

## **INQUIRY INTO TRANSPORT ASSET HOLDING ENTITY**

**Organisation:** NSW Government

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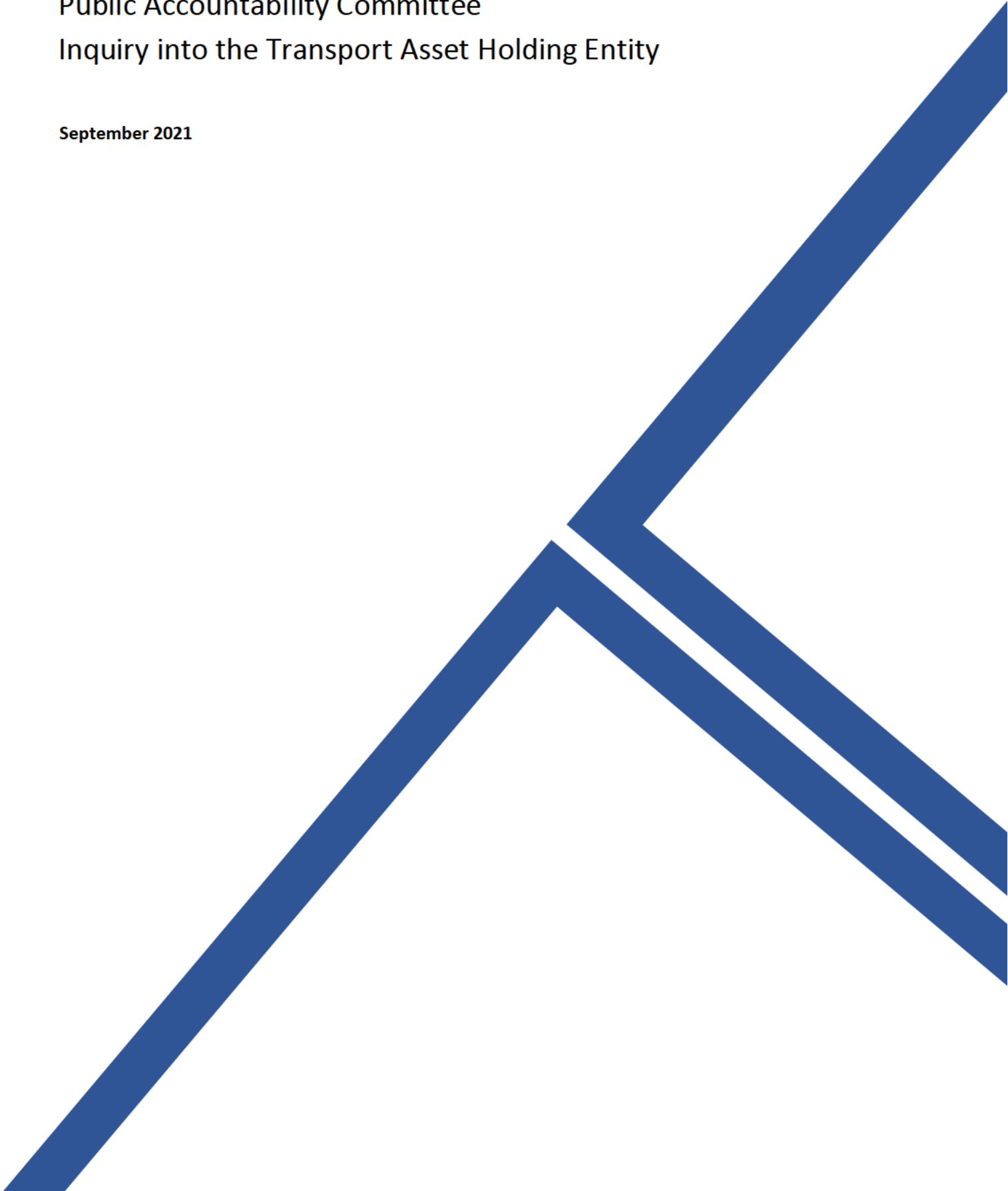
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# **NSW Government Submission**

Public Accountability Committee

Inquiry into the Transport Asset Holding Entity

September 2021



# Executive Summary

The Transport Asset Holding Entity of New South Wales ('TAHE') creates a contemporary, efficient and effective governance and operating model for the management of assets, to support the NSW Government as it seeks to achieve positive customer and community outcomes.

In the 2015-16 Budget, the Government announced its intention to establish TAHE to provide more effective governance and improved commercial management of its transport assets, while continuing to deliver a safe and reliable network with a strengthened commercial focus. Legislation to establish TAHE was introduced to Parliament in March 2017.

TAHE was established by strengthening the governance of RailCorp's existing Public Non-Financial Corporation status into a statutory State Owned Corporation. Former subsidiaries of RailCorp, Sydney Trains and NSW Trains, were established as standalone Transport agencies on 1 July 2017.

TAHE works alongside Transport for NSW as well as public and private operators and maintainers of the Transport network. TAHE undertakes its role with the clear aim to improve the value of assets it manages for the State and deliver a range of commercial services and projects that improve NSW's transport system.

TAHE is governed by an independent board that brings best practice industry expertise and governance experience. TAHE must comply with governance and standards which ensure that commercial imperatives are not prioritised over the safety and reliability of its assets.

The establishment of TAHE has strengthened the governance and assurance mechanisms for the safe operation and maintenance of the NSW rail network. Sydney Trains and NSW TrainLink will continue to run day to day customer services and operations, and Transport for NSW will continue to determine the level and frequency of rail services.

TAHE will seek to ensure tax payer funds are used to achieve optimal outcomes, ensuring scarce resources are allocated as efficiently as possible.

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# Introduction

The NSW Government has undertaken reforms since 2011 to improve delivery of public transport services. These reforms include the establishment of Transport for New South Wales (TfNSW), Sydney Trains and NSW TrainLink for the delivery of transport services to customers.

The Government built on these reforms to separate RailCorp's heavy rail operations and asset ownership, with TAHE to become the dedicated heavy rail asset manager.

As a stand-alone entity with a dedicated asset management and commercial focus TAHE will ensure the State's transport assets are managed well into the future. TAHE provides a platform for innovative and strategic asset management that will ultimately drive better value outcomes for the people of NSW. TAHE is required to comply with the safety standards as set by Legislation and the National regulator.

The NSW Government is investing record amounts in the Transport system. It is therefore appropriate that NSW have best practice governance in place to ensure assets are operated and maintained in the most efficient and effective way. Completing the reforms that commenced in 2012, including separating assets and operations and introducing commercial management disciplines, provides stronger assurance and better outcomes for the people of NSW.

Since TAHE was announced the government has delivered over \$11 billion of rail infrastructure projects for the people of NSW, including:

- Automatic Train Protection
- Central Walk project
- Commuter Car Parking
- Fixing Country Rail
- More Trains, More Services
- Transport Access Program upgrades; and
- Wynyard Walk project

In the 2021-22 Budget, the NSW Government allocated a record \$35.5 billion (\$16.8 billion for recurrent expenses and \$18.7 billion for capital expenditure) for transport infrastructure which includes:

- \$297.3 million to continue implementation of the More Trains, More Services program delivering more frequent and reliable services, including on the Illawarra, Airport and South Coast lines
- \$320 million in capital expenditure (\$1.3 billion over four years) to deliver a modern new Regional Rail Fleet to replace the ageing XPT, XPLOER and Endeavour trains and construct a new purpose-built maintenance facility in Dubbo
- \$63.8 million in capital expenditure (\$103.8 million over three years) for the Fixing Country Rail program to provide improved capacity, access, efficiency, and reliability of the regional rail network, as well as delivering a highly functional transport network for moving freight in and out of regional areas

# Background

Rail Corporation New South Wales (RailCorp) was established via the *Transport Administration Act 1988* (TAA) in 2004 as a Public Non-Financial Corporation outside the General Government sector. The Government's stated aims were improving management, increasing accountability and lifting performance. RailCorp held rail property assets, rolling stock and rail infrastructure and made these assets available to CityRail and CountryLink for their operations.

In 2010 the board was removed but RailCorp remained a PNFC. Subsequently, in 2012, RailCorp was reformed to separate operations and asset ownership, supporting a clear customer focus by each entity on their core business. Sydney Trains and NSW Trains were established as Government-owned operators to deliver services under contract to TfNSW.

TAHE's establishment as a SOC facilitates a more effective, efficient and commercial approach to the management of heavy rail assets. This is, in line with Transport's asset management framework that balances cost, risk and performance to support the delivery and achievement of safe outcomes.

Under the SOC model the Government seeks to apply private sector incentives and commercial disciplines to government entities such as TAHE, allowing them to operate under an independent board. This is done through supporting the achievement of:

1. Clear commercial objectives – the board and management are provided with a clear focus and accountability for the business' performance;
2. Managerial authority and autonomy – ensuring key internal operating decisions are made by Boards and managers with a strong incentive to maximise the value of the organisation (rather than allowing such decisions to be externally-imposed);
3. Performance monitoring – subjecting the businesses to rigorous, independent monitoring and assessment of financial performance; and
4. Competitive neutrality – removing the special advantages and disadvantages that apply due to Government ownership (e.g. requiring payment of tax equivalents) and supporting the business to operate in a competitive environment.

The SOC model is supported by the Commercial Policy Framework which aims to replicate in government businesses the disciplines and incentives that lead private sector businesses towards efficient commercial practices.

SOCs have demonstrated their ability to manage safety as a critical priority including in sensitive sectors, such as water and energy. Sydney Water, Water NSW and Essential Energy for instance, manage significant risks in their respective industries with best practice safety management. Safety is underpinned by Legislation, the TAHE Operating License and the Statement of Ministerial Expectations (refer to Appendix for a copy of the Statement of Ministerial Expectations).

Both the Operating Licence and the Statement of Ministerial Expectations are issued by the Minister for Transport and Roads and require TAHE to meet asset management and safety assurance undertakings, comply with safety obligations and legislative requirements. Further information about safety assurance is provided on page 13 of this document.

The Government has communicated the purpose and progress of TAHE to the Parliament over time throughout the implementation phase.

- The Government first flagged its intention to create a State Owned Corporation in the 2013-14 Half-Yearly Review
- It was further detailed as part of the 2015-16 Budget
- In 2017, Parliament passed an Act to create TAHE
- In July 2020, TAHE was proclaimed as a State Owned Corporation
- In November 2020 the Auditor-General issued an unqualified audit opinion on the report on the Total State Sector Accounts which was tabled in parliament.

Other jurisdictions have dedicated entities that hold public assets, such as Queensland Rail, VicTrack, the Australian Rail Track Corporation, the National Broadband Network and Australia Post.

The classification of NSW public transport agencies as Public Non-Financial Corporations (PNFC) are generally consistent with the classification of similar agencies in other jurisdictions. Queensland Rail in Queensland and VicTrack in Victoria manage heavy rail assets in those respective jurisdictions and:

- Are classified as Public Non-Financial Corporations ('PNFCs');
- Hold public transport land, assets and infrastructure; and
- Are governed by an independent Board of Directors.

Queensland Rail charges an access fee for access to its rail infrastructure whilst VicTrack charges for access to its freight terminals.



# Response to Terms of Reference

That the Public Accountability Committee inquire into and report on the Transport Asset Holding Entity, including:

- (a) its establishment and operation, and
- (b) any other related matter

## Establishment and Operation of the Transport Asset Holding Entity

### Establishment

In 1996 the Rail Access Corporation (RAC) was created as a State Owned Corporation to hold and manage the rail infrastructure assets of NSW. The Government-Owned passenger rail operator remained in government ownership. Additionally, it also provided the network control function for the network. Maintenance became the responsibility of the Rail Services Authority which competed with the private sector as RAC released various maintenance packages to public tender.

In 2001, the Rail Access Corporation and the Rail Services Authority were combined to form the Rail Infrastructure Corporation (RIC) combining the ownership and maintenance functions. The government owned passenger operators remained in separate organisations and continued to be the network controller for the network. Under TAHE, while assets and operations are separated, safety remains vertically integrated which provides centralised safety oversight and reduces interface risk.

RailCorp was initially established in January 2004 as a State Owned Corporation and later as a State Owned Business as the integrated owner and operator of the Sydney Metropolitan rail network. It undertook the functions of asset owner, maintainer and network operator in addition to providing suburban and regional passenger services. It was also responsible for network planning and for granting network access to third party rail operators.

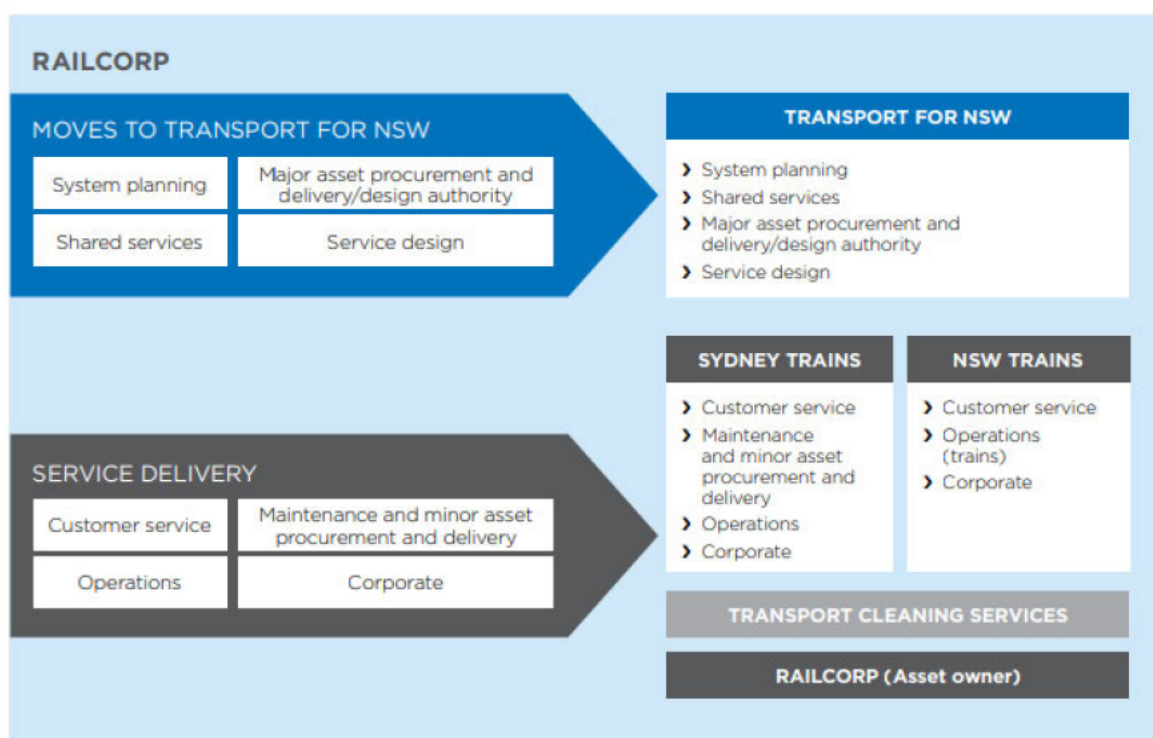
RIC continued to manage the rest of the State's rail network however in September 2004 the Commonwealth and the NSW Government reached agreement to lease the Interstate and Hunter Valley rail networks to the ARTC. The remainder of the Country Rail network would be managed by ARTC under a management contract as opposed to a lease.

In 2010 the then government removed the board, however RailCorp remained a PNFC entity.

In 2012 the intention to restructure RailCorp was announced with the above rail passenger operators being established in the separate entities of Sydney Trains and NSW TrainLink.



## FOCUSING ON OUR CUSTOMERS



Source: RailCorp 2011-12 Annual Report

In 2013 RailCorp was restructured with Sydney Trains and NSW TrainLink created as separate entities. This allowed a greater focus on service delivery and customer experience. Sydney Trains continued to be the maintainer and the network controller of the metropolitan network. Functions such as network and long term service planning become the responsibility of Transport for NSW.

In the 2013-14 Half Year Review the NSW Government announced it would strengthen the governance measures by transitioning RailCorp to a statutory State Owned Corporation.

In 2015 the ABS confirmed the status of TAHE as a Public Non-financial Corporation and the TAHE policy was referenced in the 2015-16 State Budget.

In 2016 the Audit Office approved the initial TAHE equity injections in the Government's Total State Sector Accounts (TSSA), supported by an unqualified Audit of the TSSA.

On 11 April 2017, the *Transport Administration Amendment (Transport Entities) Act 2017 (TAHE Act)* was assented to. The TAHE Act was divided into two Schedules, each to commence on a date to be proclaimed.

On 1 July 2017, Schedule 1 of the TAHE Act commenced and the following key amendments were made to the Transport Administration Act:

- Sydney Trains and NSW Trains became stand-alone Government agencies and were no longer subsidiaries of RailCorp;

- RailCorp’s functions were expanded to enable it to “hold, manage, operate and maintain” transport assets more generally and not be confined to just “rail infrastructure facilities”; and

On 1 July 2019, the Government announced the consolidation of Transport for NSW and Roads and Maritime Services. The implementation of TAHE was temporarily deferred to allow for this amalgamation.

On 1 July 2020, Schedule 2 of the TAHE Act commenced and the following key amendments were made to the Transport Administration Act:

- RailCorp was re-named, Transport Asset Holding Entity of New South Wales and converted from a government agency to a statutory State Owned Corporation;
- The Treasurer and the Minister for Finance and Small Business became the shareholders of TAHE;
- An independent Board of Directors was appointed to TAHE, including the Transport Secretary; and
- The Minister for Transport and Roads was given the power to grant one or more operating licences to TAHE which were to be used to regulate the functions of TAHE.

In March 2021 the TAHE long term operating model was endorsed by the NSW Government. TfNSW remains accountable for operational, safety, asset management, and customer and freight requirements.

By 30 June 2021, within its first year, TAHE had achieved the following milestones:

- Benedicte Colin was appointed as Chief Executive Officer;
  - Ms Colin brings over 20 years’ experience in leadership and investment roles in Europe and Australia in operations and asset management in the infrastructure sector. Prior to joining TAHE, Ms Colin was a Senior Investment Director at global investment group CDPQ and before that was the CEO of Keolis Downer.
- Commercial operating agreements with TfNSW, Sydney Trains and NSW Trains;
- Operating Licence issued by the Minister for Transport and Roads;
- Ministerial Statement of Expectations issued by the Minister for Transport and Roads;
- 2020-21 Statement of Corporate Intent signed and tabled in Parliament;
- Progressive implementation of the Commercial Policy Framework;
- Capital expenditure will be delivered with commercial disciplines with TAHE providing a level of assurance in relation to capital spending and monitoring on time and on budget capital spending.
- TAHE are progressing its commercial strategy with an initial focus on property.
- Commencement of asset base review, key stakeholder engagement and implementation of strategic plans.

To date the Government has complied with all the relevant Accounting Standards and requirements set by the Australian Bureau of Statistics and received unqualified audit opinions on the Total State Sector Accounts.

# Operation of TAHE

RailCorp reform started in 2012 with the policy reform of TAHE being progressively implemented over time due to the size and complexity of the Transport network.

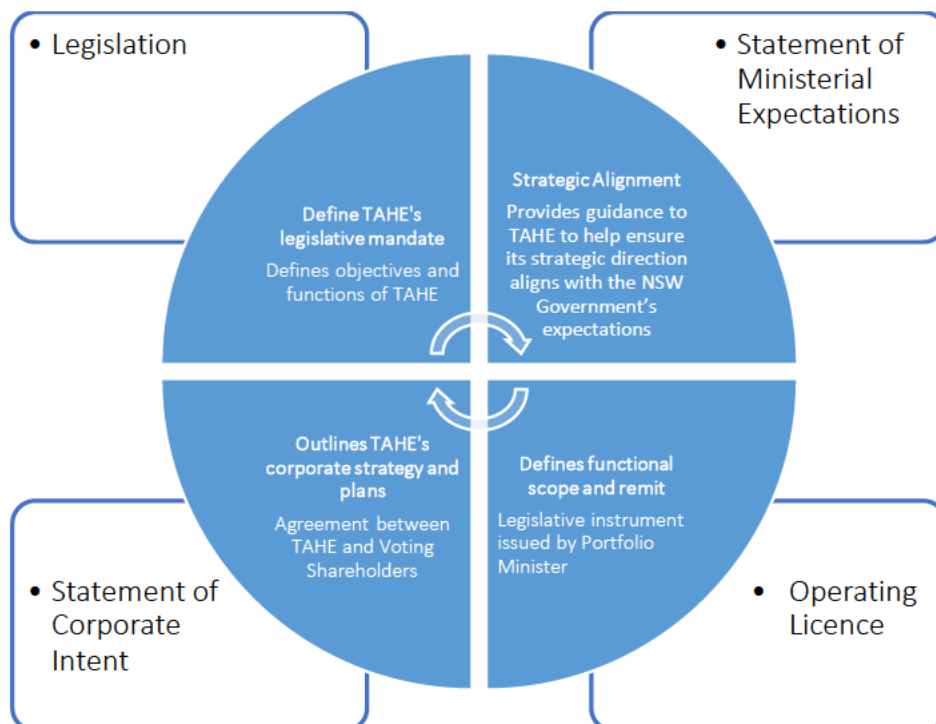
TAHE has no impact on operational rail safety, with the management for safety remaining the responsibility of TfNSW and Rail Operators and Maintainers. TAHE is subject to rigorous assurance that its assets are safe, reliable and fit for purpose. TAHE's pursuit of any commercial opportunities are subject to Transport's asset management and safety standards.

TAHE operates from its head office in 470 Pitt Street, Sydney. Since establishment TAHE's board has approved and commenced recruiting its organisational structure to enable it to meet its Legislative objectives. TAHE has appointed its CEO, and members of its executive team which includes Executive General Manager (EGM) Asset, Safety and Environment, EGM Finance and Business Performance, EGM Corporate Services and General Counsel. TAHE will continue to expand its workforce to deliver on its Statement of Corporate Intent.

## Scope

The remit of TAHE is defined by a number of documents currently in place, including Legislation, Legislative instruments, commercial agreements and guiding principles.

Together, these documents provide the high level framework that defines the TAHE Operating Model.



## Objectives

Under the Transport Administration Act, TAHE has five principal objectives:

- to undertake its activities in a safe and reliable manner;
- to be a successful business and, to operate at least as efficiently as any comparable businesses;
- to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates;
- where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development; and
- to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.

## Functions

The functions of TAHE are listed in the Transport Administration Act and include:

- Holding, managing, operating and maintaining vested transport assets;
- Establishing, financing, acquiring, constructing and developing transport assets to be vested in or owned by it;
- Promoting and facilitating access to the part of the NSW rail network vested in or owned by TAHE in accordance with any current NSW rail access undertaking or otherwise lease or make available transport assets vested in or owned by TAHE to other persons or bodies; and
- Acquiring and developing land for the purpose of enabling TAHE to carry out its other functions (including the acquisition of land).

## Operating Licence and Statement of Ministerial Expectations

The Transport Administration Act provides that TAHE's functions are exercised under an operating licence issued by the Portfolio Minister (Minister for Transport and Roads). This is consistent with other NSW Government SOCs.

An operating licence is subject to the terms and conditions determined by the Minister. An operating licence may include terms or conditions dealing with the following matters:

- Compliance by TAHE with network and asset standard requirements issued from time to time by TfNSW;
- Pricing regime or structure relating to assets leased or to which access is made available by TAHE;
- Arrangements under which TAHE assets are leased or to which access is made available;
- Safety;
- Integration of transport modes;
- Transport services which TAHE is permitted or not permitted to operate itself;
- Capital works programs, procurement and asset lifecycle;
- Businesses and activities conducted outside the State;
- Development, use or disposal of TAHE's real property or transport infrastructure.

A Statement of Ministerial Expectation was issued by the Minister for Transport and Roads to ensure alignment with the policy objectives of the NSW Government.

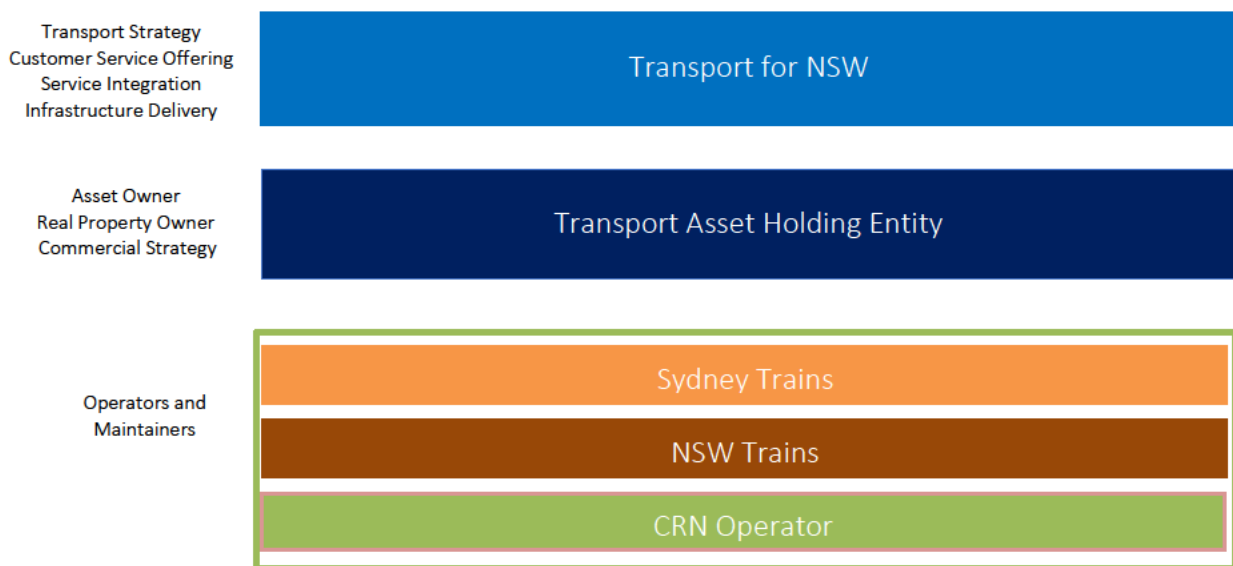
TAHE is also accountable to the Shareholder Ministers (Treasurer and Minister for Finance and Small Business) through its annual Statement of Corporate Intent.

### Rail Sector Operations

TfNSW continues to be responsible for transport policy, system planning, timetabling, procurement, and delivery of transport infrastructure projects. Sydney Trains and NSW TrainLink will continue to run day to day customer services and operations.

TAHE has various agreements in place with TfNSW, Sydney Trains and NSW Trains whereby it makes its assets available (both regulated and unregulated assets) to those agencies on a commercial basis – for example, access to track, rolling stock, stations, plant and equipment and property.

TAHE also has numerous commercial arrangements in place with third party rail operators who require access to both the Metropolitan Rail Network and the Country Regional Network.



TAHE has also appointed TfNSW and Sydney Trains as its agent to undertake various activities, including:

- Sydney Trains as agent to undertake Network Control in connection with third party track access arrangements and to administer the Airport Link contractual arrangements; and
- TfNSW as agent to manage and administer track access agreements with third parties; manage the administration of the CRN and manage its non-operational heritage portfolio (and its agreement with Transport Heritage NSW).

TfNSW will continue to determine the level and frequency of rail services provided through the Standard Working Timetable (SWTT).



Sydney Trains will continue in its current role as Network Controller of the Metropolitan Rail Network (MRN), responsible for the implementation of the SWTT through the Daily Train Plan and Daily Train Control.

Freight operators also access the Metropolitan Rail Network and Country Regional Network (CRN) through third party access agreements with TAHE, subject to the prioritisation requirements set out in the Transport Administration Act and the SWTT.

### Safety and Asset Maintenance

Decisions about assets, including maintenance and delivery, are subject to the same robust safety regimes required for NSW regulated rail assets that existed prior to the establishment of TAHE.

TAHE's Board of Directors are accountable for ensuring that an effective safety assurance regime is in place for TAHE, however it is important to note that day to day operational control for rail safety remains the responsibility of TfNSW, Sydney Trains, NSW TrainLink and other accredited third party operators and maintainers. TAHE has established an asset management and assurance framework and associated governance arrangements that support the TAHE Board meeting its obligations.

TAHE's Operating Licence prevents it from carrying out any maintenance of transport assets. Sydney Trains has been contracted to maintain transport assets that are the subject of their respective access and licence agreements.

Sydney Trains and NSW TrainLink are accredited Rail Transport Operators under the Rail Safety National Law (RSNL) and make decisions regarding funding prioritisation and allocation for required maintenance, including routine maintenance and major periodic maintenance of railway infrastructure and rolling stock to ensure safety so far as is reasonably practicable. TAHE does not require RSNL accreditation. Only accredited third parties undertake regulated railway operations.

Sydney Trains, NSW TrainLink and the third party operator for the Country Regional Network, are obliged to maintain the Transport assets that are the subject of their respective agreements in accordance with technical standards, which include:

- all statutes and regulations, including the *Work Health and Safety Act 2011* (NSW), the *Work Health and Safety Regulation 2017* (NSW) and the RSNL;
- TfNSW technical standards; and
- All relevant Australian Standards.

The TAHE Asset Management Plan, prepared by TfNSW, sets out TfNSW's recommendation for funding for maintenance and responsibilities for funding. TfNSW will attest to the Asset Management Plan each financial year.

The Office of the National Rail Safety Regulator will continue to have oversight of the regulatory arrangements for heavy rail assets.

## 2021-22 Capital Investment Plan

Summarised Initiatives (\$M)	2020-21
<b>Capital Expenditure</b>	
Automatic Train Protection	79.4
Central Walk	139.4
Community Car Park Program	141.0
Fast Rail	20.4
Fixing Country Rail	22.9
Western Line Capacity Enhancements	21.6
More Trains More Service	736.7
New Inner City Fleet	401.2
Regional Rail Fleet Program	208.6
Sydney Metro City and South West – Associated Works	108.2
Transport Access Program	310.1
Asset Management	38.0
Minor Works	148.2
<b>Capital Expenditure Total</b>	<b>2,375.7</b>
Capital Maintenance	382.6
<b>Capital Investment Total</b>	<b>2,758.3</b>



# Appendix 1 – Statement of Ministerial Expectations