

INQUIRY INTO TRANSPORT ASSET HOLDING ENTITY

Organisation: NSW Treasury and Transport for NSW

Date Received: 8 December 2021

Mr David Shoebridge MLC
Chair
Public Accountability Committee
Parliament House
Macquarie St
Sydney.NSW 2000

Dear Chair,

Inquiry into Transport Asset Holding Entity

We refer to Treasury's email of today confirming the acceptance by Mr Michael Pratt AM, Mr San Midha and Ms Cassandra Wilkinson of the invitation to attend the Public Accountability Committee's (PAC) inquiry into the Transport Asset Holding Entity (TAHE), as well as Treasury's nomination of other witnesses to attend and assist the PAC.

In order to assist the PAC, we provide this submission under the Resolutions of Continuing Effect 10 paragraph 3 (*Procedural Fairness for Inquiry Participants*) and look forward to discussing this submission with the PAC at the hearing on 16 December 2021.

We have no objection to the PAC publishing this submission on the inquiry webpage. Given the media attention on TAHE (including recent public statements made by members of the PAC that TAHE is "putting rail safety at risk" and a "financial and safety disaster" during an active inquiry) we consider it essential for procedural fairness that it be published.

Focusing on the important issues

Much of the public debate on TAHE has focused, unfortunately, on erroneous and unfounded allegations against individuals. We trust that Treasury's letter of 30 November 2021 to the PAC has provided a full explanation and has enabled closure of those issues so that the PAC can focus on the substance and demonstrable value of TAHE itself.

This submission is aimed at assisting the PAC on the important issues relating to TAHE. It has been jointly prepared by NSW Treasury and Transport for NSW (TfNSW) – the two key agencies that are responsible for the establishment and oversight of TAHE and that are best placed to explain the ways in which TAHE improves outcomes for the people of New South Wales.

The establishment of TAHE is driven by Transport Strategy and Micro-economic Reform

TAHE is a critical reform in the Transport Cluster and its genesis began almost a decade earlier. The impetus to create TAHE was the NSW Government's commitment to invest substantial funds in a significant uplift in network capacity. In 2012 the Government released the *State Infrastructure Strategy and a Long Term Transport Master Plan (Long Term Transport Plan)* that proposed better use of existing assets, as well as flagging substantial new asset delivery in Transport. The plan included a strengthened focus on efficiency, and specifically stated an intention to "make better use of existing assets" (p39). It went on further to state:

"We need to modernise our existing services, grow the network to meet changing customer needs and efficiently manage our transport services and assets" (p40)

The Long Term Transport Plan and the TAHE reforms are also consistent with micro-economic policies that have been progressively adopted by the NSW Government since the introduction of the National Competition Policy (NCP). The NCP reflects a view that improved market design can achieve many of the benefits of competition while maintaining state ownership of natural monopolies.

The 1993 Hilmer Report on National Competition Policy recommended Governments examine the merits of structural separation of public authorities into natural monopoly and potentially contestable activities. The report recommended there be access arrangements for strategic natural monopoly assets or "essential facilities". The report expressly identified rail track as an example of such a natural monopoly, and a key driver for reform since the NCP has been a view that state-run monopoly railways tend to inefficiency due to a range of factors including poor incentives.

As such, contrary to some media speculation, TAHE was created as part of a comprehensive multi-year government policy to best optimise the use of state funds to invest in an improved transport network, as well as to implement micro-economic reform in line with the NCP and the Hilmer Report.

State Owned Corporations – an established legal vehicle for efficiency, innovation and accountability

In establishing TAHE, as the material on the inquiry's website shows, many different structures were considered. This was necessary because the Government's policy was to ensure that TAHE fully met multiple objectives, including: an optimum operating structure; fiscal outcomes; safety; appropriate commercial and economic drivers; and innovation in line with the Long Term Transport Plan and ongoing micro-economic reform. Though professional advices were obtained on different structures (as noted in Treasury's previous letter), the alternative structures were ultimately not taken up because they did not meet all government objectives. In fact, part of the delay in implementing TAHE was because of the desire to ensure that the right structure was adopted that met all these objectives.

The final structure that was adopted, after careful consideration, was the State Owned Corporation under Part 3 of the *State Owned Corporations Act 1989 (SOC Act)*. Over the three decades since the SOC Act was introduced, SOCs have consistently and transparently demonstrated that they can safely and efficiently manage public monopolies and partial monopoly assets such as water and energy. The advantage of the use of SOCs is that they keep essential assets in public ownership, while achieving greater efficiency at the level of the organisation and at the level of the wider market. Efficient management of monopoly-type assets is fundamental to the economic performance of the whole State and consistent with the micro-economic reform referred to above.

One advantage of the SOC model is the opportunity to invest with partners outside the competing priorities of the State Budget to bring in innovation. As a SOC, TAHE can invest in new technology and in commercialising products. For example, VicTrack developed FiBridge, a structural health monitoring solution developed in a joint venture with Silicon Valley-based Palo Alto Research Center. These opportunities and partnerships are more accessible to SOCs, which can use their own balance sheets to support growth and opportunity.

The Government's commitment to achieving these market reform benefits through TAHE is evidenced in TAHE's enabling legislation and the Second Reading Speech. The latter states:

"Commerciality means having a structure in place that properly accounts for the costs of recurrent services and capital expenditure and provides an identifiable return to the

taxpayers on their massive investment in infrastructure. To do this in the transport context, this Government believes that we need to have a clear delineation between a publicly owned asset holder and the State as a direct service provider.”

To act as a counter-balance to simply pursuing commercial outcomes (a concern raised by some at the inquiry), public accountability (and thereby public interest) for a SOC is enshrined by having clear statutory objectives in their enabling legislation and it being overseen by three Crown Ministers: two Shareholder Ministers and a Portfolio Minister. All three are directly accountable to the people of NSW and, in the case of the Portfolio Minister, they have the power under the SOC Act to direct TAHE in specified circumstances, including where it is necessary in the public interest.

As such, the SOC structure adopted by TAHE is a long-established vehicle that has appropriate oversight and accountability while operating as a commercial entity.

Safety – a core object of TAHE

One key element of that accountability is safety of the public transport network. As mentioned in Treasury’s letter of 30 November 2021, TfNSW is the lead agency appointed by Cabinet for ensuring that TAHE met, and will continue to meet, all safety and operational requirements. TAHE’s own enabling legislation enshrines safety as a statutory objective. We note in particular, as recently submitted by TAHE to the inquiry:

“The creation of TAHE does not alter the principles that have underpinned the approach to rail and maintenance since the responses to the inquiries into the tragedies at Glenbrook and Waterfall. The overarching approach is governed by the Rail Safety National Law and regulated by the Office of the National Rail Safety Regulator (ONRSR).

“The Committee may be aware that, since the appearance of TAHE representatives before the committee, we have received the Office of Transport Safety Investigations (OTSI)’s review and advice as to whether the mitigation controls and supporting TAHE governance arrangements in place are sufficient to manage potential conflicts between TAHE’s commercial objectives and the safe management of the rail assets. TAHE welcomes the review and its preliminary broad finding that the proposed mitigations and safety governance arrangements are fit for purpose, and should achieve the objective of clarity and focus around safety roles. In particular, we note the comments that TAHE’s Operating Licence serves to constrain the organisation’s role and responsibilities and removes commercial imperatives from Transport operating rail assets.”

TfNSW and Treasury look forward to the opportunity to attend the inquiry on 16 December 2021 to expand on why TAHE supports a safe and reliable transport network.

Treasury prepares the State Accounts in accordance with relevant standards

As acknowledged previously, the accounting treatment for TAHE is complex. However, it is important to emphasise that the accounting issues at hand are not about mathematical calculations – they are about interpretation of words contained in accounting standards (and principles under the framework rules) which are in the realm of judgment and which depend on the cogency of supporting evidence. Treasury has in good faith interpreted the standards and rules correctly and has prepared a significant volume of technical papers that support the government’s approach which we would be pleased to discuss with the PAC.

Concluding Statement

NSW Treasury and TfNSW are convinced that TAHE is the right vehicle to drive generational change and to achieve micro-economic reform in pursuit of government policy and objectives. TAHE's long-term success will be driven by the measurable value it delivers to taxpayers and the service delivery innovations it fosters through realising greater efficiencies and opportunities. As the Second Reading Speech states: "*[TAHE]... will establish new arrangements for transport asset management in New South Wales that reflect both modern governance and financial practices.*"

We look forward to further discussing these points with the PAC on 16 December.

Yours sincerely,

Michael Pratt AM
Secretary
NSW Treasury

Rob Sharp
Secretary
TfNSW

8 December 2021