send a formal meeting request to your EA tomorrow.

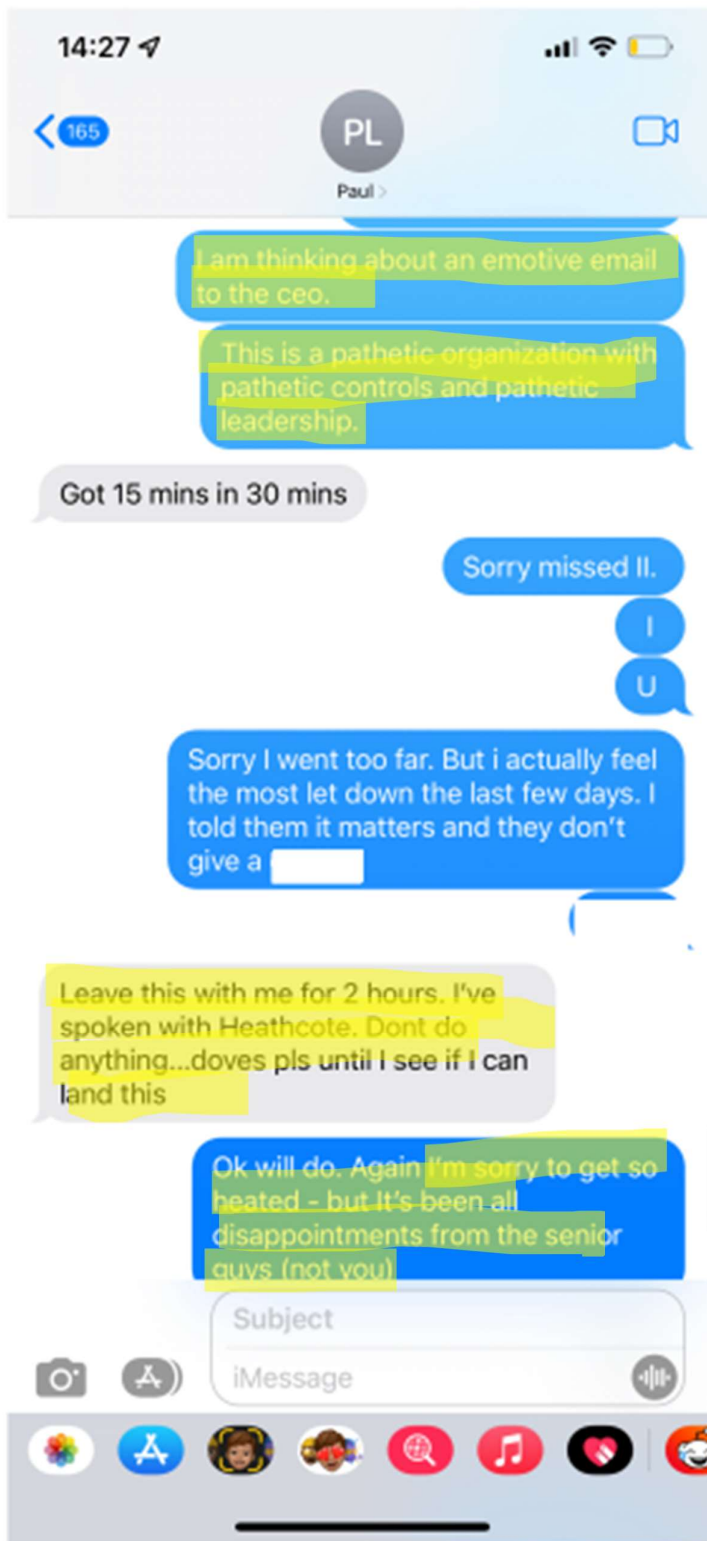
I would also appreciate if you and Bruce would communicate to your relevant staff to maintain appropriate professional courtesies toward me and my team in meetings; and to respond professionally to drafts related to the Cabinet process.

This is a complex job – but it's being made harder, not easier, by TAHE and Treasury at the moment. Thankyou again for responding – and I regret that I could not be more positive on such a warm spring day.

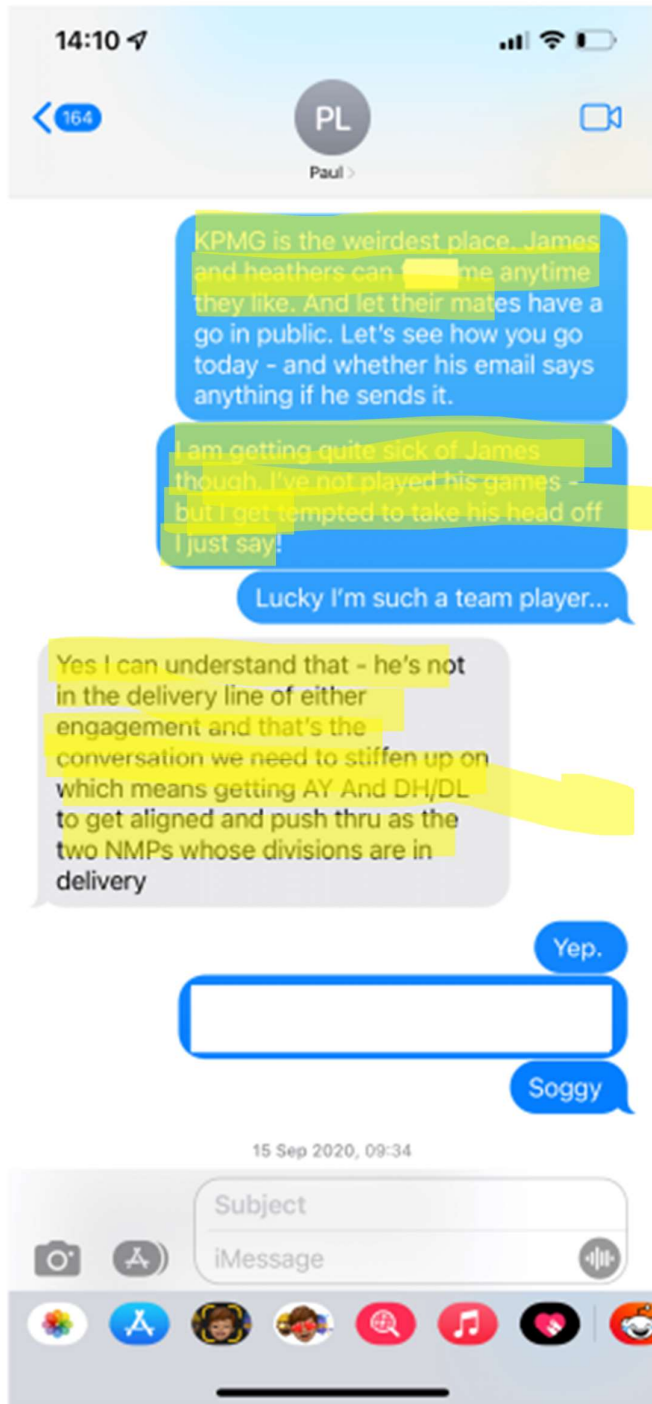
Regards to all

Brendan

Evidence 15 September 2020: Text informing Paul Low an intention to email outgoing CEO Gary Wingrove to report that KPMG is a '*pathetic organisation with pathetic controls and pathetic leadership*'; Mr Low asks me not to report it.



Evidence 15 September 2020: Paul Low acknowledges bullying and observes CEO Andrew Yates needs to 'stiffen up', to stop it.



Evidence 16 September 2020: David Linke emails Paul Low advising TfNSW – my client-reject NSW Treasury & James Hunter attempting to control findings of my report.

1 / /
Lyon, Brendan

From: Linke, David
Sent: Wednesday, 16 September 2020 11:38 AM
To: Lyon, Brendan; Heathcote, David; Low, Paul
Subject: TAHE Fiona discussion

Dear All

I just got off the phone with Fiona. Key points:

1. She will organise a meeting with Rodd and her in the next few days. I said we would move whatever we need to to have that meeting.
2. She was complimentary Brendan of the way you handled the meeting yesterday in what was a difficult situation
3. She and Rodd are not agreeable to an integrated approach. As such we cannot agree with the Treasury proposition. Fiona will be the funnel, she can send the deliverables, the other limbs such as accounting, safety etc can give their input and it will be iterative. She indicated this would be Rodd /Mike discussion.
4. The final product will be integrated but the separate streams are in place at the moment.
5. I also explained why a second partner was important and Paul's ongoing involvement.

Lets wait for the meeting .

David

Evidence 16 October 2020: Correspondence to David Linke & Paul Low where I forecast vexatious complaints from Ms Watson & Mr Hunter in retaliation of my forthcoming TAHE findings.

1 / 6
Lyon, Brendan

From: Lyon, Brendan
Sent: Wednesday, 16 September 2020 11:47 AM
To: Linke, David; Heathcote, David; Low, Paul
Subject: RE: TAHE Fiona discussion

Thanks David.

After a few days of fury; I no longer care about James email; and do not care about any proposed response. The proposal that James would use 'talking points' to clarify his (disgraceful) email is really a bit sad.

The damage has been done to me - and also to KPMG. Rodd rang me last night and it would be fair to say that he's not particularly enamoured of KPMG's conflict management process or regard for their interests.

David Linke – I've asked Paul Low to speak to you today about a minor but important matter that I would appreciate you tidying up – regarding the vexatious complaints early in the engagement. Noting the absence of wins for me – I would appreciate if you addressed that one today – it is important to me with all the mud that's been allowed to be thrown, that this one is clarified in writing before you leave.

Regards.

From: Linke, David

Evidence 16 September 2020: Email to KPMG CEO Andrew Yates, James Hunter and leadership reveals scale of KPMG/Treasury errors on budget.

110
Lyon, Brendan

From: Lyon, Brendan
Sent: Wednesday, 16 September 2020 10:30 AM
To: Hunter, James (Sydney); Yates, Andrew J; Heathcote, David; Lucas, Joel; Linke, David
Subject: NSW CABINET IN CONFIDENCE - TAHE FINANCIAL MODEL
Attachments: TAHE October Op Model_160920.xism; TAHE Financial Model File Note DRAFT_160920.pdf

Importance: High

Colleagues;

Attached are two draft deliverables that will be circulated shortly. They are:

- 1) The 'KPMG Financial Model'; and
- 2) Our related draft File Note.

The passwords are:

Model:
Draft File Note:

Context:

Noting the very high level of sensitivity and impact, we held a briefing yesterday for Treasury, TAHE and TfNSW on the model approach. We structured the briefing to:

- 1) Reach explicit agreement with Treasury on the assumptions applied
- 2) Reach explicit agreement with Treasury on the architecture of the model
- 3) Reach explicit agreement with Treasury on the scenarios applied.
- 4) Then – reveal the modelled results.

For clarity, this shows a large deterioration in the FE benefits assumed by NSW Treasury in the June cabinet submission; of the order of circa \$6bn.

This is because Treasury did not model the inputs to the Cabinet Submission; instead they summed the avoided depreciation and capital expenses. This obviously neglects the very large access charges that form costs to the budget.

Obviously, the FE impacts are sensitive to when costs/access charges begin etc – but for crystal clarity, the numbers here use Treasury's preferred scenario.

It also shows that TAHE has negative cash reserved by FY2027 without further contributions. Obviously, this could be addressed by further capital injections; but at the moment we have been advised by Treasury to assume only the numbers in PRIME.

Note that the level of access fee anticipated by treasury appears to breach the NSW RAU.

Note that the NSW RAU appears to require the budget/operators to be charged at least the floor – from 1 July this year which would also impact the FE.

Note I also met last night with the TAHE Board – with very good feedback on the professionalism of our work.

I very much look forward to the meeting today.

Evidence 16 September 2020: James Hunter cancels KPMG’s scheduled conflict oversight meeting after seeing scale of budget error; says to get ‘greater clarity’ about arrangements inside government – note Mr Hunter’s email footer identifying himself as a NSW Treasury official; presumably with knowledge of Mr Pratt.

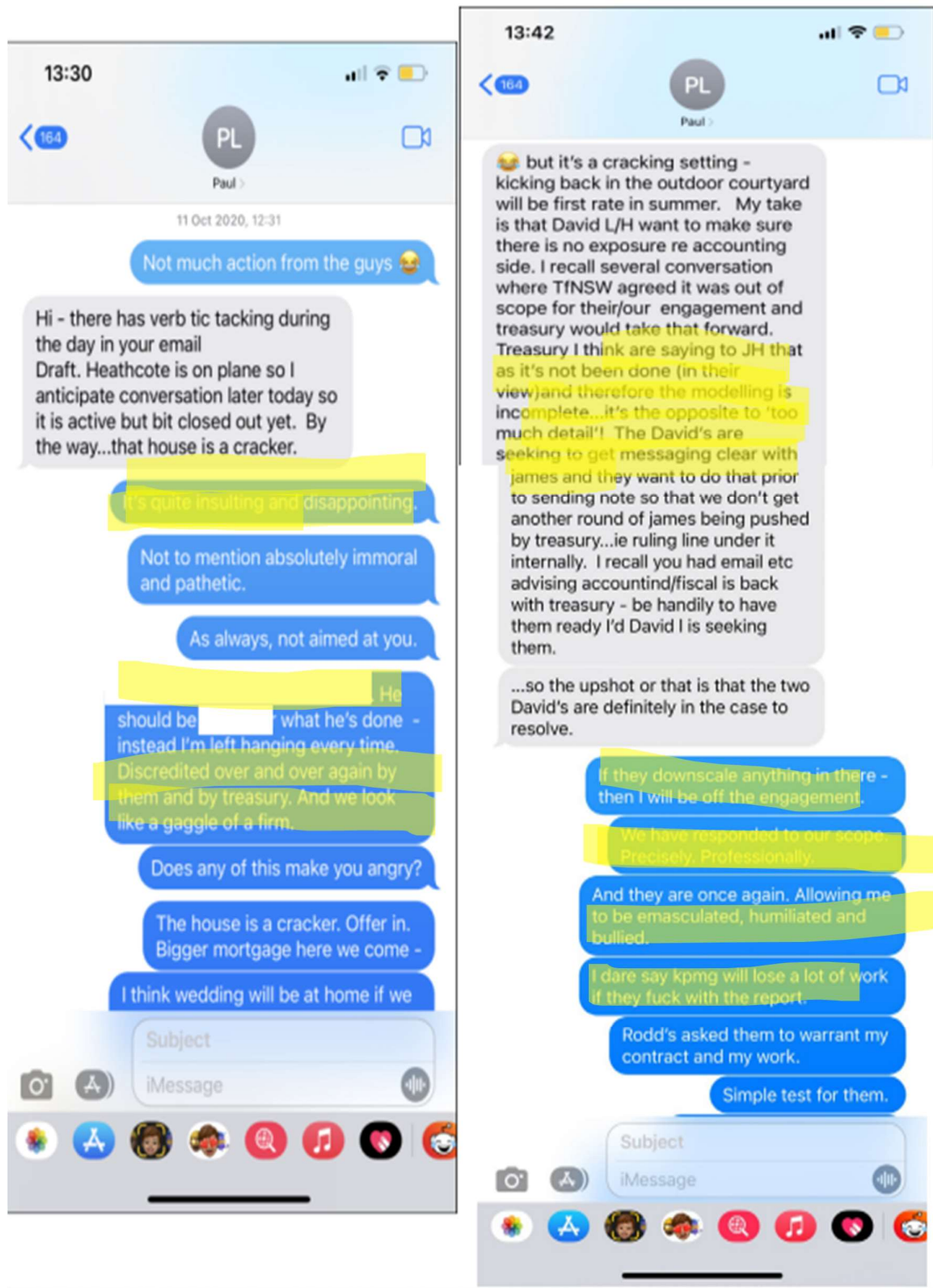
From: Hunter, James (Sydney)
Sent: Wednesday, 16 September 2020 12:04 PM
To: Yates, Andrew J [redacted]; Lucas, Joel [redacted]; Heathcote, David [redacted]; Linke, David [redacted]; Davim, Catia [redacted]; King, Andrew (AUS) [redacted]; Watson, Heather [redacted]; Low, Paul [redacted]; Lyon, Brendan [redacted]
Subject: COGC Deferred

Team, David(s) and I have just discussed this meeting and believe it is best to defer until we have greater clarity on some procedural items being discussed between TAHE TSY and TRAN.

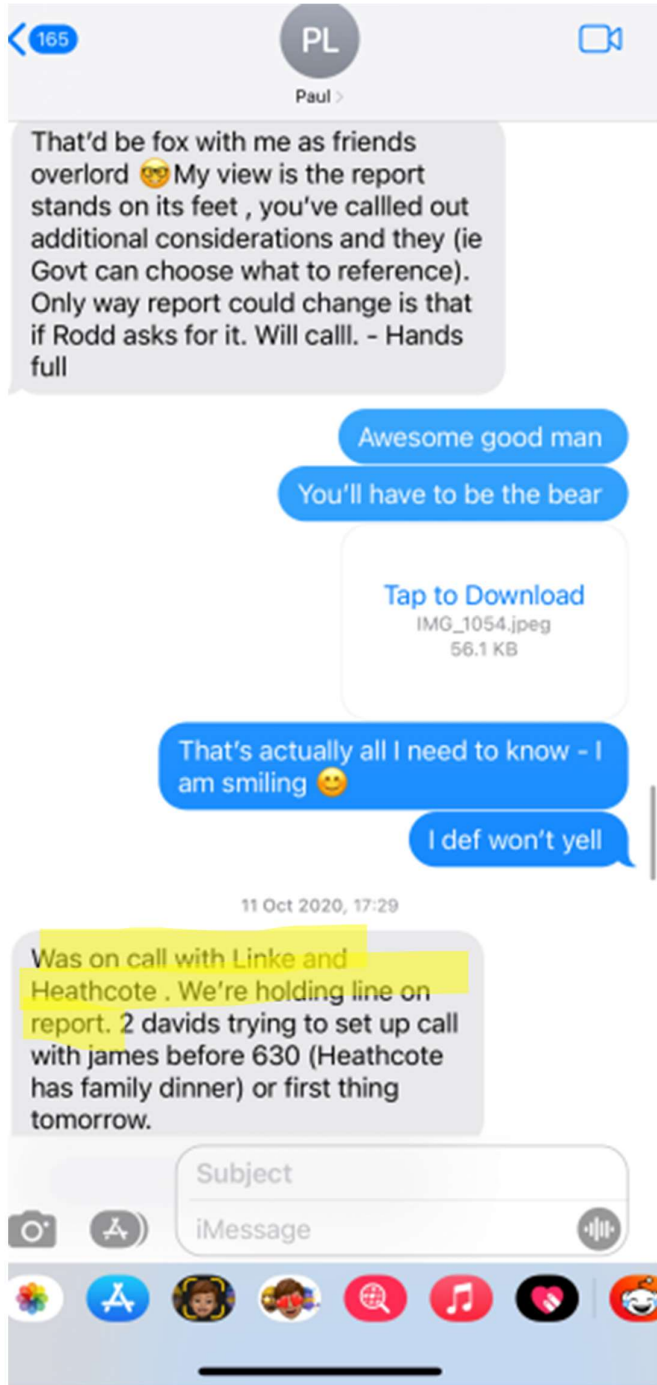
I will confirm a new time in the next few days, thank you for your patience, James

Cabinet-In-Confidence
James Hunter | Partner KPMG
NSW Treasury

Evidence 11 October 2020: Revelation James Hunter's 'greater clarity' is an email from him advising Treasury and Transport for NSW that I am no longer leading my work on TAHE.



Evidence 10 October 2020: Paul Low reports David Linke & David Heathcote 'holding the line' not allowing Treasury insist on changes to my work (contradicting Mr Yates later false evidence my work was free of interference).



Evidence 14 October 2020: Paul Low and David Linke discuss the 'difficult circumstances' and 'intense scrutiny' applied to me and my team.

215

Lyon, Brendan

From: Heathcote, David
Sent: Wednesday, 14 October 2020 10:47 AM
To: Low, Paul; Lyon, Brendan; Linke, David
Subject: RE: Fin Model agreed - TAHE and NSW Treasury (Cabinet in Confidence)

Thanks Brendan and please also pass on my appreciation to the team for their enormous efforts under difficult circumstances.

Regards
David

From: Low, Paul
Sent: Wednesday, 14 October 2020 9:03 AM
To: Lyon, Brendan ; Heathcote, David ; Linke, David

Subject: RE: Fin Model agreed - TAHE and NSW Treasury (Cabinet in Confidence)

Hi Brendan

Thanks for closing the loop and thank you to Jessie, Dave, Nick and others in the team to close out this feedback after several weeks of engagement. A mammoth task given the complexity of matters to be modelled and the range of views to be captured and considered. Thank you for keeping the team on task given the intense scrutiny on their work. Please pass on my thanks and appreciation.

Regards

Paul Low
National Leader – Infrastructure, Government and Healthcare

KPMG
Riparian Plaza, 71 Eagle St
Brisbane QLD 4000 Australia

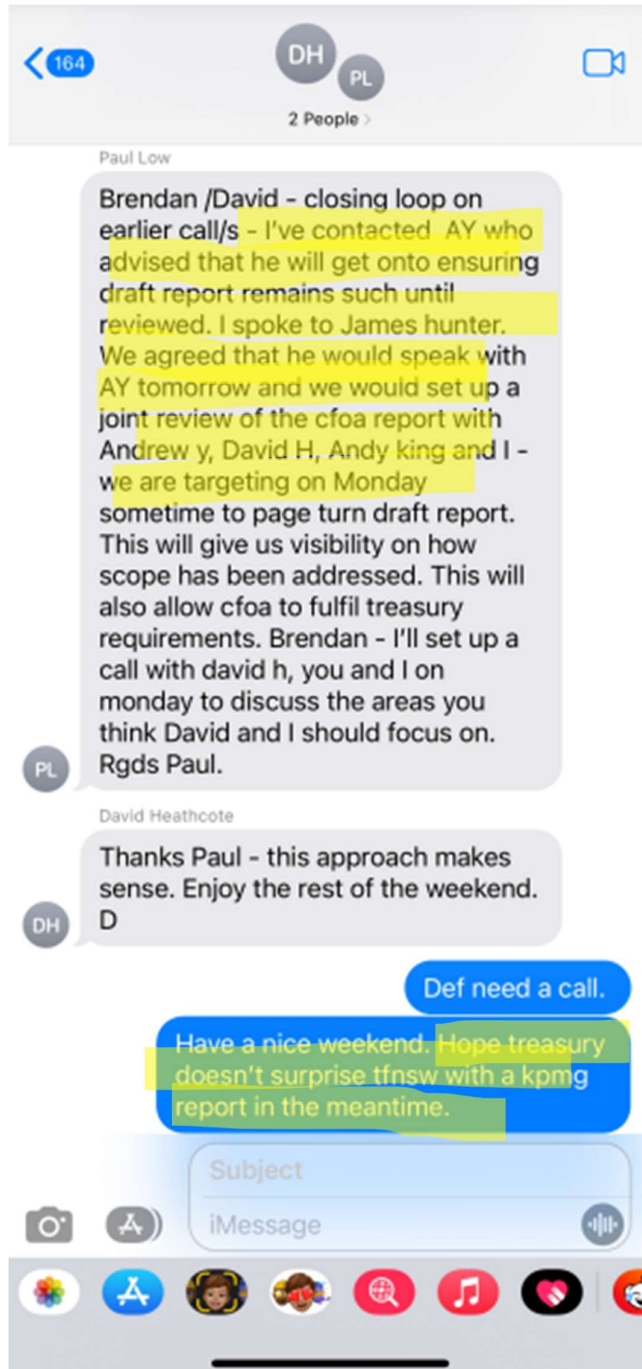
Evidence October 2020: Evidence to the inquiry from Andrew Yates to the TAHE inquiry confirms he accepted the directly conflicting work in October 2020, after the massive budget impact was shared with Mr Yates, Mr Hunter and Ms Watson.

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.

Source: Andrew Yates evidence to the PAC inquiry; appended at Evidence 28 February 2022, below and at

<https://www.parliament.nsw.gov.au/lcdocs/other/16762/KPMG%20Australia%20response%20submission%20TAHE.pdf> access date 17 October 2023.

Evidence 31 October 2020: Paul Low advises he's directly contacted Mr Yates who had assured Ms Watson's report would remain draft until any conflicts were resolved. Mr Yates advised me a few days later Ms Watson's report was issued as a final; and would not be changed.



Thanks and regards,

Joel

From: Lyon, Brendan <

Sent: Wednesday, 4 November 2020 1:18 PM

To: Lucas, Joel < > Low, Paul < >

Subject: Legal advice

Joel - I believe that there is a risk that treasury are breaking the law (corruption) and depending on what we do via cfoa - that we are in a conspiracy.

Noting the unresolved conflicts in the firm, I will be seeking independent legal advice which I will charge to the firm.

Paul - you may want this coverage too?

Brendan Lyon

Partner

Evidence 5 November 2020: Formal report of the various direct conflicts in the secret work commissioned from Ms Watson in October 2020 and accepted by Mr Yates and KPMG’s senior leadership at a secret meeting of KPMG’s conflict oversight committee.

Lyon, Brendan

230

From: Lyon, Brendan
Sent: Thursday, 5 November 2020 11:19 AM
To: Heathcote, David; Linke, David; Low, Paul; Wilcox, Christine
Subject: TAHE TfNSW draft for GW dh comments dr edits
Attachments: TAHE TfNSW draft for GW dh comments dr edits.docx
Importance: High

Attached is a much updated summary of the conflicts; Dave Russell has spent a fair bit of time overnight to break it down with crystal clarity.

Note in particular the point about CFOA applying an inconsistent numerator and denominator to describe ROE.

This is both technically wrong – and has the effect of being dishonest. It is the clearest example of their scope, and capability, being exceeded – and shows how far beyond an accounting scope they have gone.

There are so many conflicting points in CFOA’s work, that we’ve not dealt with them all -but sought to highlight the technical error and dishonest effect of the CFOA conflicting scope.

I am sure that [redacted] will understand this quite clearly.

Regards

Brendan

New Evidence 5 November 2020: My formal internal whistleblowing report of unethical behaviour, bullying and reprisals ethics Partner Christine Wilcox.

Lyon, Brendan

229

From: Lyon, Brendan
Sent: Thursday, 5 November 2020 11:00 AM
To: Wilcox, Christine
Subject: FW: IMPORTANT

Further to our discussion Christine.

This email responds to what James Hunter sent out to TfnSW and Treasury to emasculate me in front of both clients.

I have warned the firm about the risks – and asked repeatedly for the bullying to be stopped.

The Firm has done zero to either stop it – or to deal with the ethical conflicts and obvious disciplinary actions that should have been taken

On the email below, it is worth noting that nothing was clarified by Firm; they left me swinging. As they have each time, internal and external.

Noting all the crap we have to swallow about risk management, ethics and global behaviours etc – no wonder everyone thinks I am 'emotive' 'emotional' etc. But I am not.

Rather, I am a very angry, disappointed Partner in the Firm who has been subjected to repeated structural bullying and harassment.

The ongoing descriptions of me as 'emotive' are a device to avoid discussing the risks, conflicts and ethical problems I have raised continually, since April 2020.

I have been bullied, belittled, sidelined and dismissed – and everyone looked the other way.

Very different to the training – and to the global behaviours.

And very very disappointing.

From: Lyon, Brendan

Evidence 6 November 2020: I formally report CEO Andrew Yates overruling the clarification demanded by TfNSW of Ms Watson's directly conflicting and undisclosed work for Treasury.

Lyon, Brendan

From: Lyon, Brendan
Sent: Friday, 6 November 2020 8:05 AM
To: Linke, David
Subject: FW: KPMG Report TAHE

238

Top one is the final draft of what I intended to send – but was blocked and edited to the much weaker version below as sent.

My draft was agreed with Paul Low and Christine Wilcox – but was blocked when David H discussed with Andrew Yates and whomever else was there.

Went out watered down.

Dear Rodd and Fiona,

We refer to KPMG's report "*TAHE: Long-term operating model assessment (NSW Cabinet in Confidence)*", which we term the "TfNSW Report", prepared for TfNSW in accordance with our contract with you.

KPMG's scope of work was to develop a long-term operating model for TAHE as an independent, fully formed corporation that exists to profitably meet its objectives as the owner of the State's regulated rail network, unregulated rail assets and substantial adjacent non-operational land holdings.

For the avoidance of doubt:

- KPMG confirms the TfNSW Report represents KPMG's recommended TAHE operating model, subject to the limitations noted in the TfNSW Report.
- KPMG stands behind the KPMG TAHE Financial Model in all respects, other than those noted in the report.

KPMG has separately provided some advice to NSW Treasury (the "NSW Treasury Report") which you have indicated you view as representing a conflict of interest with the TfNSW Report. We are currently undertaking further internal consultations regarding the concerns you have raised and will update you in the next 24 hours.

KPMG assures you that TfNSW can use the operating and financial models with confidence for the Cabinet process, as agreed in our scope of work and contract with you.

The NSW Treasury Report is not intended and cannot be used to construct alternative outcomes to the KPMG TAHE Financial Model.

I hope this letter clarifies the status of KPMG's work and provides you with comfort that our work responds to the scope agreed with you.

Sincerely,

Evidence 6 November 2020: David Linke reviews Ms Watson's scope and reports a direct, unreconcilable conflict to the General Counsel Louise Capon – Mr questions how Ms Watson can assert the accounting estimates in the budget are reasonable, when my detailed model shows they are not. The resulting internal conflict review found there was 'no conflict' and the work was 'reasonable'.

From: Linke, David
To: Capon, Louise
Cc: Lucas, Joel
Subject: TAHE - Subject to legal professional privilege

Louise

This note documents my conclusions, actions and the discussions in the COCG on 4 November 2020:

1. On 4 November I received and reviewed the CFOA report to Treasury. This is the first time I had received that report.
2. I have not received the final scope agreed with Treasury on the CFOA advice. This scope was the subject of the discussion at the meeting on 12 October and the outcome of that meeting was communicated to TfNSW on 13 October 2020.
3. While I have not reviewed the final scope and I understand that CFOA are arguing that the reports are in relation to separate matters, it is my view that the reports are in conflict and that the Treasury report issued is, at least so far as the intent of the discussion on 12 October 2020, in excess of that scope and is being used in a way that everyone was concerned to ensure did not occur in that meeting. This is regardless of whether the advice is considered to be within the strict words of that scope (a matter on which I cannot conclude given the point above).
4. I also re-read elements of the IPG report. My sense is the different approaches comes down to three issues:
 - * Is there a floor on the Access fees or not? In the CFOA report the point is made that there is no penalty or compliance action taken should the fees be below the IPART floor. In fact the same point is made in the IPG report. The IPG report assumes the floor, the CFOA report does not. This is a matter on which we need advice from the respective Government departments.
 - * The next point is the ROE point. It is worth noting that this issue is not unrelated to the Access fee issue. The CFOA report concludes that the benchmark return of 1.5% is reasonable and in accordance with the accounting framework. The use of the 1.5% benchmark is in accordance with Federal Government guidelines and therefore this rate of return seems appropriate. The issue seems to be that given the level of Access fees assumed to be below the floor, TAHE will sustain losses for the period of the reform and therefore negative returns are crystallised and not a 1.5% ROE. The response to this is that certain decisions are to be made by Government and therefore there is no bright line period in which this assessment needs to be made. If that is the case then the question is how can we conclude that the assumption is reasonable without understanding what the import of those decisions or the financial outlook may be or look like. The analogous example is the question as to whether an asset value is reasonable having regard to future anticipated returns. What work would ordinarily be undertaken to conclude that such a position was reasonable?
 - * The final point is a serious conflict issue for the firm. A financial model has been prepared based on a sustainable view of the TAHE operating model. That model shows certain consequences. The CFOA advice is now being used to defer the financial hit to the State budget. It is difficult to see how both these pieces of advice can stand since this aspect is difficult to reconcile.
5. My recommendation is that an independent review of the positions be undertaken. The composition of that review will need some different skills so perhaps should be involved.
6. The above was the substance of my contribution to the meeting on 4 November 2020.

Evidence 6 November 2020: Louise Capon responds to my formal report of conflict, corruption and consequential bullying and reprisals against me – advises Jeff Cook will investigate.

From: Capon, Louise
Sent: Friday, November 6, 2020 3:55:18 PM
To: Lyon, Brendan
Cc: Wilcox, Christine ; Hulme, Spencer ; Low, Paul ; Cook, Jeff A
Subject: RE: Legal representation

Brendan,

Thank you for your email. The matters that you raised in your email to me on Wednesday are serious and it is important that we clearly understand the nature of your concerns.

Jeff Cook, our Ethics and Independence Partner, will meet with you to understand your concerns. Spencer Hulme from OGC will also attend and he will be in touch to arrange that meeting.

We appreciate you raising your concerns and participating in the meeting with Jeff and Spencer.

Kind regards
Louise

From: Lyon, Brendan
Sent: Thursday, 5 November 2020 4:58 PM
To: Capon, Louise
Cc: Wilcox, Christine ; Low, Paul
Subject: Legal representation

Dear Louise,

We've not met but I understand you're familiar with the happy place I find myself in.

As you might be aware, I was seeking independent legal advice on some issues facing me and Paul Low as my second partner.

After discussion with Christine I am feeling much more comfortable about internal conflict management and have elected not to proceed with external advice on that basis.

I think Christine is organising a chat so that I can reduce my reliance on email 😊

I look forward to meeting you and to discussing these issues.

Regards,

Brendan Lyon | Partner
Deal Advisory - Infrastructure & Projects
International Towers
200 Riverside Avenue

Evidence 8 November 2020: Email to my team and Mr Low discussing bullying and bad treatment by KPMG and Treasury personnel.

From: Lyon, Brendan

Sent: Sunday, November 8, 2020 2:33 pm

To: Hui, Jessie; Russell, Dave; Hudson, Nick; Leech, Ross; Gao, Karen; Pham, Michael; Reid, Chantal; Harris, Gavin; Moloney, Trisha; Fullerton, Garrett; Wilmot, Matthew; Low, Paul; Heathcote, David

Subject: Fwd: FINAL KPMG TAHE REPORT (NSW CABINET IN CONFIDENCE)

Team - FYI the final tahe report is now lodged.

We should all be very proud of ourselves. This has not been an easy job in any respect. We've all had to put up with internals and Stakeholder behaviors that we shouldn't have.

But - our works been very important to the public Interest and it'll prove to have been very much in the firms interest too, however resistant some colleagues may have been at times.

Let's see what happens now - but you should each be proud- and know that I'm extremely grateful to every one of you.

Despite everything thrown at us - we've done an amazing job.

Thanks.

Brendan Lyon
Partner
Infrastructure & Projects Group
KPMG

From: Lyon, Brendan

Evidence 8 November 2020: Email from Paul Low acknowledges the 'challenging' internal and external pressures applied

Lyon, Brendan

From: Low, Paul
Sent: Sunday, 8 November 2020 8:17 PM
To: Lyon, Brendan; Hui, Jessie; Russell, Dave; Hudson, Nick; Leech, Ross; Gao, Karen; Pham, Michael; Reid, Chantal; Harris, Gavin; Moloney, Trisha; Fullerton, Garrett; Wilmot, Matthew; Heathcote, David
Subject: Re: FINAL KPMG TAHE REPORT (NSW CABINET IN CONFIDENCE)

Well done all and thank you for staying the course. Engagements don't get more complex technically and challenging in terms of internal and external relationships.

Thanks again to Brendan and you all.

Regards
Paul

245



Evidence 19 November 2020: Treasury Deputy Secretary San Midha instructs me to change my now final advice, copies in KPMG leadership.

264

Lyon, Brendan

From: San Midha
Sent: Thursday, 19 November 2020 4:55 PM
To: Lyon, Brendan; Linke, David; Heathcote, David; Low, Paul; Hunter, James (Sydney)
Cc: Michael Pratt
Subject: RE: UPDATED FINAL KPMG TAHE REPORT (NSW CABINET IN CONFIDENCE)

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Brendan,

I refer to my email and **letter** dated 11th Nov:

I still await a reply to my letter and confirmation on corrections to your report or removing incorrect references to Treasury's Model.

Regards



Treasury

San Midha | Deputy Secretary
Policy and Budget Group
52 Martin Place, Sydney (enter via 127 Phillip Street)
GPO Box 5469, Sydney NSW 2001
T:
E: SanMidha@treasury.nsw.gov.au | Treasury.nsw.gov.au

Evidence 19 November 2020: Treasury Secretary Mike Pratt AM emails six minutes later, copying in KPMG's leadership and also demanding I change my report findings.

From: Michael Pratt <Michael.Pratt@treasury.nsw.gov.au>
Sent: Thursday, November 19, 2020 17:01
To: San Midha; Lyon, Brendan; Linke, David; Heathcote, David; Low, Paul; Hunter, James (Sydney)
Cc: San Midha
Subject: RE: UPDATED FINAL KPMG TAHE REPORT (NSW CABINET IN CONFIDENCE)

Brendan,

This needs your urgent attention. You either correct the errors or remove all references to Treasury's model which is not for you to comment upon. Please revert asap as this matter needs urgent resolution.

Michael Pratt AM | Secretary

52 Martin Place, Sydney (enter via 127 Phillip Street)
GPO Box 5469, Sydney NSW 2001

Treasury.nsw.gov.au



Treasury

Courier deliveries to:
NSW Treasury, GPO Box 5469, Sydney
Unit 1, 52-54 Phillip Street, Alexandria NSW 2015

Evidence 19 November 2020: My email response two minutes later, advising Mr Pratt that *'I am sick of being bullied by you'*.

From: Lyon, Brendan
Sent: Thursday, 19 November 2020 5:03 PM
To: Michael Pratt; San Midha; Linke, David; Heathcote, David; Low, Paul; James Hunter (Contact)
Cc: San Midha
Subject: Re: UPDATED FINAL KPMG TAHE REPORT (NSW CABINET IN CONFIDENCE)

Mike - I'm sick of being bullied by you.

Grow up or tell the truth. Up to you.

Brendan Lyon
Partner
Infrastructure & Projects Group

Evidence 19 November 2020 Mr Pratt's response nine minutes later, instructing KPMG leadership *'I expect you to take action'* against me.

266

Lyon, Brendan

From: Michael Pratt
Sent: Thursday, 19 November 2020 5:12 PM
To: Lyon, Brendan; San Midha; Linke, David; Heathcote, David; Low, Paul; Hunter, James (Sydney)
Cc: San Midha
Subject: RE: UPDATED FINAL KPMG TAHE REPORT (NSW CABINET IN CONFIDENCE)

To the Senior Partners on this email, you obviously have a partner who refuses to take counsel and is out of control. As you are aware we engaged KPMG (Heather Watson) earlier this year to provide fiscal and accounting advice that is now concluded in support of the TAFE work. That work provides the basis for Treasury advice. I expect you to take action.
Mike

Michael Pratt AM | Secretary

52 Martin Place, Sydney (enter via 127 Phillip Street)
GPO Box 5469, Sydney NSW 2001
T: | F: | E: | Treasury.nsw.gov.au
EA



Courier deliveries to:
NSW Treasury | The Phillip 110
Level 11, 61-64 Phillip Street, Sydney NSW 2000

Evidence 20 November 2020: My formal report to Mr Low about the content of my call to Mr Pratt the evening prior.

[Handwritten signature] 301

Lyon, Brendan

From: Lyon, Brendan
Sent: Friday, 20 November 2020 3:36 PM
To: Low, Paul; Heathcote, David
Subject: RE: Draft words
Importance: High

Noting that the phone call will have been 'emotively' described by some of our colleagues – I thought it worth just arming you up to understand what I said and did.

1. I got an email from the Deputy Secretary asking me to change our finalised report.
2. I then got an email from the Secretary asking in effect the same – and quoting at me Heather's (additional, conflicting) scope of work.
3. I then wrote my short email.
4. And then I got called a rogue partner – even though I have been the only one doing my scope that was agreed by everyone including Treasury.
5. And then I rang him
6. What I said to Mike yesterday on the call was:
 - In 20 years I've not seen the types of behaviours I'd seen from Treasury and it was unrecognisable to me.
 - I said that the continued mischaracterisation of our work and personal attacks were deeply inappropriate.
 - I said that Treasury had not advised of errors in any of our work and that I do not appreciate the efforts to discredit our my team, our professional work or our firm.
 - I told him that I thought the efforts to hide the results are inappropriate and unprofessional.
 - I asked him why he thought it was ok for Treasury to behave as it has - he said that we had 'not listened to us'
 - I said "I am listening now, what do you disagree with?"
 - He said that he agrees with Heather Watson's work (which is being used precisely to discredit our work)
 - I asked him which bit of the financial or operating model Treasury disagrees with.
 - He struggled for words and then hung up.

Important:

It's important to note that I was not angry, didn't yell or swear – I just said as above; and very calmly.

I did not raise this this morning as I didn't want you to think I was explaining or justifying – but now that I've sent the agreed retraction, it's worth my two champions knowing what I actually said and did.

I am not surprised that Pratt went mental. He's passive aggressive, a real fan of 'tough' letters – but has the minor problem of having a dog that ate about \$7.3bn of homework. Whoops!

With the benefit of the content, I am not sure either of you would disagree – noting that the delivery was not ideal

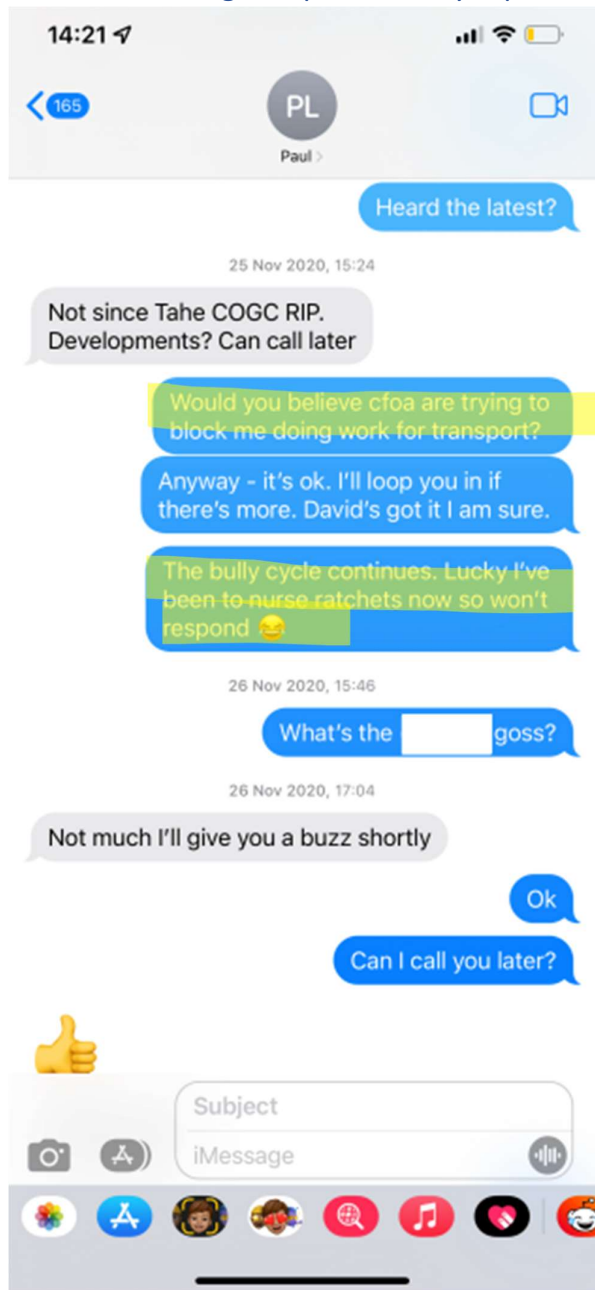


Anyway, that's what went down – and almost word for word what I said.

Have a good weekend.

[Handwritten signature] 300

Evidence 25 November 2020 text to Mr Low advising of Mr Yates and Mr Pratt banning me from working in reprisal for my report being lodged with Cabinet.



Evidence 2 December 2020: Jeff Cook writes to advise no evidence of misconduct or corruption; General Counsel advises I should not make a corruption report ICAC; does not act on bullying allegations instead invites me to ring Ben Lawler if worried.

Lyon, Brendan

From: Cook, Jeff A
Sent: Wednesday, 2 December 2020 9:14 AM
To: Lyon, Brendan
Cc: Hulme, Spencer; Heathcote, David
Subject: Review findings
Attachments: Research - Reporting obligations under NSW legislation.docx

Hi Brendan

As mentioned in our discussion with David Heathcote, I have now had the opportunity to review the material provided by you relating to the two engagements KPMG has with NSW Treasury (NSWT) and Transport for NSW (TFNSW) respectively.

Based on that information, and in response to your concerns stated to Spencer Hulme and myself on 9 November, there does not appear to be a basis for concluding that:

- NSWT has deliberately overstated the benefits to the NSW Government which would accrue from the establishment of TAHE by approximately \$7b; or
- NSWT officials, namely the Department Secretary and a Director reporting to the Department Secretary, are attempting to confuse or obscure the true financial effects of the establishment of TAHE.

Based on the above, I have not seen evidence that would suggest to me that NSWT are engaged in corruption or that we are engaged in a conspiracy. If you have, or come into possession of, further information that you feel may evidence corruption on the part of NSWT, or that we are engaged in a conspiracy, please reach out to me.

Spencer Hulme and I committed to coming back to you regarding the legal framework around reporting obligations. A note from OGC is attached on these matters. In the current circumstances no reporting obligation appears to exist. Should you want to discuss the note further please reach out to Spencer in OGC.

I have reviewed an email from you that I note raises allegations of bullying and harassment. If you consider that you have been the subject of such conduct, please may I ask you to reach out directly to Ben Lawler in PPC so that these matters can be properly investigated.

Please give me a call if you have any questions flowing from this email.

Kind regards
Jeff

Jeff Cook
Partner – Risk Management
KPMG
International Towers 3
300 Barangaroo Avenue
Sydney

Evidence 11 March 2021: Ben Lawler writes to me, advising KPMG are investigating a conduct complaint by NSW Treasury Secretary Mike Pratt, for my refusal to (improperly) alter my results, as per Mr Pratt's demand.



269

Private and confidential
Brendan Lyon
c/- KPMG

11 March 2021

Dear Brendan,

Investigation into conduct

KPMG is conducting an investigation into conduct that may have arisen on 19 November 2020 when you were interacting with a client representative in connection with the TAHE engagement. The investigation allows KPMG obtain legal advice on these issues and to determine whether there have been breaches of KPMG policies and procedures (including the KPMG Code of Conduct and Values).

As part of the investigation, we would like you to attend an interview with me and a legal representative of KPMG at 4pm on Thursday 11 March on Level 38 in the Barangaroo office. A meeting invitation will be sent to you with room details.

You should be aware that if the investigation identifies inappropriate conduct then KPMG may take disciplinary action. Disciplinary action can take many forms, which range from a verbal warning through to retirement from the partnership.

You may bring a support person to the interview. The support person can provide you with support during the interview and, if you wish, take notes on your behalf. The support person is not able to speak on your behalf, or interfere with the investigation process. Provided they have not been involved in the TAHE engagement, your support person can be a KPMG Partner or employee of KPMG.

Please contact me if you have any questions regarding the matter.

Counselling and employee assistance is available to you through the Employee Assistance Program by contacting 1800 808 374 or text 0439 449 876 for real-time SMS counselling.

This investigation is confidential. Please do not to discuss it with anyone in the workplace, except if they are acting as your support person.

Ben Lawler

Director, People Performance & Culture

Evidence 24 March 2021: Jeff Cook issues two more conduct warnings, includes one for failing to undertake KPMG's 'we do what is right: acting with integrity training'.

271



Level 38 Tower Three
300 Barangaroo Avenue
Sydney NSW 2000

P O Box 167 Australia Square
Sydney NSW 1215
Australia

ABN: 51 194 660 183
Telephone:
Facsimile:
DX: 1055 Sydney
www.kpmg.com.au

Private and confidential
Brendan Lyon
KPMG
Level 38 Tower Three
300 Barangaroo Avenue
Sydney 2000

24 March 2021

Dear Brendan

Late Completion of Mandatory Learning

The purpose of this letter is to inform you that you have not completed, in the timeframe set down by the firm, more than one mandatory training or compliance requirement in this financial year to date. The mandatory training and/or compliance requirements that you have not completed within the relevant timeframes are:

- Annual Declaration of Compliance
- We Do What is Right: Integrity at KPMG 2020

It is the expectation of the firm that partners will behave in a manner consistent with the firm's values and lead by example, including by appropriately prioritising the completion of mandatory training and compliance requirements within the relevant timeframes.

KPMG, an Australian partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

Liability limited by a scheme approved under Professional Standards Legislation.

270



These matters will be taken into account in your year-end performance review, and consequences may apply in accordance with the Partner Assessment Guide to Potential Partner Consequences, if:

- in the remainder of this financial year, you do not complete any further mandatory training or compliance requirements; or
- in future financial years you again fail to complete more than one mandatory training or compliance requirement,

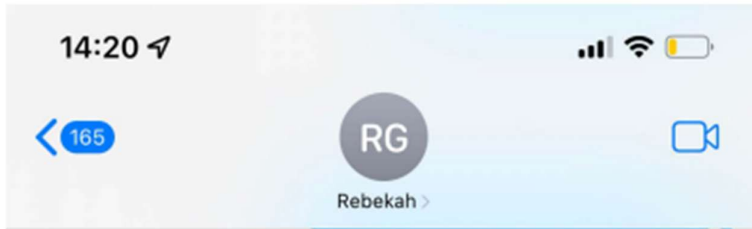
within the relevant timeframes set down by the firm.

Yours sincerely

Jeff Cook
Partner Ethics & Independence

David Heathcote
National Managing Partner, Deals Tax Legal

Evidence 26 March 2021: email to my lawyer Rebekah Giles discussing Mr Low's explicit knowledge and stated view of the unfairness of the reprisals over TAHE



Fri, 26 Mar, 15:33

Is it ok if I drop partnership agreements off on Monday?

Yes sure

Also I just had a call from Paul low saying that it's not fair to me - been bullied - and he's said that in the internal interviews.

Thought I should tell you

Evidence 29 March 2021: My letter to KPMG requesting disciplinary processes are paused until I return from leave for my wedding.



Level 38 Tower Three
300 Barangaroo Avenue
Sydney NSW 2000

P O Box H67 Australia Square
Sydney NSW 1213
Australia

ABN: 51 194 660 183
Telephone: +61 2 9335 7000
Facsimile: +61 2 9335 7001
DX: 1056 Sydney
www.kpmg.com.au

Our ref RGLR01

29 March 2021

To
Director, People Performance & Culture

Dear

I refer to the investigation referred to in your letter dated 11 March 2011 and our recent discussions in relation to a separate matter.

I am in the process of seeking legal advice in relation to these matters.

I am also getting married in less than 2 weeks and taking a short period of leave. As such, I propose we defer advancing these matters until late in April.

Please let me know if you are agreeable to this.

Yours sincerely

Brendan Lyon
Partner, KPMG

New Evidence 29 March 2021: Letter advising me of new investigation over allegations I bullied Ms Watson by raising questions of ethics and professionalism; Kate Gatti declines request to delay disciplinary action until after my wedding.



Tower 3, International Towers Sydney
300 Barangaroo Avenue
Sydney NSW 2000

PO Box H67
Australia Square NSW 1213
Australia

ABN: 87 160 010 116
Telephone: +61 2 9336 7000
Facsimile: +61 2 9336 7001
DX: 1066 Sydney
www.kpmg.com.au

29 March 2021

Strictly Confidential

Mr Brendan Lyon
1403/168 Kent St
Millers Point NSW 2000

Dear Mr Lyon,

Investigation into allegations of inappropriate conduct

As we advised you last week, this is to inform you that on behalf of KPMG I am undertaking an investigation into allegations about your conduct. This investigation is conducted to enable KPMG to obtain legal advice and accordingly will be subject to legal professional privilege.

As discussed with you last Thursday, we have now paused the investigation referred to in the letter from Ben Lawler to you dated 11 March.

Concerns have been raised about your conduct by a fellow KPMG Partner, previously identified to you. This letter sets out details of the process moving forward and the allegations raised.

Interview to discuss allegations

Thank you for your letter to Ben Lawler dated today. We acknowledge your request that we defer the investigation until late April.

Whilst appreciating your request, we think it would be beneficial to have an initial meeting with you this week to discuss the matter. We acknowledge that you may require more time to respond in detail to the allegations after you return from leave.

To assist in the investigation, we ask that you please attend an interview with me and Jim Fox of MinterEllison, on Thursday 1 April 2021 at 11am at KPMG's Office in Barangaroo, to provide your response to the allegations below.

You are encouraged to bring a support person of your choice to the interview, provided they are not otherwise involved in this matter, such as by being a potential witness or decision-maker. Please advise us of the name of your support person before the meeting so that we can determine there is no conflict with any other role they may play in the investigation



Allegations for response

It is alleged that:

1) On multiple occasions you deliberately withheld project information from the Partner to exclude and undermine her. This is alleged to have occurred by asserting to the Conflicts and Oversight Committee (COGC) in June 2020 that restrictions of Cabinet In Confidence and restrictions contained in an NDA prevented disclosure to the Partner of the scope of your engagement when in fact they did not, and by omitting the Partner from email correspondence on 2 July 2020.

2) You repeatedly belittled or undermined the Partner in front of KPMG colleagues. This is alleged to have occurred in May 2020 when you are alleged to have repeatedly made statements to employees working with the Partner about the manner in which the Partner worked and the appropriateness of the work undertaken by her.

The types of comments which have been allegedly made by you include: saying to team members in a taxi trip in 2020 the Partner must be difficult to work for; saying that she undermined you in meetings; and saying that you would use other partners in the firm rather than her.

3) On multiple occasions you undermined the Partner by inappropriately criticising her advice. This is alleged to have occurred in July and August 2020 when you are alleged to have inappropriately attached risk ratings to the Partner's work in a project status report to the project working group for the Project without consulting with the Partner. This occurred in project working group meetings on 24 July 2020, 31 July 2020, 7 August 2020 and 14 August 2020. This allegedly inferred that the Partner's work was deficient or poor.

4) On and around 14 May 2020, you repeatedly and inappropriately pressured the Partner to amend her professional advice in relation to a draft deliverable document. This is alleged to have occurred by you:

- making changes to a document including altering the risk ratings related to accounting to reflect your view rather than the view of the Partner and her team, without consulting with her; and
- making comments to her in discussions on 14 May 2020 including asking the Partner to change her advice and words to the effect that you expected the Partner to agree with you so that your integrity was not compromised

5) You misrepresented the Partner's work or acted in an undermining manner, allegedly to damage her reputation. This is alleged to have occurred:

- on 3 July 2020, when you attended a meeting with your client and its auditors in circumstances where it was agreed that the Partner would be the only attendee from KPMG and you did not provide prior warning to the Partner. It is further alleged that you attended this meeting within your engagement scope as a mechanism to allow you to misrepresent the situation and create a perception of risk that did not exist;
- in emails sent by you to COGC members on 14 June 2020, 27 July 2020 and 29 July 2020,
- in an email sent by you to a client on 20 July about the Partner's scope of work and the status of her engagements;
- in a COGC meeting on 24 August 2020 at which it is alleged that you:
 - i) incorrectly said that the Partner had attended a meeting with the Auditor-General the previous week, which if true, would have been inconsistent with the engagement strategy for the Partner's client; and
 - ii) incorrectly implied that one of the Partner's clients had issues with the Partner's advice.



- 6) On multiple occasions you made unsubstantiated statements to damage the Partner's professional status. This is alleged to have occurred in meetings with members of COCG on 14 August 2020, 7 September 2020, 30 October 2020 and 4 November 2020, and with colleagues from KPMG on 24 July 2020, and in a discussion in August 2020 with the Partner's client.

The types of comments which have been allegedly made by you include: that you have "personal and professional reservations" about the Partner; that you did not want the Partner's input and referred to "past professional and personal experience"; that the Partner's work was beyond scope; and that you have and "ethical and moral issues in relation to working with her".

- 7) You have bullied the Partner by engaging in the behaviour as set out in allegations 1-6 above.

Please be aware that no conclusions have yet been reached as to the substance or otherwise of the allegations contained in this letter. The process being followed in this investigation is designed to ensure that you have a full and fair opportunity to respond before any determination of substance or otherwise is made. In accordance with volume 3 of the Partner Guidelines the CEO will be the decision-maker in relation to this matter.

CONFIDENTIALITY, PRIVILEGE, VICTIMISATION AND COUNSELLING

This investigation is **confidential** and you must not discuss it with anyone except any person who is your legal representative or acting as your support person through this investigation process, so long as they also agree to keep the matter confidential. You must also not discuss this investigation or anything relating to it on any social media, such as Facebook or Twitter.

You must also ensure that you do not victimise anyone involved in this investigation (such as by criticising, threatening or embarrassing them for being involved in the investigation).

Counselling and employee assistance are available to you by contacting Access on 1300 360 364 if you feel you require further support.

Please also feel free to contact me on 0437 132 402 if you have any questions regarding this matter.

Yours faithfully,

Kate Gatti

Head of Employee Relations

New Evidence 23 April 2021: I return from my wedding and email CEO Andrew Yates requesting he remove the prohibition on my professional work agreed with Mr Pratt in November in consequence of the finalisation of my report.

From: Lyon, Brendan

Sent: Friday, 23 April 2021 12:04 PM

To: Yates, Andrew J

; Yates, Deborah

; Heathcote, David

Subject: TfNSW engagement, clarity on 19 November email

Importance: High

Dear Andrew, Deb and David,

Noting TAHE and David's email of 19 November last, David has asked me to email you to advise of an opportunity to undertake a strategic business case for TfNSW for a port community system; and to seek your confirmation that I may lead the engagement.

For background, I led KPMG's engagement with TfNSW to develop the internal business case/scoping for TfNSW – which is attached.

I also submit that:

- I am the logical Partner to lead the engagement, noting my own and my team's expertise in the area
- We have supported TfNSW to scope the project meaning we know the most about this project
- I have a strong and positive reputation with TfNSW; and
- The business case will not involve NSW Treasury or Mike Pratt

The digitisation of supply chains is a major forward opportunity in infrastructure; and will see significant fee opportunities over time.

Accordingly, I would appreciate your advice on whether I can proceed with this opportunity – noting the email of 19 November last.

I am happy to discuss with you if needed.

Regards

Brendan Lyon

Brendan Lyon | Partner

Deal Advisory – Infrastructure & Projects Group

International Towers
300 Barangaroo Avenue
Sydney NSW 2000 Australia

New Evidence 28 May 2021 email to my lawyers regarding my dismissal and KPMG's cynical insistence on removing liability for any impacts of their bullying.

From: BRENDAN LYON
Sent: Friday, 28 May 2021 9:44 AM
To: Elisha Lorizio
Cc: Rebekah Giles
Subject: FW: Brendan Lyon - Execution Retirement documents
Attachments: Retirement Deed - Brendan Lyon 30 June 2021 (Final)(65773593_65773598_1(ADMIN).pdf; Lyon_B - NAB Redemption Notice_65773615_1(ADMIN).pdf

Hi Elisha;

As below they've accepted all changes but are obviously wanting to exclude mental disease (cos they know what they did last summer).

They are very motivated to sign today, because they've now been contacted by Adele Ferguson who's investigating TAHE and are keen to lock me down.

Elisha – could you pls review asap and advise if you're happy – then I'll come in and sign.

Apparently the CEO of the firm will meet me to sign when I am ready. That'll be the first time 😊

Thanks again team – this is a great outcome.

From: Heathcote, David
Sent: Friday, 28 May 2021 9:06 AM
To:
Subject: Brendan Lyon - Execution Retirement documents

Hi Brendan,

As discussed, please find attached your Retirement Deed together with the embedded Retirement Statement for execution. You need to sign the Deed in the presence of a witness (second last page), the witness may be anyone. You are also required to sign the Power of Attorney contained as Schedule 2 within your Deed, again in the presence of a witness, however **the witness must be a solicitor external to the Firm**.

Please note, we have accepted all the requested changes, with the only change being the following addition in bold and underlined to the scope of release proposed by your lawyers; "compensation or damages for personal **physical** injury".

Also attached is an Application for Redemption Notice: KPMG Finance Trust. This notice is required by Treasury which enables the redemption of your Units in the KPMG Finance Trust and also the repayment of your equity loan funding as at 30 June 2021. Accordingly, can you please arrange for the Unit Holder, being the authorised officers of Trust to sign the notice. Please do not date the section "will be repaid on" as Treasury will date accordingly.

If it is possible to get these executed this morning, I can arrange for Gary to also sign so we can wrap this up by lunchtime today. Let me know what is possible and I can meet you in the office if that works.

Many thanks
David

Evidence 20 January 2022: NSW Parliament publishes my detailed, evidenced 162-page answer on notice detailing wrongdoing by Mr Yates and KPMG's senior leadership; and Mr Pratt and senior NSW Treasury officers.

[Appended HERE](#) due to its length.

Evidence 14 February 2022 letter KPMG General Counsel Louise Capon *'condemns in the strongest terms'* Parliament's publication of evidence; demands Parliament *'improve'* practices; attempts to refer Inquiry to privileges committee for sanction.



Level 38, International Towers Three
300 Barangaroo Avenue
Sydney NSW 2000

P O Box H67 Australia Square
Sydney NSW 1213
Australia

14 February 2022

Mr David Shoebridge MLC
Chair
Public Accountability Committee

Dear Committee Chair,

Public Accountability Committee Inquiry into the Transport Asset Holding Entity

I refer to the response to a question on notice from Brendan Lyon entitled "AQON - Mr Brendan Lyon - received 19 January 2022 - REDACTED" published on the Committee's website on 11 February 2022 ("the Document").

KPMG has co-operated in good faith with the Public Accountability Committee ("The Committee") for the duration of its inquiry into the Transport Asset Holding Entity ("TAHE Inquiry"). KPMG partners have appeared before the Committee and the firm provided the Committee with a detailed submission, a range of supporting documents and provided a comprehensive response to questions on notice in a timely manner. We have the utmost respect for the New South Wales Parliament and the important role that all parliamentary committees play in our democratic process. We will continue, as we have, to engage with the Committee in a manner that reflects this respect.

KPMG is, however, extremely disappointed to see the Committee has published the Document in its current form, with no warning. Given the personal and potentially defamatory nature of the content of the Document, we respectfully and strongly request that the Committee remove the Document from the Committee's website.

The Document contains screenshots of private conversations where Mr Lyon refers to KPMG partners and employees, including junior staff members, in a manner that is offensive. The vast majority of these conversations have very little relevance to the Committee's broad terms of reference, and no relevance to the question on notice Mr Lyon was responding to. The material includes identifying information concerning KPMG partners and employees.

The Document, in our view, is of limited probative value and is highly prejudicial to the individuals within KPMG which it identifies.

©2021 KPMG, an Australian partnership and a member firm of the KPMG global organisation of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. Liability limited by a scheme approved under Professional Standards Legislation. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organisation.



14 February 2022

We note that the Committee Chair David Shoebridge at the Committee's public hearing on Thursday 10 February said:

"Committee hearings are not intended to provide a forum for persons to make adverse reflections and in that regard, we would appreciate wherever possible if people could stick to the issues rather than the personalities. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the house in 2018."

We further note that section 13 (b) of the Legislative Council's Procedural Fairness Resolution states:

(b) Where a witness gives evidence in public that may seriously damage the reputation of a person or body, the committee may consider keeping some or all of the evidence confidential.

We request the Committee urgently review the information contained in the Document against the standards outlined above. Further we call on the Committee to review its policies and procedures that have allowed the Document to be published in its current form.

Given the nature of the content that has been published we have also written to the Privileges Committee of the NSW Parliament and asked them to consider the matter.

KPMG stands by all its people and condemns in the strongest terms the Document and the way it has been published.

KPMG will provide a detailed response to the Document in the coming days and requests that the Committee considers and publishes our response as soon as practicable after receipt.

Kind regards,

Louise Capon
General Counsel, KPMG Australia

CC The Hon. Matthew Ryan Mason Cox, MLC
The Hon. Robert BORSAK, MLC
The Hon. Peter John POULOS, MLC
The Hon. Courtney HOUSSOS, MLC
The Hon. John GRAHAM, MLC
The Hon. Scott Glynn FARLOW, MLC
The Hon. (Lou) Louis AMATO, MLC
The Hon. Daniel Mookhey, MLC

Evidence 28 February 2022: CEO Andrew Yates *'firmly rejects'* bullying and misconduct saying Yates, Hunter, Watson & KPMG leadership *'all performed the roles expected of them at KPMG'*.



Level 38, International Towers Three
300 Barangaroo Avenue
Sydney NSW 2000

P O Box H67 Australia Square
Sydney NSW 1213
Australia

ABN: 51 194 660 183
Telephone: +61 2 9335 7621
Facsimile: +61 2 9335 7001
DX: 1056 Sydney
www.kpmg.com.au

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

Question on notice: my response

67. The sole question I took on notice was:

The CHAIR: Have you ever seen any accounting firm or any of these big four give policy or campaign advice during an election campaign?

BRENDAN LYON: I'm certainly aware that they attach personnel to political oppositions over time. I would take it on notice but definitely I'm aware. I don't if KPMG does. I'm aware another firm had done that. Let me just take it on notice and I'll just refresh my recollections.

68. I have not seen any Big Four firm give policy or campaign advice during an election campaign and am thus not able to assist the Committee in that regard.