

REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY COMMITTEE

TRANSPORT ASSET HOLDING ENTITY

CORRECTED

Virtual hearing via videoconference on Friday 1 October 2021

The Committee met at 9:30

PRESENT

Mr David Shoebridge (Chair)

Ms Abigail Boyd

The Hon. Scott Farlow

The Hon. John Graham

The Hon. Courtney Houssos (Acting Deputy Chair)

The Hon. Trevor Khan

The Hon. Daniel Mookhey

The Hon. Peter Poulos

The CHAIR: Welcome to this virtual hearing of the Public Accountability Committee's inquiry into the Transport Asset Holding Entity. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of the land upon which the Parliament sits. I pay the Committee's collective respects to Elders past, present and emerging—those who are attending the meeting in any form as well as those who are viewing proceedings on webcast.

Today's hearing is to be conducted as a fully virtual hearing. This enables the work of the Committee to continue during the COVID crisis in a manner that protects the health and safety of witnesses, the secretariat, staff and members. I ask for everyone's patience today if there are any technical difficulties with the online proceedings. If participants do lose their internet connection they are reminded to simply rejoin the hearing by using the link that has been provided to them by the secretariat. Today we will be hearing from the Transport Asset Holding Entity, Transport for NSW and NSW Treasury. The questions will be directed to the function, purpose and operation of the Transport Asset Holding Entity, an entity that has been created and has been the cause of some ongoing controversy.

Before we commence I will make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's proceedings will be placed on the Committee's website as soon as it is available from Hansard. In accordance with broadcasting guidelines, media representatives are reminded to take responsibility for what they publish. While parliamentary privilege applies to material within the hearing itself, it does not apply to comments made afterwards by witnesses, Committee members or members of the public or media.

Committee hearings are not intended to be a forum to make adverse reflections on individuals. I ask members and witnesses to stick to the issues, if they could, and not the personalities. There may be some questions that a witness could answer only if they had further material to hand, in which case witnesses are entitled to take a question on notice and will have 21 days in which to respond. All witnesses are entitled to procedural fairness. It is a matter this Committee considers to be of extreme importance and is also consistent with the resolution of the House in 2018.

Finally, I make a few notes on etiquette for virtual hearings. I ask Committee members to clearly identify whom their questions are being directed to and I ask witnesses especially to commence with their name when making a contribution. That may feel repetitive on occasion but is of great assistance to Hansard. I ask that everyone please mute their microphones when they are not speaking and remember to unmute them just prior to making a contribution. If possible, members and witnesses are asked to avoid speaking over each other, which does make it impossible for Hansard. Also to assist Hansard, I remind members and witnesses to speak as clearly as possible and directly into the microphones.

BENEDICTE COLIN, Chief Executive Officer, Transport Asset Holding Entity, affirmed and examined

PETER CRIMP, Executive General Manager, Finance and Business Performance, Transport Asset Holding Entity, sworn and examined

The CHAIR: I welcome our first two witnesses, from the Transport Asset Holding Entity [TAHE]. Thank you both for your attendance today. You have an opportunity, if you wish to take it, to make a brief opening statement.

Ms COLIN: Thank you, Chair. I will take that opportunity. I am very pleased to be here representing the Transport Asset Holding Entity, an organisation with an important role to play for the people of New South Wales. TAHE provides New South Wales with a strategic and dedicated asset owner for an extensive, high-quality portfolio that includes 4,000 operational tracks, 1,500 electric and diesel cars, 300 square kilometres of land, 400 retail outlets, and 1.3 million square metres of lettable area. These assets need a dedicated focus to unlock their value, accelerate precinct development and build a portfolio generating sustainable revenues.

TAHE was established as a State-owned corporation on 1 July 2020. It is at the very beginning of its journey. Operationalising TAHE will require building a team with relevant expertise and capabilities, implementing the set of contractual arrangements that have recently been agreed with Transport for NSW [TfNSW], Sydney Trains and NSW Trains, setting up systems and procedures and devising the best capital structure to support a pipeline of property projects. I joined TAHE on 1 September. I bring 25 years of experience in transport operations, infrastructure investment and setting up businesses. Notably my last two roles, as CEO of Keolis Downer and as investment director as CDPQ, provide me with the requisite knowledge and skills for this role.

Yet having been in TAHE for only one month, it is clear to me that TAHE's role is not well understood. Too often TAHE is described in terms of legal and accounting structures. This misses the point. This organisation is all about ensuring we maximise the value of our transport assets, freeing up TfNSW to focus on strategy and rail operators to focus on providing better outcomes for public transport users and the New South Wales taxpayers. The New South Wales Government is investing record amounts in the transport system. This year TAHE has \$3.4 billion of major capital projects to be delivered. As an independent State-owned corporation, TAHE will oversee that New South Wales regulated transport assets are delivered safely and efficiently while bringing new life and innovation into its unregulated business.

I want to be clear on three very important things. Firstly, safety is the highest priority for the TAHE board, me as the CEO and executives across the organisation. The creation of TAHE strengthened the transport safety arrangements. We operate in accordance with a pre-existing safety framework but now provide an additional third line of assurance within it. It is a key priority identified in our operating licence and statement of expectation from the transport Minister, to whom we are required to report on a regular basis. Secondly, this is a significant reform. It involves a lot of change, and change can be difficult. One of my priorities as CEO is to better articulate TAHE's role. I am very happy today to take the opportunity of this hearing to answer questions and explain how TAHE's operating model works.

Thirdly, this is the beginning of a journey. Our execution will not always be perfect and it will take some time to achieve maturity. We welcome recommendations as we progress our implementation road map and we will report transparently. When I joined the organisation a month ago, I shared with the team the values that I wanted the organisation to embrace. Integrity and accountability were high on my list, as well as collaboration and commitment. This is how I intend to lead this organisation and how we will be held accountable. Thank you again for the opportunity to appear before you today.

The CHAIR: Thank you, Ms Colin. Mr Crimp, did you have anything to add?

Mr CRIMP: No, I do not.

The CHAIR: I will hand over to the Committee members to commence questioning. Mr Mookhey might wish to kick off questioning.

The Hon. DANIEL MOOKHEY: Thank you, Chair. I thank the witnesses for taking the time to join us this morning and I thank the CEO for the opening statement that she has made. Firstly, congratulations on obtaining the role. Secondly, what process was utilised to select you for this job?

Ms COLIN: I can only comment on—sorry, should I say this is Benedicte Colin, Chair?

The CHAIR: Ms Colin, you have the benefit of a quite distinct voice, so we can just move on with your evidence.

Ms COLIN: Okay. The process involved being approached by a recruitment firm and having interviews with the chair and the board on two or three occasions, if I remember correctly.

The Hon. DANIEL MOOKHEY: Thank you, Ms Colins. When did the recruitment firm approach you?

Ms COLIN: If my recollection is correct, it would have been around February or March.

The Hon. DANIEL MOOKHEY: You did not put an application in; you were approached?

Ms COLIN: Sorry?

The Hon. DANIEL MOOKHEY: You did not put an application in; you were approached?

Ms COLIN: I was approached, yes.

The Hon. DANIEL MOOKHEY: Was it February or was it March?

Ms COLIN: I think it was around late February.

The Hon. DANIEL MOOKHEY: Can I ask a really simple question here, Ms Colins? What is your remuneration?

Ms COLIN: My remuneration would be normally disclosed as part of the annual report. Since I started on 1 September, it would be next year. But to answer your question, my remuneration is \$575,000. That is the total remuneration and there is no bonus component.

The Hon. DANIEL MOOKHEY: So \$575,000 and no bonus component: That puts you at the equivalent of the Secretary of Treasury or thereabouts, is that right?

Ms COLIN: I could not confirm but I understand it is consistent with the remuneration of senior executives within the New South Wales government, yes.

The Hon. DANIEL MOOKHEY: Thank you, Ms Colins, for being frank about that because it has so far been somewhat of a secret—

The CHAIR: Mr Mookhey, it is Ms Colin, singular. There is no "s".

The Hon. DANIEL MOOKHEY: Thank you. I did not mean to cause offence by getting your name wrong. I have some understanding of what that feels like. Chair, can I now formally table the documents for the purposes of the Committee? Ms Colin, I understand that it has been provided to you and your witnesses. Do you have these documents right now?

Ms COLIN: Sorry, which document are you referring to?

The Hon. DANIEL MOOKHEY: I am referring to the one that has been provided to you that is called "TAHE_Tender_001".

Ms COLIN: I received an email just about 15 minutes ago, just before the hearing started, so I have not had time to look at all the documents within this email.

The Hon. DANIEL MOOKHEY: That is okay. I will just take you through it then. I will read the relevant sections to you and see what information is available that you could provide, or perhaps Mr Crimp could provide as well. That would be useful. The first document, which is TAHE_Tender_001, is the instrument of appointment for your predecessor that was signed by the Treasurer and the Minister for Transport and Roads. It states:

Mercer Consulting (Australia) Pty Ltd (Mercer) conducted an independent work value assessment and remuneration report (Mercer Report) recommending a competitive remuneration range ...

Having considered the Mercer Report, the Board of TAHE have proposed a remuneration rate ...

Is it the case that in order to determine your remuneration, or the remuneration of your predecessor, that TAHE hired Mercer Consulting to prepare a benchmark?

Ms COLIN: As you will appreciate, I was not part of the organisation, so I cannot comment on the process that the board or the remuneration committee went through. These questions would be better directed to the chair of TAHE.

The Hon. DANIEL MOOKHEY: Sure. Can Mr Crimp add any detail there for us? Is he aware?

Mr CRIMP: No, I was not involved in any capacity with the recruitment of the chief executive [CE].

The Hon. DANIEL MOOKHEY: I probably will take you up on your suggestion there, Ms Colin, but do you mind potentially taking it on notice for me?

Ms COLIN: Sorry, what is your question so that I can take it on notice correctly?

The Hon. DANIEL MOOKHEY: Did TAHE hire Mercer Consulting to produce a benchmark in order to determine executive remuneration at TAHE? If so, can they provide the report? The second aspect of this briefing to the Treasurer and the finance Minister says that your predecessor would be paid:

... towards the maximum of end of the remuneration range proposed in the Mercer Report to compensate for the short-term nature of the appointment, as is typical with contractor roles. TAHE has advised that the permanent CEO, once appointed, is expected to receive a lower remuneration rate ...

It seems like your predecessor was paid more than you are. Do you know what your predecessor was paid?

Ms COLIN: I do not know what my predecessor was paid.

The Hon. DANIEL MOOKHEY: Does Mr Crimp have any further detail on that for us?

Mr CRIMP: No, I do not.

The Hon. DANIEL MOOKHEY: Again, do you mind taking that on notice? I would be interested, given that there have been three CEOs in the past 14 months since your organisation was created. Are you able to provide us, on notice, what the remuneration was for each of your predecessors?

Ms COLIN: Yes, we will.

The Hon. DANIEL MOOKHEY: Thank you. Before I turn to the next matter, I will pause to see if there are any questions from my colleagues on that matter.

The CHAIR: No, you can proceed, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Thank you, Chair. TAHE was formally established on 1 July 2020, is that correct?

Ms COLIN: That is correct.

The Hon. DANIEL MOOKHEY: But work on establishing TAHE started years before, is that correct?

Ms COLIN: That is my understanding, yes.

The Hon. DANIEL MOOKHEY: It started as early as 2013, is that correct?

Ms COLIN: I was not involved in that process, so I cannot comment on the exact date when the process started.

The Hon. DANIEL MOOKHEY: Sure. Mr Crimp, have you been with TAHE since day one?

Mr CRIMP: I have been with TAHE since 1 July 2020. Prior to that I was also responsible for the accounting and finance for RailCorp, which was TAHE's predecessor.

The Hon. DANIEL MOOKHEY: You were involved in the project team inside Transport and/or RailCorp that led to the establishment of TAHE, is that correct?

Mr CRIMP: I was not part of a formal project team, but by virtue of my role I was often consulted or included in activities.

The Hon. DANIEL MOOKHEY: As part of what was called "day one readiness", TAHE was meant to have certain policies in place on day one, is that correct?

Mr CRIMP: Sorry, who is the question addressed to?

The Hon. DANIEL MOOKHEY: As a matter of courtesy I will address it first to Ms Colin, but if she wishes to pass it to you it is a matter for her.

Ms COLIN: I was not present at the time, so I cannot really answer your question.

The Hon. DANIEL MOOKHEY: Could I then direct the question to Mr Crimp? As part of TAHE's establishment, it was required to have a whole set of policies in place on day one, is that correct?

Mr CRIMP: There was a whole framework that needed to be put in place for the 1 July stand-up, including policies, staffing, the board and delegations. Yes, there was a suite of process, policies, procedures et cetera that was available.

The Hon. DANIEL MOOKHEY: Thank you, Mr Crimp. The one that I specifically want to ask you about is delegations, which you made reference to. TAHE was required to have its policies in place for delegations, which I guess in layman's terms is who can spend what and with what authority. Is that a fair summary of what we are talking about, Mr Crimp?

Mr CRIMP: Yes.

The Hon. DANIEL MOOKHEY: To the CEO, what is your delegation for incurring general expenditure for the general work of the corporation?

Ms COLIN: There is a delegation in place which provides some delegations in terms of expenses, capital spending and authorities to enter into agreements.

The Hon. DANIEL MOOKHEY: What is the delegation that you have?

Ms COLIN: I do not have the delegations sitting right with me. It has been embraced and endorsed by the board. It will be reviewed with us hiring new employees. But I am happy to take that question on notice.

The Hon. DANIEL MOOKHEY: That would be appreciated. For what it's worth, I do have it with me because TAHE provided it to the upper House as part of a call for papers. Just to be clear for the people who might be following, it is the TAHE document which is index No. 5268. It is the TAHE delegations framework, July 2020, final draft, which was published on 23 June 2020. Ms Colin, do you have an unlimited delegation to incur expenditure on behalf of the corporation?

Ms COLIN: No, I do not.

The Hon. DANIEL MOOKHEY: When did that change?

Ms COLIN: Sorry?

The Hon. DANIEL MOOKHEY: When did that change?

Ms COLIN: Again, I do not have the delegations with me. As you will appreciate, I have just started my role, so I am not familiar with the entire documents and delegation.

The Hon. DANIEL MOOKHEY: But Ms Colin, this is not a small question. You are the CEO of the organisation.

The CHAIR: I think Mr Crimp has something to add. We will go to Mr Crimp and then come back to you, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Sure.

Mr CRIMP: I am happy to comment on that. There was a proposed delegation framework that was ready for 1 July. That was considered by the board in one of their initial meetings in July and was adopted by the board at that point. There are certain delegations that are described as "unlimited" but there are constraints around those. They have got to be within approved procurement practices, they need to be within budget and they need to be within the plan as well. If those—

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Crimp, but can I just unpack that a little? The framework that I am referring to was adopted by the board on its inception sometime after July, is that correct?

Mr CRIMP: Yes.

The Hon. DANIEL MOOKHEY: And it is still in place?

Mr CRIMP: Yes. There have been some modifications to that though since that time frame.

The Hon. DANIEL MOOKHEY: Sure. I do appreciate the context that you have given, Mr Crimp. But I just want to go through some specific matters with the CEO because I do not think it is unreasonable for direct questions to the CEO of a corporation like this, which manages \$38 billion worth of assets, to understand precisely what is the scope of her powers and, equally, what is her understanding of the scope of her powers. I am reading from a document here that says you have unlimited authority to incur expenditure so long as it is within the approved budget. Is that your understanding of your responsibilities, Ms Colin?

Ms COLIN: Yes.

The Hon. DANIEL MOOKHEY: Equally, you have the ability to change expenditure on any non-capital project, don't you, to any limit?

Ms COLIN: Yes.

The Hon. DANIEL MOOKHEY: Equally, you have the ability to issue whatever tenders and obtain whatever quotes you would like, for whatever values you would like, so long as it is in accordance with procurement guidelines—which, to be fair, is what Mr Crimp said. Is that fair?

Ms COLIN: Yes.

The Hon. DANIEL MOOKHEY: You also have unlimited authority to hire whatever set of consultants, professional services or labour hire personnel you wish to, is that correct?

Ms COLIN: For so long as we would be within procurement guidelines and policies of the organisation and within the budget.

The Hon. DANIEL MOOKHEY: Yes, but—I am reading from the document—it does not seem to be as fettered as the others. It seems like you have whatever power you need to hire whatever consultants you would like, is that fair?

Ms COLIN: Yes.

Mr CRIMP: Can I just add to that? I do not think that is necessarily the case. I think there is a \$2 million limit in relation to consultants, labour hire or professional services.

The Hon. DANIEL MOOKHEY: I am reading from this document. It says "consultants—no limit—CEO".

Mr CRIMP: That was one of the changes, I believe, that the board requested as part of the stand-up to the initial adoption of that framework.

The Hon. DANIEL MOOKHEY: That happened last year, did it?

Mr CRIMP: Yes. It arose at the first consideration and then there was a report back to the board at a later stage.

The Hon. DANIEL MOOKHEY: Thank you, I appreciate that, Mr Crimp. To the best of your recollection, what other variations were made by the board to the delegations?

Mr CRIMP: One variation was in relation to vesting orders. Vesting orders were initially a board-reserved matter, but it became clear that there were routine vesting orders that did not need to go to the board, so the board made a sub-delegation to the chief executive to undertake and approve certain vesting orders.

The Hon. DANIEL MOOKHEY: Is that the only other one you can recall?

Mr CRIMP: No, there were others, but I—

The Hon. DANIEL MOOKHEY: Perhaps on notice?

Mr CRIMP: Pardon?

The Hon. DANIEL MOOKHEY: Perhaps on notice do you mind providing us with some further information as to what other variations were made by the board?

Mr CRIMP: Yes, I am happy to.

The Hon. DANIEL MOOKHEY: Thank you, Mr Crimp. That is just in respect to the delegations as they apply to operating expenditure. If I turn now to capital expenditure—which, let's be honest, is the core of what TAHE does, as you made clear in your opening statement—it says here that regarding approved expenditure of money in relation to capital expenditure funding you have no limit, Ms Colin. Is that your understanding?

Ms COLIN: Capital expenditure would be set within a budget, which is approved by the board and which is informed by a series of documents and plan provided by each of the operators and reviewed by TfNSW. This informs our plans.

The Hon. DANIEL MOOKHEY: But you have no limit.

Ms COLIN: Within that budget, which again has to be approved by the board, I have no limit.

The Hon. DANIEL MOOKHEY: That applies as well to any variations in a project, is that correct?

Ms COLIN: Any substantial variation to the project—again, I have just started my role—I think would need to be discussed at board level.

The Hon. DANIEL MOOKHEY: I appreciate that. The reason I ask this is because I am not aware of any person in the public sector who has this level of authority. Can you explain to us how this was created and what organisation this was benchmarked across? Do you have any information on that?

Ms COLIN: Again, I just joined the organisation, so I cannot comment on the formation of TAHE nor a benchmark with other organisations. I think these questions would be better directed to Treasury, who was intimately involved in the set-up of the organisation [disorder]—

The Hon. DANIEL MOOKHEY: That is an interesting question, Ms Colin. Was this decision made by Treasury or was it made by Transport?

The Hon. TREVOR KHAN: Point of order: It is my standard point of order with the Hon. Daniel Mookhey.

The Hon. DANIEL MOOKHEY: Yes, I get it. Don't worry.

The Hon. TREVOR KHAN: There have been repeated times where he has spoken over the witness. If he could just throttle it back by 10 per cent, it might make it easier.

The CHAIR: Perhaps, Mr Mookhey, a slightly longer pause to allow a witness to complete their thoughts.

The Hon. DANIEL MOOKHEY: I appreciate that, as always.

Mr CRIMP: Can I just add also that I believe the capital delegations were amended at the same time as the operating delegations. The same restrictions were in place in terms of both "within budget", "within plan" and "within procurement guidelines". If it was not within those limits or criteria, then there was a sub-delegation of I believe \$5 million, from memory.

The CHAIR: Mr Crimp, would it be possible for you to provide the current delegations with any amendments to the Committee?

Mr CRIMP: Yes, I have already taken that on notice.

The CHAIR: Thank you.

The Hon. DANIEL MOOKHEY: Ms Colin, before I perhaps rudely interrupted you, as my colleague pointed out, you were making a point that these questions were better directed to Treasury, to which I asked you, to the best of your knowledge, was it Treasury that determined this policy?

Ms COLIN: Again, I was not involved in the setting up of TAHE, so I cannot comment on who was involved in the development of that policy.

The Hon. DANIEL MOOKHEY: Sure.

The CHAIR: Mr Mookhey, I have just one question in relation to this issue.

The Hon. DANIEL MOOKHEY: Please.

The CHAIR: Ms Colin, the statement of corporate intent—which I am sure you are familiar with, is that right?

Ms COLIN: Yes.

The CHAIR: It provides:

TAHE adheres to a modified version of the *Commercial Policy Framework*, as agreed with NSW Treasury.

What are the modifications? Do they provide additional leniency from the usual strictures?

Mr CRIMP: I am happy to speak to that.

The CHAIR: I might ask Ms Colin first and then we will come to you, Mr Crimp.

Ms COLIN: I will direct that question to Mr Crimp, if that is okay.

Mr CRIMP: In terms of the modification of the commercial framework, there were certain items that Treasury deemed did not need to take place in the first year of operations. For example, we were exempt from quarterly reporting. There are other items that did apply on 1 July but there were others, as I said, that were exempt in the first 12 to 18 months.

The CHAIR: What were the exemptions, Mr Crimp? You would obviously be aware of them.

Mr CRIMP: Yes. There was the one I mentioned a moment ago in relation to quarterly reporting. There was another one with respect to State taxes. I would have to take on notice probably the other framework items that were exempt in the first year.

The CHAIR: Did any of them relate to delegations?

Mr CRIMP: I do not believe so.

The CHAIR: Sorry, Mr Mookhey.

The Hon. DANIEL MOOKHEY: That was actually my next topic, Mr Chair. However, before I complete this one I had a question for Mr Crimp, who was perhaps more involved in the establishment of TAHE. I have not come across any State-owned corporation that has had delegations policies that seem to be this loose. Can you shed any light as to who created this policy and how?

Mr CRIMP: There was an original draft that was presented to the board as part of the stand-up. I do not know the exact origin of that; it was probably through one of the project teams that were working on the stand-up. But as I said, the board modified those prior to adopting them.

The Hon. DANIEL MOOKHEY: I think you said that they modified them after adopting them, but it is fair to say they were modified. Did the board have any regard to ICAC's policy on procurement here, which contains multiple warnings about the dangers of unlimited delegations?

Mr CRIMP: I cannot speak for the board, sorry.

The Hon. DANIEL MOOKHEY: Did anyone in the TAHE organisation provide such advice to the board?

Mr CRIMP: I am not aware of that.

The Hon. DANIEL MOOKHEY: To the best of your knowledge, given TAHE was liaising heavily at the time with Transport and Treasury, did anybody in Transport or Treasury say that having the head of an organisation like this, which you have effectively described yourself as in start-up mode, to invest unlimited authority to acquire—subject to the parameters that you have stated—perhaps would breach some of ICAC's guidelines and policies?

Mr CRIMP: There were always the constraints around expenditure having to be within budget, for example.

The Hon. DANIEL MOOKHEY: Thank you. I will pause there, Mr Chair, and invite any other questions from our colleagues on this topic before we get to the one that you raised.

The CHAIR: No, you can proceed, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Thank you. You are a State-owned corporation, correct?

Ms COLIN: Correct.

The Hon. DANIEL MOOKHEY: As a result, the Treasury's Commercial Policy Framework [CPF] applies to you, is that correct?

Ms COLIN: Yes.

The Hon. DANIEL MOOKHEY: What is your understanding of what the Commercial Policy Framework is, Ms Colin?

Ms COLIN: Again, I just started in my role, so I am [inaudible] of being educated on these documents. I operate my role within the delegations that are given to me by the board and my shareholders. As I am not familiar necessarily with the extent of all documents, if it is okay I will take your questions on notice.

The Hon. DANIEL MOOKHEY: I understand that—

Mr CRIMP: I could answer that.

The Hon. DANIEL MOOKHEY: Just before we do, Mr Crimp, to follow up on Ms Colin's answer, I understand you say that you answer to your shareholders. Who are your shareholders?

Ms COLIN: Treasury and the Minister of finance.

The Hon. DANIEL MOOKHEY: Is it your understanding that the Treasury is the department that applies the Commercial Policy Framework?

Ms COLIN: Yes.

The Hon. DANIEL MOOKHEY: Mr Crimp, I think you wish to add some detail there?

Mr CRIMP: Yes. There was a series of Treasury policy papers [TPPs], as they are described, that constitute the Commercial Policy Framework. Some of those were deemed to apply on 1 July. Others, as I said earlier, were deferred given the set-up of TAHE.

The Hon. DANIEL MOOKHEY: Sure. Would you agree with me that the Commercial Policy Framework is a suite of policies that seek to replicate, within government business, disciplines and incentives that lead towards efficient commercial practices?

Mr CRIMP: That does not sound unreasonable.

The Hon. DANIEL MOOKHEY: Indeed. Can I just be clear here? When TAHE was being formulated inside both the Treasury and Transport, it was reasonably envisaged, was it not, that the Commercial Policy Framework would apply to TAHE on day one?

Mr CRIMP: With certain exemptions and exceptions based on the nature of the stand-up.

The Hon. DANIEL MOOKHEY: When did that caveat arrive, Mr Crimp? I am inspecting multiple documents from 2017 and 2018 that make it very clear that on day one TAHE was expected to be compliant with the Commercial Policy Framework. When did it change from "it should be compliant with the Commercial Policy Framework" to it should be compliant with the Commercial Policy Framework subject to the conditions you have just said?

Mr CRIMP: It was signed off in the original brief, which was the "TAHE_Tender_002" document that you distributed this morning.

The Hon. DANIEL MOOKHEY: Indeed. TAHE_Tender_002 is the brief that was signed by the Treasurer and the finance Minister as the two Ministers—actually, as your voting shareholders, but equally the Treasurer is the administrator of the Commercial Policy Framework. The Treasurer gave you this exemption from the Commercial Policy Framework on 29 June 2020. Is that your recollection?

Mr CRIMP: That is the date that one of the shareholders signed. The second one signed on the thirtieth.

The Hon. DANIEL MOOKHEY: Yes, the day before you came into existence, is that correct?

Mr CRIMP: Yes.

The Hon. DANIEL MOOKHEY: The day before you are created the Treasurer is already exempting you from governance policies, is that fair?

Mr CRIMP: There was certain—

Ms COLIN: That would be a—

Mr CRIMP: There were certain exemptions—

Ms COLIN: Sorry, I was going to say—

Mr CRIMP: Sorry.

The CHAIR: We will start with you, Ms Colin, and then we will go to Mr Crimp.

Ms COLIN: I was going to say that these questions would be better directed to Treasury, who actually was involved in the signing of these documents.

The Hon. DANIEL MOOKHEY: I am wondering whether or not TAHE or the interim TAHE team requested it. Mr Crimp, did any of the people involved in the transition team, I think it was called, request this exemption?

Mr CRIMP: I have no knowledge of that, no.

The Hon. DANIEL MOOKHEY: What was your understanding of the reasons why the Treasurer provided you with this exemption?

Mr CRIMP: In certain circumstances there were items that probably did not add value in the stand-up nature. Again, I could come back to quarterly reporting. That was an exemption for the first 12 months as TAHE went through that transition.

The Hon. DANIEL MOOKHEY: Is it the case that the Treasury exempted you because "requiring full compliance with the Commercial Policy Framework from 1 July 2020 would place an administrative burden on the interim board that would run counter to efficient commercial practices"?

Ms COLIN: Mr Mookhey, I do not think that is what Mr Crimp said.

The Hon. DANIEL MOOKHEY: No, I am not suggesting that he did. I am asking him now—and to be fair, Ms Colin, I am asking you. Was the actual reason—not the reasons Mr Crimp gave—that TAHE got this exemption that "requiring full compliance with the CPF from 1 July 2020 would place an administrative burden on the interim board that would run counter to efficient commercial practices"?

Ms COLIN: Again, I was not involved in the decision-making of this exemption, so I cannot comment on the intent. I would certainly refer you to my opening statement, which is that we are at the very beginning of a journey. We need to establish the appropriate systems and procedures to comply with this policy. I appreciate that it is the beginning of a journey.

The Hon. DANIEL MOOKHEY: Does Mr Crimp wish to perhaps provide any context to that question?

Mr CRIMP: You are quoting directly out of the document that was signed by the Treasurer.

The Hon. DANIEL MOOKHEY: I am.

Mr CRIMP: On the basis that that was in the document, I would have to agree.

The Hon. DANIEL MOOKHEY: So, Mr Crimp, it was not the reason that you gave. In fact, the inference that I am drawing from this—and please tell me if I am wrong—is that you were exempted from a powerful form of corporate governance that applies to every State-owned corporation because basically you were not ready to comply.

Mr CRIMP: No, I think if you read the full sentence, the preceding part of that quote that you gave us was that after establishment:

... TAHE's nature and functions will change significantly as it transitions to its full mandated scope.

Then it says, "Additionally, requiring". I think the context still stands that—

The Hon. DANIEL MOOKHEY: Please explain to me—

Mr CRIMP: —there is more than just the burden on the board.

The Hon. DANIEL MOOKHEY: I will take you at face value. Can you explain to me how have TAHE's nature and functions changed significantly in the last year?

Mr CRIMP: We have been through a transition from a public non-financial corporation [PNFC] to a State-owned corporation. That is in itself a transition.

The Hon. DANIEL MOOKHEY: But you are still exempt—

Ms COLIN: If I can—

The Hon. DANIEL MOOKHEY: Please, Ms Colin.

Ms COLIN: Sorry, if I can add to Mr Crimp's response, all the work that has been done in 2020 and 2021 was really embedding the operating model, which starts with an operating licence, which is granted by the transport Minister. That specifically articulates what we can do and what we cannot do, and it specifically articulates that we cannot be a rail operator nor a rail maintainer, under the Rail Safety National Law. We have a statement of expectation, which is also issued by the transport Minister, and over the course of the last few months TAHE entered into five key agreements that really embed its operating model. There was a track access agreement signed with Sydney Trains, NSW Trains and Transport for NSW. There is a licence and agency maintenance agreement which also has been signed with Transport for NSW, Sydney Trains and NSW Trains. These two agreements are key because they determine the revenue model of TAHE. As well as the project, property and development agreement, which looks after how we develop capital projects and property projects, and the corporate services agreement. So it is fair to say that the operating model of TAHE has significantly evolved since 1 July 2020.

The Hon. DANIEL MOOKHEY: I accept that you are implementing the model that you were meant to. Whether you consider that to be a change in function is a different question. But trust me, Ms Colin, we will turn to some of the matters that you raised later on. Mr Crimp, you made the point that you were exempted from the requirement to pay State taxes, is that correct?

Mr CRIMP: Yes, I think for the first 12 months there was an exemption as part of our stand-up in relation to State taxes, other than in areas where we leased or licensed properties—

The Hon. DANIEL MOOKHEY: We are talking about the tax equivalency regime, aren't we?

Mr CRIMP: No, I was talking about State taxes.

The Hon. DANIEL MOOKHEY: Which taxes are you exempt from?

Mr CRIMP: Land tax, for example.

The Hon. DANIEL MOOKHEY: Right.

Mr CRIMP: That was an exemption in our founding governance, except in the instance of—

The Hon. DANIEL MOOKHEY: Why were you given that exemption?

Mr CRIMP: Pardon?

The Hon. DANIEL MOOKHEY: Why did you need that exemption?

Mr CRIMP: I cannot comment on why we need it. I just know that that was part of the stand-up.

The Hon. DANIEL MOOKHEY: You have got billions of dollars' worth of land, don't you?

Mr CRIMP: Yes.

The Hon. DANIEL MOOKHEY: And you are exempt from paying land tax on it as a commercial enterprise now?

Mr CRIMP: No, only in the first 12 months, and where we derive revenue from that, in terms of leased or licensed premises to non-rail operations, then we are still liable for taxes.

The Hon. DANIEL MOOKHEY: You are paying land tax from this year, are you?

Mr CRIMP: That same exemption is actually carried forward.

The Hon. DANIEL MOOKHEY: When are you going to be paying land tax?

Mr CRIMP: We are paying land tax but only on a limited category of our portfolio.

The Hon. DANIEL MOOKHEY: When will you be paying land tax on all of your portfolio?

Mr CRIMP: That is still 18 months away, I believe.

The Hon. DANIEL MOOKHEY: Why is that?

Mr CRIMP: Some of it comes back to the ability to get valuations of some of that land from the valuation office.

The Hon. DANIEL MOOKHEY: What do you mean [disorder]—

The Hon. JOHN GRAHAM: Can I just ask what the value of that exemption is over each fiscal year it is in place?

Mr CRIMP: I have not quantified that value.

The Hon. JOHN GRAHAM: Will you give us a ballpark figure, firstly?

Mr CRIMP: No, I would be speculating at this stage.

The Hon. JOHN GRAHAM: Will you take that on notice?

Mr CRIMP: Yes.

The CHAIR: Mr Crimp, the statement of corporate intent states that the land values for the rail operations are some \$11.1 billion and the land for other property portfolios is \$300 million. Is that statement of corporate intent accurate?

Mr CRIMP: It would have been at the point in time.

The CHAIR: So you should be readily able to determine the land tax, given that you have the values set out in the statement of corporate intent.

Mr CRIMP: That may not be the same value, though, that the Valuer General holds in their records.

The Hon. DANIEL MOOKHEY: The Valuer General's records are public. I could find out what the value of your land is right now. Really, what is the issue that you have in getting your land valued?

Mr CRIMP: It is aligning the portfolios and the titles with the Valuer General information.

The Hon. DANIEL MOOKHEY: But Mr Crimp and Ms Colin, given that your core purpose is to hold assets and one in four of the assets you own is land, are you seriously telling us you do not know what the land portfolio is worth for the purposes of land tax?

Ms COLIN: The way we—

Mr CRIMP: I—

Ms COLIN: Sorry, Mr Crimp. Go ahead.

Mr CRIMP: We know what the value of the land is. It is valued regularly as part of our normal financial statement preparation, but in terms of—

The Hon. DANIEL MOOKHEY: Is the actual—sorry, Mr Crimp. There was a delay; I thought that you had stopped.

The CHAIR: But, Mr Mookhey, not quite long enough a delay. Mr Crimp, we might just allow you to answer it and then, Ms Colin, if you wish to add anything at the end the opportunity will be available for you to do so. Mr Crimp.

Mr CRIMP: As I said, we have valuations of our land for the purposes of our financial statements. There is an exercise underway matching that on a title-by-title with the information that the Valuer General has in their records.

The Hon. DANIEL MOOKHEY: Is the actual reason why you were given this exemption that if you had to pay land tax then you would have to pass it on to your customers, would you not?

Mr CRIMP: It would depend, under the leases Act, whether or not there had been sufficient notice provided to those rental customers under the lease.

The Hon. DANIEL MOOKHEY: No, I am not just talking about the rental customers. You would have to recover the full economic value of that land and the tax, and you would have to charge NSW Trains and Sydney Trains more, would you not?

Mr CRIMP: I do not believe we would be charging them any more. The lease and licence arrangements would already reflect that.

The Hon. DANIEL MOOKHEY: No, but IPART would consider that a cost that needs recovery, would it not?

Ms COLIN: It depends which matter, which rail agreements and which type of assets you would consider, Mr Mookhey. Are you talking about regulated assets or unregulated assets?

The Hon. DANIEL MOOKHEY: Both, actually. But to be very clear, I just want to put this to you and you can deny it if you disagree: Was the actual reason you were given this exemption that in its absence you would have to recover this cost from your main customers, which would have impacted on the State's budget?

Mr CRIMP: No, I do not believe that is a correct statement.

The Hon. DANIEL MOOKHEY: Okay. Was all the land subject to evaluation by Jones Lang LaSalle?

Mr CRIMP: No, the valuation was done by Colliers and there was another firm that looked at the land valuation in the country rail network. I do not recall their name.

The Hon. DANIEL MOOKHEY: Did they tell you what the value of the land tax exemption was?

Mr CRIMP: That was not part of their mandate. They were asked to value it in accordance with accounting requirements.

The Hon. DANIEL MOOKHEY: Okay, I will move on from that. I might just pause there and ask if any of my colleagues have any questions on these matters.

Ms ABIGAIL BOYD: If you do not believe that the land tax exemption was given in order for you not to have to pass it on to entities that would end up having to pay it, so it would appear on the budget, then why do you think that the land tax exemption was given?

Mr CRIMP: Probably more for administrative reasons in terms of having been able to match the respective land values with the Valuer General.

Ms ABIGAIL BOYD: Will you explain that a bit more? What do you mean by that?

Mr CRIMP: There is a piece of work that is required and is underway to validate the land for the purposes of land tax.

Ms ABIGAIL BOYD: So it was too difficult to work out the value, and so that is why you are not taxed.

Mr CRIMP: It was probably lack of information more than—and difficult, based on the information available.

Ms ABIGAIL BOYD: No-one else gets that sort of exemption when it is difficult to value a thing. Does that not strike you as unusual?

Mr CRIMP: That was already in the founding legislation, so it was recognised, I think, at the time that there were implementation issues.

The Hon. DANIEL MOOKHEY: When your assets were owned by RailCorp, why did they not know the value of this in line with the Valuer General evaluation?

Mr CRIMP: RailCorp was exempt from land tax.

The Hon. DANIEL MOOKHEY: Fair enough. I want to ask some questions about your finances, if you do not mind. Is it the case that you expect Sydney Trains and NSW Trains to be your biggest customers?

Ms COLIN: As I noted before, we have entered into track access agreements and licence and agency agreements with Sydney Trains and NSW Trains. That is correct.

The Hon. DANIEL MOOKHEY: Yes, but the question specifically is: Do you consider them to be your biggest customers?

Ms COLIN: They would be driving a significant portion of our revenues, yes.

The Hon. DANIEL MOOKHEY: How much of your revenue do you think they would be driving?

Ms COLIN: I cannot second-guess but it would be, as I said, of very significant importance for our revenues.

The Hon. DANIEL MOOKHEY: Mr Crimp?

Mr CRIMP: At the moment it would probably be around 90 per cent.

The Hon. DANIEL MOOKHEY: So 90 per cent of your revenue is coming from two customers, NSW Trains and Sydney Trains.

Ms COLIN: As part of our revenue sources, yes, but we also have revenue from other infrastructure assets and revenues from property and retail.

The Hon. DANIEL MOOKHEY: Sure. I accept that, Ms Colin, thank you. But it is the case that we are talking about 90 per cent coming from just two of these customers. How do you decide how to charge them?

Ms COLIN: There is a methodology under the track access agreement for which we followed the IPART methodology. The same methodology, even though not mandatory, has been applied for the licence, agency and maintenance agreement.

The Hon. DANIEL MOOKHEY: So to paraphrase—and tell me if I have got this wrong—you have basically mimicked what you think IPART would say you should charge them.

Ms COLIN: I did not say "mimic", but—

The Hon. DANIEL MOOKHEY: True, but I am asking you.

Ms COLIN: I said—for the track access agreement, we have to comply with the methodology which is recommended by IPART. For the unregulated assets which are the subject of the licence, agency and maintenance agreement, we followed the same methodology.

The Hon. DANIEL MOOKHEY: You followed the same methodology. Thank you; that clears that up. Did you obtain any consultant support to help you follow that methodology?

Ms COLIN: I was not involved in that process, so I might direct the question to Mr Crimp.

Mr CRIMP: Sorry, could you repeat the question, please?

The Hon. DANIEL MOOKHEY: Did you utilise any consultants to assist you with following the IPART methodology?

Mr CRIMP: There was some assistance as part of a broader engagement around the construction of what a building-block approach would look like with respect to both the return of and return on assets.

The Hon. DANIEL MOOKHEY: Which consultant?

Mr CRIMP: When Boston Consulting Group [BCG] were engaged, they provided some insight into that—

The Hon. DANIEL MOOKHEY: Yes, we will get to the BCG engagement.

Mr CRIMP: —in conjunction with our own people. And then there is an access model that has been updated, and that was done with some consultants as well.

The Hon. DANIEL MOOKHEY: Who were those consultants?

Mr CRIMP: That was KPMG.

The Hon. DANIEL MOOKHEY: When was KPMG providing you with that model? What did you call it, Mr Crimp?

Mr CRIMP: An access costing model.

The Hon. DANIEL MOOKHEY: When did KPMG provide you with the access costing model?

Mr CRIMP: It would have been in the first six months of 2021.

The Hon. DANIEL MOOKHEY: Who from KPMG did that?

Mr CRIMP: As in names?

The Hon. DANIEL MOOKHEY: Yes, please. The lead partner.

Mr CRIMP: The lead partner on that was Heather Watson.

The Hon. DANIEL MOOKHEY: How was Heather Watson chosen?

Mr CRIMP: In prior years KPMG had developed a model for the TAHE project team that would have helped inform some of that activity. The model was already established, and it was getting KPMG to update that with the most recent information.

The CHAIR: Mr Crimp, will you be a little bit more specific about when that was provided? You said the first six months of this year; we are only talking about very recent history. Could I ask you to be more specific?

Mr CRIMP: Sorry, I meant this calendar year.

The CHAIR: Yes, so when you say the first six months of this calendar year, we are still talking about very recent history. I think it would assist the Committee if you could be more specific.

Mr CRIMP: I do not recall the exact start date of that exercise; I would have to take that on notice.

The CHAIR: When was it delivered, Mr Crimp?

Mr CRIMP: Again I will have to take that on notice. It was around the May time frame, I believe, but I will take that on notice.

The Hon. DANIEL MOOKHEY: So let me just be clear about the timetable. Firstly, was Ms Watson the first KPMG partner to assist you with the access model?

Mr CRIMP: No.

The Hon. DANIEL MOOKHEY: Who was?

Mr CRIMP: I do not recall who the lead partner was in the previous engagement.

The Hon. DANIEL MOOKHEY: Sure, and so that lead partner stopped. Do you recall when that person ceased?

Mr CRIMP: It was a one-off exercise done in earlier years.

The Hon. DANIEL MOOKHEY: Was it performed between 1 July 2020 and 31 December 2020?

Mr CRIMP: No, the model was originally developed in—I would be speculating. Let me take on notice when the original model was developed.

The Hon. DANIEL MOOKHEY: I am speaking specifically about TAHE, not Transport. Between 1 July 2020 and 31 December 2020, do you have any recollection as to who the lead partner was from KPMG who was assisting TAHE with the development of the access model?

Mr CRIMP: In that time frame, as I said, it was under the supervision of Heather Watson.

The Hon. DANIEL MOOKHEY: You never actually told us how Ms Watson was selected by TAHE.

Mr CRIMP: It was on the basis that they had already developed a model, and it was sensible to continue to use that model and get it updated to reflect the needs going forward.

The Hon. DANIEL MOOKHEY: Did Ms Watson obtain this work without a tender?

Mr CRIMP: That would have been sole-sourced, yes.

The Hon. DANIEL MOOKHEY: Why has Ms Watson's engagement by TAHE not been published on the contracts register?

Mr CRIMP: I believe that engagement has been.

The Hon. DANIEL MOOKHEY: I could not see it. Could you provide us the date it was published and perhaps if you are aware of the date it was taken down, if it is the case that it has disappeared? All the TAHE contracts did not appear. How much was Ms Watson paid by TAHE?

Mr CRIMP: I will have to take that on notice.

The Hon. DANIEL MOOKHEY: Do you have an estimate as to the range?

Mr CRIMP: Not off the top of my head, no. I will take that on notice.

The Hon. DANIEL MOOKHEY: Did anybody from Treasury tell you to hire Ms Watson?

Mr CRIMP: No.

The Hon. DANIEL MOOKHEY: Did anyone from Treasury make any reference to Ms Watson to TAHE or its board?

Mr CRIMP: In relation to that piece of work?

The Hon. DANIEL MOOKHEY: Yes.

Mr CRIMP: No.

The Hon. DANIEL MOOKHEY: Did you ever check whether Ms Watson had any relevant conflicts of interest?

Mr CRIMP: In relation to this particular exercise?

The Hon. DANIEL MOOKHEY: Yes, because these are the crucial aspects of the model that determines how much you charge. Did you ever check whether Ms Watson had any conflicts of interest, especially with Treasury?

Mr CRIMP: I do not recall.

The Hon. DANIEL MOOKHEY: Is it the case that Ms Watson was also engaged in providing advice to Treasury at the same time?

Mr CRIMP: She was providing accounting advice, I believe, yes.

The Hon. DANIEL MOOKHEY: So, at the same time Ms Watson was advising Treasury on the accounting treatment, she was advising you on how much to charge NSW Trains and Sydney Trains.

Mr CRIMP: They were updating a model that had previously been developed by KPMG.

The Hon. DANIEL MOOKHEY: Sure, but I am putting it to you: From 1 July 2020 you became an independent organisation that is meant to be independent of government. You never checked to see whether Ms Watson had a conflict of interest, given that she was engaged by Treasury. To be fair to Treasury, they have described her in budget estimates as a consultant hand-picked by them. You have also sole-sourced her. Does that not strike you as being potentially a conflict of interest?

Mr CRIMP: The nature of the work, in terms of updating the model, was done by other KPMG staff that were familiar with that from previous activities. That is why they were selected.

The Hon. DANIEL MOOKHEY: Who actually signed off on that decision? Was that a decision made by the CEO or the board of TAHE?

Mr CRIMP: I believe it would have been the CEO.

The Hon. DANIEL MOOKHEY: Which one of the three?

Mr CRIMP: It would have been the first CEO.

The Hon. DANIEL MOOKHEY: Is that Anne Hayes?

Mr CRIMP: Yes.

The Hon. DANIEL MOOKHEY: Thank you. How much are you charging Sydney Trains and NSW Trains this year?

Ms COLIN: Mr Mookhey, our agreements are under review at the moment as part of our audit, so I am afraid it would not be appropriate to answer that question. We will take it on notice, if that is okay.

The Hon. DANIEL MOOKHEY: I welcome that, Ms Colin. I will just read from your statement of corporate intent. If you have it with you, I am reading from page 6. It says that in accordance with the agreement that you have signed with the Treasurer and the finance Minister, your earnings before interest, tax, depreciation and amortisation [EBITDA] this year is meant to be \$779.3 million. Is that your understanding?

Ms COLIN: Yes.

The Hon. DANIEL MOOKHEY: Are you on track for that figure?

Ms COLIN: As I have mentioned before, we have entered into two key agreements with Sydney Trains and NSW Trains and Transport for NSW, which are the track access agreements—which generate revenue for access to our tracks—as well as the licence, agency and maintenance agreements, which generate revenue from licensing unregulated assets such as stations and rolling stock, for instance. So, yes, we are on track.

The Hon. DANIEL MOOKHEY: Great. I will just do some back-of-the-envelope calculations. Given that Mr Crimp has said that you expect 90 per cent of your earnings to be coming from those two customers—granted, revenue is not the same as EBITDA, which is lower than revenue—we can infer from that that you are likely to be collecting close to \$750 million from just those two entities. Correct?

Ms COLIN: Yes.

The Hon. DANIEL MOOKHEY: And the following year, 2022-23, you are expecting to realise almost exactly the same levels of earnings. That is, this year you are expected to earn \$779.3 million and then next year you are meant to earn \$779.6 million. It is basically the same, correct?

Ms COLIN: Yes.

The Hon. DANIEL MOOKHEY: So we can infer that therefore the charges that you are applying for them, which I presume stem from your choice to follow the IPART methodology, lead to the conclusion that they have to pay circa \$700 million to \$750 million for the next two years. Is that correct?

Ms COLIN: That will depend on our capital base and capital program, but yes.

The Hon. DANIEL MOOKHEY: But it is not an unreasonable inference, is it?

Ms COLIN: No.

The Hon. DANIEL MOOKHEY: Thank you. What happens in the years after that?

Ms COLIN: The track access agreement will build, as I said, on the methodology of IPART and our capital base. That will depend on the capital programs which will be approved by TAHE.

The Hon. DANIEL MOOKHEY: Indeed, but the access model that Mr Crimp was describing allows you to forecast how much you will be charging those two entities in the succeeding years. What does that model say NSW Trains and Sydney Trains should be paying you?

Ms COLIN: Again, the methodology is based on our capital programs and informed the capital programs by NSW Trains and Sydney Trains, on which we will be paying charges, so it will be updated. Mr Crimp, would you mind providing an answer in terms of how the adjustment works based on our capital base?

Mr CRIMP: And can I just clarify that the KPMG access pricing model looks at what the floor is and what the maximum allowable revenue is. It does not stipulate a price. The price was a negotiated price based on an agreed methodology, so the model itself does not generate an answer in terms of pricing. But our methodology was to look at our existing assets and look at the return of and return on those assets, and then also factor in over the forward estimates what the incremental investment is in both regulated and unregulated assets, which in turn attracted a fee and charge for that future investment.

The Hon. DANIEL MOOKHEY: Thank you, Mr Crimp. I appreciate that. Trust me; we will get to that access methodology and the difference between your floor and ceiling price shortly. In your statement of corporate intent, on page 7, it says that you are meant to have satisfactory completion of a 10-year strategic business plan by 1 July 2021. Do you have your 10-year strategic business plan in place?

Ms COLIN: It is in the process of being adopted by the board. Yes, that work is well progressed.

The Hon. DANIEL MOOKHEY: That plan would therefore tell you how much you will be charging those two entities in the years going forward, given that they are massively, by far, your biggest customers. For the last time before I pass to my colleagues: Do you wish to tell us what will happen in terms of how much Sydney Trains and NSW Trains will pay you when we get beyond the forward estimates?

Ms COLIN: As I repeated before, our financial statements are currently being audited. They are informed by our business plan, so there will be an estimate in our next statement of corporate intent. The amount of charges will be reviewed regularly based on the capital programs that are being developed.

The CHAIR: Whilst we are on the statement of corporate intent, Ms Colin and Mr Crimp, would you agree that complying with that is essential for your organisation? It is not negotiable; you have to comply with it.

Ms COLIN: Yes.

The CHAIR: Will you tell me the key risks and emerging contingent liabilities that you determined could materially impact the current and future results of TAHE?

Ms COLIN: Transport Asset Holding Entity is a State-owned corporation, and so it derives revenue from a range of customers. We have mentioned the two big ones, which are NSW Trains and Sydney Trains, so it is essential that we enter into firm agreements with those two customers. We also have revenues from other infrastructure assets and third-party operators on our tracks, which we need to firm up, as well as revenue derived from our retail. Any major amendments to this agreement would have an impact on our revenues.

The CHAIR: So they are risks because you have a narrow customer base. Is that one of your points? Is that what you are trying to describe, Ms Colin?

Ms COLIN: I am saying that it was very important as part of the development of the operating model that we firmed up these agreements with NSW Trains and Sydney Trains.

The CHAIR: Ms Colin, you are required under the statement of corporate intent to fully disclose all of the known key risks and emerging contingent liabilities. I have not seen that done anywhere. Will you please now fully disclose all known key risks and emerging contingent liabilities? In doing that, will you tell us who you have disclosed them to so far?

Ms COLIN: Sorry, I will have to take that question on notice. We are in the process of developing our enterprise risk agreement and our risk management frameworks. That work is certainly underway, and we intend to report it when we are in a position to do so.

The CHAIR: Ms Colin, they were required to be disclosed last financial year under the statement of corporate intent. I accept it was before your time, so I will go to Mr Crimp. Your organisation was required to fully disclose all emerging contingent liabilities last financial year. Mr Crimp, I am asking you now: What are they?

Mr CRIMP: We disclose contingent liabilities as part of our annual report each year. One contingent liability that does get signalled in there is the risk of contamination across our network. In our half-year we also identified that COVID represented a risk to our future revenue streams, and that will also be incorporated into our financial statements as a risk as well.

The CHAIR: Have you disclosed as one of your risks what was identified by the Auditor-General—that there is an inherent conflict between the objectives of a commercial return and maintenance and safety measures? Have you addressed that?

Mr CRIMP: That is one of the steps we have taken to address the four recommendations from the Auditor-General. As you will be aware, we appeared at the Public Accounts Committee a fortnight ago and spoke

to progress that had been made against those four recommendations and have, from our perspective, met the needs and the requirements of those recommendations.

The CHAIR: I ask you, Mr Crimp, to provide with some specificity where it is that you have fully disclosed the key risks and emergent contingent liabilities. Will you provide details of those key risks and emergent contingent liabilities to the Committee, other than the general terms in which you have just spoken then about COVID and the like?

Mr CRIMP: Those are, from our perspective, the key risks.

The CHAIR: That is it—COVID and that you have a narrow customer base. You say that is complying with the statement of corporate intent. Is that seriously your answer, Mr Crimp?

Mr CRIMP: And contamination.

The CHAIR: And contamination. You are holding \$40 billion of assets in a highly politicised environment, where you did not have agreements even with your key customers. There are major tax considerations going forward. You do not have an answer on land tax, and none of that is being put forward in your answer about fully disclosing contingent liabilities and key risks. None of that is part of it. Is that right?

Ms COLIN: Can I answer that question, Mr Shoebridge?

The CHAIR: Please do, Ms Colin.

Ms COLIN: As I said, I just joined the organisation a month ago. But I can tell you in the month since I joined the organisation we are in the process—and perhaps from your perspective it is late in the process—of adopting a risk assurance framework which identified in much more granularity the risks that the company might be exposed to. That risk assurance framework is not yet completely approved and developed, so it would be premature for me to comment. But I can reassure you that that process is underway.

Ms ABIGAIL BOYD: I was just going to jump in there on the maintenance aspects. In regard to maintenance, TAHE is ultimately responsible for the maintenance of the assets. Is that correct?

Ms COLIN: Transport Asset Holding Entity is not ultimately responsible for the maintenance of the assets. The ongoing maintenance is the responsibility of accredited parties such as Sydney Trains and NSW Trains but the debt for maintenance rests with Transport for NSW, and Transport for NSW is responsible for making sure that any critical safety items resulting from maintenance is funded. We do not have responsibilities over budget of maintenance, and that is to comply with our operating licence.

Ms ABIGAIL BOYD: Just to clarify, Transport for NSW is responsible for identifying the maintenance required. Is that correct?

Ms COLIN: That is not what I said. If I said it, I take it back. Sydney Trains and NSW Trains, which are the accredited party for the maintenance of the tracks and the networks, are responsible for developing their asset management plans, the maintenance requirements and funding requirements over maintenance.

Ms ABIGAIL BOYD: Who is responsible for determining how much money is spent on maintenance?

Ms COLIN: Sydney Trains and NSW Trains would come to Transport for NSW, and Transport for NSW is responsible for seeking the appropriate funding for the maintenance of these assets.

Ms ABIGAIL BOYD: Does TAHE pay for the maintenance of any of the assets in any way, through any arrangement?

Ms COLIN: For regular maintenance, it does not—not for the assets that are the subjects of the operation of the networks. We pay maintenance for our property portfolio, which is retail, for instance.

Ms ABIGAIL BOYD: Okay. If there is a maintenance issue then from a TAHE perspective, although you are the owner of the assets, the maintenance cost is not something that is borne directly by TAHE. Is that what you are saying?

Ms COLIN: Yes.

Ms ABIGAIL BOYD: Thank you.

The CHAIR: I have one question on that, and then I will hand to Mr Mookhey to take us through to the end. The Auditor-General describes those arrangements as legacy arrangements in the context where there were no access fees being paid by Sydney Trains. Mr Crimp, is it fair to describe those maintenance arrangements as legacy arrangements flowing from the arrangements that have been in place with RailCorp?

Mr CRIMP: That is not a phrase I would have heard or used in relation to that.

The CHAIR: I will read from the Auditor-General's report, which I am surprised you have not read, Mr Crimp. It says:

However, current legacy arrangements from RailCorp have transitioned to TAHE, where no network access fees are paid by these rail operators. Maintenance expenses for the TAHE rail assets continue to be paid by the public rail operators.

Are you saying that is the first time you have read or heard that report from the Auditor-General?

Ms COLIN: Can I just point out that the report from the Auditor-General was issued at the back of 2020. We have now entered into new agreements with Sydney Trains, NSW Trains and Transport for NSW.

The CHAIR: Thanks, Ms Colin. Mr Crimp, could you answer my question?

Mr CRIMP: On 1 July 2020 the rail services contract that was in place between Transport, RailCorp and Sydney Trains continued in its present form. The recommendation from the Auditor was that we get commercial agreements in place, which have now been done, effective 1 July 2021.

The CHAIR: So now that access fees are being paid, are Sydney Trains paying both access fees and the maintenance costs to TAHE? Is that what the arrangements are now?

Mr CRIMP: They do not pay maintenance to TAHE.

The CHAIR: Are they undertaking maintenance expenses? Sorry, Mr Crimp, they are paying access fees for your assets.

Mr CRIMP: Yes.

The CHAIR: But they are also paying to maintain your assets. They are double-paying.

Ms COLIN: They are not double-paying. They are not paying maintenance to TAHE. That is what Mr Crimp is saying.

The CHAIR: No, they are paying to access your assets and they are also paying to maintain your assets. They are paying the expenses themselves to maintain your assets. They are double-paying you.

Mr CRIMP: That is not correct. In terms of the building-block model that we developed, it takes into account the fact that they are paying the direct costs which they are funded for. The access charges that are generated by TAHE only relate to the depreciation on that asset—so the return of the asset and the return on, not the direct cost of maintaining or operating those assets.

The Hon. DANIEL MOOKHEY: I might direct this to Mr Crimp, given that he raised the issue of the floor price and the ceiling price before. Can I just refer you to what I have labelled "TAHE_Tender_003", which is KPMG's *TAHE: Long-Term Operating Model Assessment*, dated 8 November 2020? If you go to page 5, it says this at the top:

Access fees will be negotiated between TAHE and the operators, in future years. In the interim, KPMG have calculated a floor and a ceiling and NSW Treasury have recommended an assumption that they will commence at \$700m pa for FY21/22 to FY23/24—

that probably clarifies the point you were making before; Treasury basically said that that was going to be the policy—

—then increase onwards. Notably, KPMG estimates show that TAHE is non-compliant with the floor test in FY21, subject to IPART determination.

KPMG then goes on to say that you should be charging these two customers a minimum of \$1.4 billion, not \$700 million, or a maximum of \$4.3 billion. KPMG then goes on to say:

The introduction of access charges to the public operators is the key reason for the deterioration of estimated budget performance under both TAHE scenarios.

You are undercharging your customers, are you not?

The CHAIR: I think that is first to you, Ms Colin, and then to you, Mr Crimp.

Ms COLIN: Sorry, I just had a network break for five seconds, so I did not hear Mr Mookhey. I am really sorry.

The Hon. DANIEL MOOKHEY: Mr Crimp, then. Can you answer? You are undercharging your customers by \$700 million a year, or \$3.5 billion, are you not?

Mr CRIMP: No. If you look at that report, there are differences between the KPMG calculation and the Treasury calculation, both as to what the return on equity [ROE] should be and what the rate of return should be.

The Hon. DANIEL MOOKHEY: Indeed, and we will be pursuing that this afternoon, but basically—

The Hon. TREVOR KHAN: Point of order—

The CHAIR: Mr Mookhey, I do not think Mr Crimp had finished, so we will let Mr Crimp finish.

The Hon. DANIEL MOOKHEY: I apologise.

Mr CRIMP: I would suggest you could discuss that with Treasury, because there was a difference of opinion between Treasury and KPMG in relation to the basis of charges in that report.

The Hon. DANIEL MOOKHEY: Treasury has created this policy in order to minimise the impact on the State budget, has it not?

Ms COLIN: I would not comment on Treasury's intention in terms of creating the policies.

The Hon. DANIEL MOOKHEY: But I want to put this to you: The reason why you are—certainly according to KPMG—undercharging your customers by what could be potentially billions of dollars is that if you charged them the full price then it would destroy the State budget, would it not?

The Hon. TREVOR KHAN: Point of order: These witnesses have come along voluntarily. They are giving evidence as to what they know.

The CHAIR: Mr Khan, I get the thrust of your point of order and I think it is fairly made. I do not think that the witnesses can give an answer about the overall impact on the State budget.

The Hon. DANIEL MOOKHEY: I will move on. Ms Colin, we will conclude with this. You made reference to the five agreements that you have entered into and you have helpfully described them in your submission, which I appreciated. I will read from page 10 of your submission. At 2.6.4, you say that you have entered into a deed with Transport for NSW for property and development:

This deed deals with the ongoing roles and responsibilities of TfNSW and TAHE with respect to capital projects, which are characterised as either in-flight projects or future projects.

On page 11 you then go on to say that you have entered into a corporate services agreement with Transport for NSW and Sydney Trains and that this is for the delivery of corporate services by Transport for NSW and Sydney Trains to TAHE. You then go on to say:

The Services Agreement is between Sydney Trains and NSW Trains and details the arrangements under which Sydney Trains and NSW Trains will provide various services to each other, in particular Rolling Stock Maintenance ...

Basically I can infer from this that your customers are helping you provide your own corporate services. Transport is helping you to control your property portfolio. As you rightly pointed out, you are not responsible for maintenance. I have the impression that you are not an independent business at all, and in fact every single policy suite that has been created has been created so the Government keeps control of your organisation. Would you like to respond?

Ms COLIN: Thank you for the question. Yes, I think TAHE has been established to be a State-owned corporation. It has an independent board, as you would know, with a majority of independent directors. It provides a level of independence in terms of the decision-making that we have under the regulated assets. As I pointed out in my opening statement, we provide a certain level of assurance on our regulated asset base. We have three sources of revenue, which we have discussed at length in the previous hour: revenues from our regulated assets, revenue from our infrastructure assets and revenue from our property portfolio. The reason I joined TAHE is because I think there is a massive opportunity with a property portfolio which has not been unlocked. Those revenues have not yet been identified in terms of the statement of corporate intent but we will develop additional revenues from this property portfolio, which we will reinvest in the networks. There are opportunities around precincts where we can generate much more revenue than has been done in the past. To answer your question: I believe we have independence, and that is the reason that I came to it.

The CHAIR: Thank you, Ms Colin. Unfortunately, we have run out of time for this session. Ms Colin, you have a monumental task in front of you. One month into it, we all wish you well.

(The witnesses withdrew.)

(Short adjournment)

TRUDI MARES, Deputy Secretary, Corporate Services, Transport for NSW, sworn and examined

JOHN HARDWICK, Executive Director, Asset Management, Safety, Environment and Regulation, Transport for NSW, sworn and examined

MATT LONGLAND, Chief Executive, Sydney Trains, sworn and examined

The CHAIR: I welcome everybody back to this next session of the Public Accountability Committee's review into what is known as TAHE. We have a series of witnesses from Transport for NSW. Thank you all for your attendance today. There is an opportunity, should you wish to avail it, of making a brief opening statement. Do any of you wish to take that opportunity?

Ms MARES: Thank you, yes. I would appreciate that. Shall I proceed?

The CHAIR: Yes. Proceed, Ms Mares.

Ms MARES: I thank the Committee for the opportunity to provide this opening statement on behalf of Transport. The New South Wales Government is delivering over \$72 billion worth of transport projects for the people of New South Wales. This scale of delivery requires contemporary operating models with clear objectives and mandates that ensure customers and communities remain our focus. The establishment of TAHE puts in place new arrangements for transport asset management in New South Wales that reflect modern governance practices. Clear accountabilities and responsibilities across Transport for NSW, Sydney Trains, NSW TrainLink and TAHE have been established through detailed and extensive collaboration.

TAHE has been given a very specific role in the New South Wales rail system and it has been established as a strategic asset manager. While Transport is not able to speak to issues relating to TAHE entity classification, accounting standards or fiscal objectives, we can provide strong assurances in regard to safety, operations, asset management and maintenance. Transport remains accountable for the long-term transport strategy, including heavy rail projects. Sydney Trains and NSW TrainLink continue as operators of public passenger services. Public transport fares will continue to be set by government and are not, and will not be, within TAHE's mandate.

TAHE will not be an operator or have responsibility for operations of the heavy rail network or services or undertake maintenance. The safety of our rail service has been first and foremost in the development of an operating model with TAHE. Importantly, TAHE's legislative objectives place equal importance on safe and reliable operations as against other objectives. Passenger safety is protected in a range of ways. Sydney Trains continues to take responsibility for safety relating to the core operational assets that it accesses from TAHE to deliver its services. Accordingly, as the accredited rail transport operators under the Rail Safety National Law, Sydney Trains and NSW TrainLink make the decisions for all maintenance of railway infrastructure and rolling stock requirements to ensure safety.

Transport is obligated to provide TAHE an annual attestation that an asset management plan is in place which ensures that the maintenance and safety standards of assets will be maintained. The Office of the National Rail Safety Regulator continues to have oversight of regulatory arrangements for rail assets and has been engaged throughout. Transport has recently been collaborating with the Office of Transport Safety Investigations and providing detail on the safety, asset management and maintenance arrangements implemented between Transport rail operators and TAHE.

Just finishing off, there are four other ways that passenger safety is protected that I would like to highlight. The first of those is that the Transport secretary not only retains his directional powers over Sydney Trains and NSW TrainLink but also takes a seat on the board of TAHE. This ensures a coordinated approach to safety discussions. The second is the operating licence. That is a significant safety protection. TAHE is required to comply with that licence that is issued by the Minister for Transport and Roads. The third significant safety protection is the Statement of Ministerial Expectations, also issued by the Minister for Transport and Roads. The statement requires that the TAHE board has assurance that effective safety environment and asset management is in place, meeting all standards, and annual reporting is provided to the Minister.

The fourth significant safety protection is that, like all State-owned corporations, the portfolio Minister, being the Minister for Transport and Roads, is able to issue a binding direction to the board to take certain identified action in the public interest, and this is a significant power. In closing, TAHE, Transport and the public rail operators have from 1 July 2021 entered into a range of agreements. The agreements support Transport, TAHE, Sydney Trains and NSW TrainLink to meet their legislative objectives and obligations and provide a foundation for working together. Transport's strong focus on safety across all parts of transport does not change. Thank you, Chair.

The CHAIR: Thanks, Ms Mares. Does either of the other two witnesses wish to make any brief opening statement?

Mr HARDWICK: Not at this time.

The CHAIR: This is the one chance. Mr Longland? I will now hand over to the Hon. Daniel Mookhey to commence the questioning.

The Hon. DANIEL MOOKHEY: Thank you, Chair. Firstly, can I thank all the witnesses for taking the time to join us this morning. I want to start by establishing some basic information about each of you. Ms Deputy Secretary, I will address all questions at you at first instance, as is protocol, if you do not mind, unless you tell me otherwise. Ms Mares, how long have you been responsible for TAHE?

Ms MARES: Thank you for the question, Mr Mookhey. I commenced in this role on 1 September this year, or a little over a month ago. My role is threefold. I am on the executive committee at Transport. My team has been part of the coordination groups from a legal perspective and otherwise in preparing the agreements with TAHE and, thirdly, we service TAHE through a corporate services agreement.

The Hon. DANIEL MOOKHEY: Indeed. Prior to your appointment as deputy secretary on—was that, 1 September?

Ms MARES: Yes.

The Hon. DANIEL MOOKHEY: Were you involved in TAHE in any capacity prior to that?

Ms MARES: I have been with Transport for five years. I was heading up the shared services area so my only interface with TAHE prior would have been in developing the shared services arrangements.

The Hon. DANIEL MOOKHEY: So basically you have only been in this role for a month. That is fair?

Ms MARES: Yes, that is fair.

The Hon. DANIEL MOOKHEY: Who was the deputy secretary responsible for TAHE prior to you?

Ms MARES: In establishing TAHE, the previous deputy secretary was Fiona Trussell.

The Hon. DANIEL MOOKHEY: Thank you. Is she with Transport for NSW still?

Ms MARES: No, she is not, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Mr Longland, how long have you been the CEO for Sydney Trains?

Mr LONGLAND: Thank you for the question. I was appointed as the chief executive on 14 June 2021.

The Hon. DANIEL MOOKHEY: What were you doing prior to that?

Mr LONGLAND: Prior to that I was the deputy director-general of Transport and Main Roads in Queensland and the head of TransLink, the public transport authority in Queensland.

The Hon. DANIEL MOOKHEY: This might be an obvious question, but I can only presume that as the deputy director in Queensland you had no involvement with TAHE?

Mr LONGLAND: That is correct.

The Hon. DANIEL MOOKHEY: Mr Hardwick, it is good to see you again. I think you have been involved in TAHE prior and longer.

Mr HARDWICK: My role within Transport is we set the asset management framework in accordance with the Treasury Asset Management Policy and, within that framework, I am accountable to make sure that within Transport that we comply with the requirements of that. So within that I hold the standards setting for the technical assurance and the technical standards setting for all of the assets within the Transport cluster, which includes the heavy rail assets. I am also accountable for bringing together the attestation process and all of the asset management plans and the strategic asset management plans to Treasury and supporting TAHE in that. I have also been involved in an advisory capacity within a small team where we have been advising into the group doing the work on TAHE since—it is just over 12 months, a bit more than 12 months.

The Hon. DANIEL MOOKHEY: Mr Hardwick, were you involved with TAHE around 2013, or even the inception of or development of it in 2013 or 2014?

Mr HARDWICK: I have not been in the transport industry that long. I have only been in the transport industry since 2017.

The Hon. DANIEL MOOKHEY: Congratulations on joining, I guess. Deputy Secretary Mares, the first set of questions I would like to ask you is about the genesis of TAHE. But I accept, given that you have been in the role for only a month, you might need to take some of this on notice. I will leave it to you to decide what you are in a position to answer and what you are not in a position to answer, but I will be directing the questions predominantly at you because I believe you are the person from Transport who is probably the most appropriate person of the three witnesses who are here. Was creating TAHE Transport's idea?

Ms MARES: Thank you for the question, Mr Mookhey. I really could not answer that. I would have to take that on notice. I do understand that initial sightings of TAHE were in mid-year budget papers and then raised through budget papers. But, yes, I am not sure about the idea as such.

The Hon. DANIEL MOOKHEY: Do any of the witnesses have any idea, or perhaps Mr Hardwick, whether or not the idea of TAHE originated in the transport department?

Mr HARDWICK: Thank you for the question. I would not have been involved in any of those conversations. My involvement was very much around making sure of the asset management and the maintenance of assets and the safety components of our obligations within Transport and Sydney Trains and NSW TrainsLink.

The Hon. DANIEL MOOKHEY: Ms Mares, when did Transport start work on TAHE?

Ms MARES: My understanding is that when TAHE was announced in 2014-15, work commenced with numerous people across Transport and Treasury on the development of the TAHE model.

The Hon. DANIEL MOOKHEY: Is it possible that work started in 2013?

Ms MARES: I would have to take that on notice, I am sorry.

The Hon. DANIEL MOOKHEY: Sure. Was TAHE created as a joint project between Transport and Treasury?

Ms MARES: Again, I would have to take that question on notice to confirm for you. I will see what I can provide.

The Hon. DANIEL MOOKHEY: Well, since its inception, was TAHE, prior to 1 July 2020, developed jointly by Treasury and Transport?

Ms MARES: There were definitely advisory groups. Mr Hardwick may have comments about the member and composition of those where Transport and Treasury were working collaboratively. Mr Hardwick?

Mr HARDWICK: Thanks for that, Ms Mares. I have no further information other than, obviously, the predecessor to TAHE, which was Asset Co, was a Transport idea. That is the only other information I have related to that. All other items I know about are related to the asset management and safety obligations.

The Hon. DANIEL MOOKHEY: Ms Mares, Treasury officials at budget estimates told us that the responsibility for standing up TAHE, I think was how they put it, belonged to the Transport cluster. Do you agree with that?

Ms MARES: TAHE, being a State-owned corporation, is not the responsibility of Transport. I am sorry, could you hear me?

The Hon. DANIEL MOOKHEY: Yes. Sorry, Ms Mares.

Ms MARES: Yes. So my understanding is that the establishment of TAHE and the classification is a matter for Treasury.

The Hon. DANIEL MOOKHEY: Indeed.

Mr HARDWICK: I might just add to that, Ms Mares, if that is okay. It was jointly developed up to 1 July 2020 between Treasury and Transport for NSW.

The Hon. DANIEL MOOKHEY: But Treasury left us with the firm impression that you were the driving cluster, not them. Is that true?

Mr HARDWICK: I cannot comment on that and I do not have that information.

The Hon. DANIEL MOOKHEY: Ms Mares, is that true?

Ms MARES: Thank you, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Just to complete, this was only evidence that was given to us about a month ago and it was pretty clear from the Treasury officials that they had a view that the processes of establishing TAHE operationally belonged to the Transport cluster almost exclusively. Do you agree with that?

The Hon. TREVOR KHAN: Point of order: What is actually being done here is witnesses are being asked to comment on what really is the Hon. Daniel Mookhey's impression of evidence given at a hearing that these witnesses were not at. That has got to be the height of unfairness. He can put a proposition but he cannot put [disorder] to agree with his impression.

The CHAIR: I hear the point of order. I think if the question is more grounded in the content of the evidence rather than the impression of the evidence, it might be of assistance.

The Hon. DANIEL MOOKHEY: I will rephrase it. I will take the Hon. Trevor Khan's suggestion. Were you the lead cluster in establishing TAHE?

Ms MARES: My understanding is that in developing the operating model for TAHE there was strong collaboration between Treasury and Transport.

The Hon. DANIEL MOOKHEY: Thank you, Ms Mares. I might at this opportunity table all the Transport documents formally, Chair. These have been referred to the witnesses. I hope you have them. Ms Mares, do you have them?

Ms MARES: Thank you, yes. I am just opening the document. I received them at 9.30 this morning.

The Hon. DANIEL MOOKHEY: Can you tell me, what is your understanding of what the objectives were of TAHE at its inception?

Ms MARES: Thank you for that question, Mr Mookhey. Sorry, can you just repeat that again? I was just opening the document.

The Hon. DANIEL MOOKHEY: No problems. What is your understanding of what the objectives of TAHE were at its inception?

Ms MARES: My understanding is that the Transport Asset Holding Entity was established as a State-owned corporation [SOC] on 1 July to assume ownership of RailCorp's asset base, including rail infrastructure, rolling stock, stations, facilities, plant, equipment and real property.

The Hon. DANIEL MOOKHEY: Were they the only objectives that you understood?

Ms MARES: That would be the key information I have, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Were there any further objectives about its impact on the State's short and medium term fiscal results that you are aware of?

Ms MARES: No. I am not aware of that.

The Hon. DANIEL MOOKHEY: Can I take you to what is labelled "Transport_Tender_001"?

Ms MARES: Yes.

The Hon. DANIEL MOOKHEY: You can see that this is a joint briefing to the Minister for Transport and Roads and the Treasurer in 2014 that has been produced to the upper House as the result of a call for papers. Can you turn to the first slide, which is on page 2?

Ms MARES: Yes.

The Hon. DANIEL MOOKHEY: As you can see in the second dot point it states:

The intent of this re-organisation is to optimise the management of public transport assets in delivering efficient and effective operations and services by eventually bringing under one controlled entity all of the public transport assets.

Does that, broadly speaking, speak to what you have just described?

Ms MARES: Thanks, Mr Mookhey. A couple of comments: Firstly, that is not the final position on the TAHE establishment. The document, I think you said, was 2014. The other comment I would make is that it is Cabinet-in-confidence and on that basis I cannot comment on Cabinet documents.

The Hon. DANIEL MOOKHEY: I accept that, Ms Mares, but the problem that I have with that is that you have produced these documents to the upper House. So I infer, therefore, that Transport has waived it, really, which is the reason why I am asking you the questions on this. I accept your point that things may have evolved but, to be clear, I was asking at inception, not now—at inception, the motive for establishing TAHE. I would just put it to you again. I understand if you cannot answer it or [inaudible] but as a matter of procedural fairness

I should put it to you: Was it the intent of establishing TAHE to optimise the management of public transport assets in delivering efficient and effective operations and services by eventually bringing under one controlled entity all of the public transport assets?

Ms MARES: Thank you for the clarification, Mr Mookhey. I would still hold that I cannot comment on Cabinet documents.

The Hon. DANIEL MOOKHEY: Sure. I will just refer you to the next paragraph because I want to be procedurally fair because I do intend to suggest that the Committee make findings on these matters. It states the other objective:

Treasury supports this initiative, but Government added a further objective of creating an asset structure that, where feasible, improves the State's short and medium term fiscal results.

Do you now accept that one of its objectives when it was created was to improve the State's short and medium term fiscal results?

Ms MARES: Thank you, Mr Mookhey. Two comments, if I could: One is that things have moved on since then so I would just make the point again that there have been further advancements on whatever was in that original document and that I cannot comment on Cabinet documents.

The Hon. DANIEL MOOKHEY: Sure. In September 2013 did Transport for NSW and NSW Treasury agree to, "Fully investigate structural options, which facilitate efficient and effective budget and accounting treatment and financial reporting of all public transport assets, liabilities and capital expenditure"?

Ms MARES: Thanks, Mr Mookhey. As you would appreciate, it is difficult for me to answer that question.

The Hon. DANIEL MOOKHEY: Do you wish to take it on notice?

Ms MARES: I can take it on notice and see what I can provide to the Committee.

The Hon. DANIEL MOOKHEY: Thank you. Because this document states:

In September 2013, Transport for NSW (TfNSW) and NSW Treasury agreed to:

1. Fully investigate structural options, which facilitate efficient and effective budget and accounting treatment and financial reporting of all public transport assets, liabilities and capital expenditure.

To be procedurally fair to Transport, I want to put it to you that that is what you agreed to do.

Ms MARES: As I mentioned, Mr Mookhey, I will take that on notice and see what can be provided to the Committee.

The Hon. DANIEL MOOKHEY: Thank you. I appreciate that, Ms Mares. Do you mind turning to what I believe is—I am sorry, I will just make sure I give you the right reference because I do not want to be rude. I am fairly positive it is "TRANSPORT_TENDER_002".

Ms ABIGAIL BOYD: Mr Mookhey—

The Hon. DANIEL MOOKHEY: Sorry. I will pause there and allow other members, if they wish, to ask any questions on that.

Ms ABIGAIL BOYD: Thank you. Just before you leave that last document that we were looking at, which also contains a comparison of the Victorian and Queensland models, in budget estimates we did hear quite a lot of discussion about how the accounting treatment relies on the treatment of those other entities in Victoria and Queensland. Mr Longland, given your background, are you able to tell the Committee the major structural difference between the Queensland Rail structure and what has been set up for TAHE?

Mr LONGLAND: Thank you for the question. I am happy to provide some high-level comments from my previous experience in Queensland. Queensland Rail managed rail assets as commercial assets. They do that through two separate companies, both Government owned. Queensland Rail is a not-for-profit government-owned company that is the deliverer of rail services. In my previous role in Transport, I was effectively the contract manager and that part of Queensland Rail was charged with delivering rail services under contract to the department. Then Queensland Rail Limited was the commercial arm that held the assets and drove a return on those assets back to government. So part of my payment to Queensland Rail included an element for return on assets to ensure that those assets were treated in the commercial way.

Ms ABIGAIL BOYD: Who did Queensland Rail report to?

Mr LONGLAND: Queensland Rail had two shareholding Ministers, the Minister for Transport and Main Roads and the Treasurer.

Ms ABIGAIL BOYD: Thank you.

Ms MARES: Ms Boyd, could I just add a point, if you would not mind? It is just that the financial treatment of TAHE with a comparison to Queensland or Victoria is a matter for Treasury. Thank you.

Ms ABIGAIL BOYD: Understood. Thank you for your insight, Mr Longland.

The Hon. JOHN GRAHAM: Can I just follow up on that document. I thought the important point my colleague was making about the question of who added this further objective, as Mr Mookhey has indicated, the Transport for NSW and Treasury document indicates quite clearly that while it states "Treasury supports this initiative", it was government that added this further objective. Can you shed any further light on that before the Committee makes a finding based on the documents that are in front of it? Was it actually government that imposed that added objective about the budget bottom line?

Ms MARES: Thank you, Mr Graham. I have taken that question on notice and I will do my best to provide what I can to the Committee.

The Hon. JOHN GRAHAM: Thank you.

The Hon. DANIEL MOOKHEY: Can I just follow that question up? Was it the Expenditure Review Committee of the Government? Will you take that on notice?

The Hon. TREVOR KHAN: Point of order—

The Hon. DANIEL MOOKHEY: Take that on notice.

The Hon. TREVOR KHAN: It has already been indicated it is being taken on notice. You can ask the question in seven different ways. You are going to get the same answer. She has taken it on notice.

The Hon. DANIEL MOOKHEY: Which I appreciate, Mr Khan. I was just asking a specific question.

The CHAIR: All right. I think we might return to some ordered questioning. Those matters have been taken on notice. I might go to you, Mr Mookhey, to take this forward at this moment.

The Hon. DANIEL MOOKHEY: Can I turn to tender document 002, if you do not mind.

Ms MARES: Mr Mookhey, would you just mind confirming the title of that one?

The Hon. DANIEL MOOKHEY: Yes. It is called "Transport_Tender_002".

Ms MARES: Ah, yes. Okay. Thank you.

The Hon. DANIEL MOOKHEY: Did Transport for NSW, in a joint submission with Treasury, propose the establishment of TAHE because, by holding public transport assets in an independent commercial entity, these expenses can be reclassified in the budget as a capital investment?

Ms MARES: Thank you for the question, Mr Mookhey. A couple of points: The first one is that any accounting or financial matters are relevant to be referred to Treasury; the other is that this document "Transport_Tender_002" that you have referred me to is also a Cabinet submission, Cabinet-in-confidence, so I would be taking the position that I cannot comment on Cabinet documents.

The Hon. DANIEL MOOKHEY: Ms Mares, I was not asking you to comment on Cabinet documents. I was asking you whether or not Transport recommended, in a joint submission with Treasury, the establishment of TAHE because it would allow the assets to be held in an independent commercial entity and these expenses can be reclassified in the budget as a capital investment?

Ms MARES: If you are not referring to the document then I am not aware of that and I cannot comment on a Cabinet document.

The Hon. DANIEL MOOKHEY: Sure. Look, I appreciate that, Ms Mares, but as a matter of procedural fairness, given that again I am going to suggest the Committee make findings on the basis of these documents, I should put them to you at least as a matter of procedural fairness for you to answer them however you see fit.

Ms MARES: Yes, thanks. I appreciate that, Mr Mookhey. I understand.

The Hon. DANIEL MOOKHEY: This is a Cabinet submission that is in the name of the Hon. Andrew Constance, MP, who was the Minister for Transport and Infrastructure, and the Hon. Gladys Berejiklian, who was

the Treasurer. It states on page 4, "3 Proposal". The very first reason it gives for the establishment of TAHE is this:

Grants currently paid to Railcorp and other agencies for investment in public transport infrastructure have in the past appeared on the Budget as an expense. By holding public transport assets in an independent, commercial entity, these expenses can be reclassified in the Budget as a capital investment.

I want to put it to you and the Transport cluster that the main reason why TAHE was established was to convert costs that otherwise appear in the budget as an expense to costs that would appear as a capital investment, and that would affect the budget result. I will put this question to Treasury as well but I bring it to you first.

Ms MARES: Thank you. I appreciate that and understand that you are putting these to me. The financial treatments and the accounting treatments are a matter for Treasury so I could not comment on those. I would also make the same comment that I cannot comment on Cabinet documents. Thank you, Mr Mookhey.

The CHAIR: Mr Mookhey, can I just ask a question here?

The Hon. DANIEL MOOKHEY: Yes, please, Chair, if you wish to follow up.

The CHAIR: Ms Mares, if you are not able to satisfy the Committee that that was the purpose, from a Transport agency's perspective, what other possible purpose is there for the creation of this entity?

Ms MARES: Thank you, Mr Shoebridge. I cannot talk to 2014, but what I can say is that in the establishment of the entity there were some joint outcomes that, as the strategic asset owner, would really maximise the commercial opportunities of the assets while retaining safety and maintenance within Transport itself.

The CHAIR: But that is no benefit to you. What you are suggesting there is that TAHE may be able to leverage its \$11 billion worth of property assets and become a property developer as well as a rail infrastructure owner. That is no benefit to Transport for NSW, is it?

Ms MARES: Thank you, Mr Shoebridge. I was not suggesting they were a developer. I was suggesting as a strategic asset owner they could optimise the assets for the State, but there are other benefits to Transport and they are really around a third line of assurance that they offer in the safety space. They have some role to play in there—Mr Hardwick may wish to comment—that certainly provides some value to Transport in addition to the other items we mentioned.

The Hon. DANIEL MOOKHEY: We will get to safety later.

The CHAIR: Ms Mares, on the safety point, Transport for NSW identified right at the outset that there was a high risk by separating the ownership in this way—a high risk—of safety risks in the creation of this structure. Far from being a positive, that was identified as a high risk at the outset, was it not?

Ms MARES: Thank you for that question, Mr Shoebridge. I believe that the Secretary for Transport commented on this in estimates also, saying that we used a range of advice and identified issues and risks that should be addressed in the creation of the TAHE operating model and we are confident that they have been addressed and dealt with through the establishment of it. Mr Hardwick, did you have any comments?

The CHAIR: No, Ms Mares, just stopping you there, you have identified safety as a positive in your initial answer. In your further answer you then said, "Oh, actually, yes, there was a risk and we have now mitigated that risk and we are mitigating that risk." Whether or not that is fully mitigated is a matter we may well explore. We can reject safety as a rationale. You say that you cannot comment on the budget benefits as a rationale, so we are left with no compelling rationale from your agency about why on earth this entity was created, aren't we, Ms Mares?

The Hon. TREVOR KHAN: Point of order: My point of order is on two bases. The first is that the witness was seeking to answer by referring part of her response to Mr Hardwick and she should be allowed to do that. The second thing is, Chair, at this stage neither you nor Mr Mookhey can speak for what conclusions this Committee will come to. We are entitled to hear all the evidence and consider it at the end. So I think it is unfair to put a proposition to a witness that this Committee has already come to a conclusion on a particular matter in the question or speech that you give. I ask that you put it in a proper form, but I also ask that the witnesses be entitled to answer the question before you ask another question.

The CHAIR: Mr Khan, I put no such conclusion and I do not have a firm view about the conclusion. My proposition was based upon the absence of a compelling or even an identified reason coming from Transport for NSW. Ms Mares, I would ask if you could answer the question and, of course, you may refer to Mr Hardwick or Mr Longland to provide further assistance.

Mr HARDWICK: So—

Ms MARES: Sorry, Mr Shoebridge, can you just clarify the question you would like answered for the record?

The CHAIR: You say that the budget basis, you cannot put that forward as a rationale for TAHE. You then initially said, well, there was a safety rationale for it, and then when you clarified your evidence you said, well, actually, there is a safety risk that you think has been mitigated. If it is not for safety and it is not for a budget purpose, what on earth other purpose that benefits Transport for NSW explains the creation of this entity?

Ms MARES: Thanks, Mr Shoebridge. Just a point of clarification. You asked what benefit there was of TAHE to Transport, and that was the response I gave around the assurance of safety. Also, in noting that I cannot currently answer to previous documents or works in 2013 or 2014, I did agree to take those questions on notice and see what can be provided to the Committee as further evidence. I will refer to Mr Hardwick to see if there are any further points that would be relevant to the Committee.

Mr HARDWICK: Thanks, Ms Mares. Yes, I have got just a couple of points and I think, really importantly, safety does remain our number one priority across Transport. It is enshrined in the Act and supported by the Rail Safety National Law. The operators maintain their safety accreditation and decisions about the assets remain the maintenance, delivery and subject of the same safety assurance regimes that existed prior to 1 July. A couple of the things which I think Ms Mares was trying to elaborate on was the establishment of TAHE has added a third line of assurance through the independent board and CEO to critically assess that risk exposures are appropriately controlled by Transport for NSW, Sydney Trains and NSW Trains and private operators so that they are complying with their safety legislation obligations to operate a safe and reliable network.

The Hon. DANIEL MOOKHEY: Thank you, Chair. Do you mind—

The CHAIR: This is a board, Mr Hardwick, that the New South Wales Cabinet submission states is going to be deliberately dumbed down and have no expertise and be basically populated by lawyers and low-profile persons. Is that the board that you are saying will provide an additional level of assurance?

The Hon. TREVOR KHAN: That is outrageous. There is nothing wrong with [disorder].

The CHAIR: Well, I think—

Mr HARDWICK: Well, if I could—

The CHAIR: —Mr Hardwick might answer the question.

Mr HARDWICK: Thank you for that question. I cannot comment on the Government's position on these matters. What I can say is the interactions I have had, where I have had to submit things to the current board of TAHE, they have discharged those accountabilities as the way I would expect for any board that I have reported to for safety and asset management matters. The questioning and the way in which they are discharging their accountabilities related to safety and asset management are exemplary of people that have actually been involved in highly critical assets in the past in their careers.

The CHAIR: You would be aware, would you not, Mr Hardwick, of the Cabinet submission that says the intent of the Government is to not have people with infrastructure and railway skills on the board but indeed to have low-profile persons—lawyers and the like—who therefore will not be able to assert the kind of independence and quality assurance you are putting forward as a benefit, Mr Hardwick. You would be aware of that, would you not?

Mr HARDWICK: Mr Shoebridge, thank you for the question. I cannot comment on what the Government has done but I can comment on the interactions I have had with the board, and those board members are highly skilled in their capabilities related to assurance and their workplace health and safety [WHS] obligations as board members, and the critical infrastructure of their backgrounds suggests to me that they have the capability to discharge those accountabilities with respect to the railways.

The CHAIR: This may be addressed further. Ms Boyd, do you have anything on this?

Ms ABIGAIL BOYD: Thank you, Chair. Ms Mares, just coming back to your response in relation to the rationale and the benefits that TAHE could possibly have in this situation, you mentioned the ability to, I guess, make more profit out of the assets. Is that necessarily likely, given that you have 90 per cent of those assets being leased out to the Government? Can you explain that?

Ms MARES: Thank you, Ms Boyd, for that question. I think the way that the assets are commercially managed is a matter for TAHE, so I could not comment on that. But what I would say is that in the setting up of TAHE, I know that one of the outcomes that was looking to be achieved, balanced off against safety, community

outcomes and a range of others that I can find and read out if it serves the Committee, was that there was a commercial return. So there is some optimisation and a more strategic management of the assets intended as part of the current model. I am not speaking to any documents from the past but as to the current model.

Ms ABIGAIL BOYD: By setting up this quite complicated model—and I know you cannot comment on this—which does appear to be primarily for accounting reasons and to make the budget look better, but let's put that to one side, haven't we created additional costs? We have the costs of the board, which we have heard in terms of salary are quite high, but also the costs of the model in terms of the interactions, the legal structure and everything else that needs to be set up to make it work between TAHE and Sydney Trains. Are we not creating actual additional real costs?

Ms MARES: Thanks, Ms Boyd. What I would say is that, yes, there are agreements set up between TAHE and Transport. There are interfaces that we have set up with them. Obviously, I cannot comment on TAHE costs specifically or their board or other costs that you mentioned. I have not got a comparison financially of the difference between RailCorp versus TAHE and what those internal costs may be. I do not believe we have put any new resources on for TAHE from a Transport perspective, so without that information in front of me I would just say, yes, there are interfaces set up but we are doing those within our current business.

Ms ABIGAIL BOYD: Just one final question from me: What is the benefit to the people of New South Wales? What is the benefit to passengers of TAHE?

Ms MARES: Mr Longland or Mr Hardwick may wish to answer this. I think there are a few that are set out in the current model. Certainly two that we have spoken of are the additional layer of assurance around safety, so safety of services and also the commercial outcomes that may see benefit to the people of New South Wales.

Ms ABIGAIL BOYD: Sorry, you have mentioned safety again. What do you mean by that? How is there another layer of assurance? Are you saying that TAHE has expertise in maintenance or safety?

Ms MARES: Not maintenance, to be clear, but I will let Mr Hardwick speak to that and Mr Longland may have a comment too.

Ms ABIGAIL BOYD: Thank you.

Mr HARDWICK: Thank you for that question. I think the key for me in the safety space is around the establishment of the third line of assurance from the asset owner with that true independence from the activities of the day-to-day activities of the business and it has really given us an ability to look at the risk exposures from that independent view. They are reviewing the work that I do and the work of Sydney Trains, NSW Trains and the private operators through that independent lens, which gives you a higher level of confidence that the things that are being done within Transport, the operators and the maintainers has that due diligence piece put across it.

Ms ABIGAIL BOYD: How does this differ, Mr Hardwick, from the 1996 structure that resulted in such disaster and safety issues?

Mr HARDWICK: Thank you for the question, Ms Boyd. I cannot comment around the items of 1996. But the things that have been put in place since 1996 are the things like the Rail Safety National Law, the Office of the National Rail Safety Regulator, ONRSR, and their responsibilities and the way in which they discharge it. We have also implemented a number of ways in which that occurs, and obviously the rail transport operators themselves holding that true accountability for the fully assured delivery of services and outcomes at that operational level is really important. Maybe Mr Longland would like to add some more to that.

Mr LONGLAND: Thank you, Mr Hardwick. Just to reinforce Mr Hardwick's comment that the creation of TAHE has no impact on the operational rail safety risks. Day-to-day safety management of rail and rail service delivery remains with the operators and with Transport for NSW. In Sydney Trains—from our perspective and the agency that I lead—we are the agency that is accredited under the Rail Safety National Law as a rolling stock operator and rail infrastructure manager. We have defined systems in place with our safety management system. We have an asset management process that is internationally accredited and we work with Mr Hardwick and Transport on the development of asset management plans. They are funded and we undertake that maintenance.

Ms ABIGAIL BOYD: To clarify, Mr Longland, you are saying that it has no impact on the safety. Ms Mares is saying that it is beneficial for the safety of the network. Which is it?

Mr LONGLAND: Thank you for the follow-up, Ms Boyd. What I could say is that the creation of TAHE has no adverse impact on the operational rail safety.

The CHAIR: Mr Hardwick, do I understand your evidence to be that the establishment of this independent TAHE board is another level of assurance in the system? Is that your evidence?

Mr HARDWICK: It is the third line of assurance as the asset owner with an independent board. That is the way in which it is managing its safety obligations. Any State-owned corporation board or any other board has an obligation to discharge its WHS obligations.

The CHAIR: Mr Hardwick, in fairness to you, I will read you paragraph 5.10 from the submission that went to Cabinet to establish this entity. I will ask you if, having heard that, you stand by that position. It reads:

Ultimately, the risk that the board wishes to replace the Government's investment priorities with its own depends on the nature of the persons appointed as board members. It is not proposed that the TAHE board would consist of high-profile persons with infrastructure planning backgrounds, but rather expert financiers, asset managers and/or lawyers.

Having heard that, do you stand by your evidence that there is a third level of assurance?

Mr HARDWICK: Thank you for that question. I cannot comment on that document you are reading from as it is a Cabinet-in-confidence document. But what I can say in general terms is that my interactions and experience with the board are that their inquiry and the way in which they have set up the assurance frameworks for TAHE and the way in which it interacts with Transport for NSW would be the types of things I would expect for a board that I report into.

The Hon. DANIEL MOOKHEY: With your permission, Ms Mares, I think these questions are best directed to Mr Longford, if that is possible.

Ms MARES: Longland, yes.

The Hon. DANIEL MOOKHEY: I apologise, I often call out Transport officials for mispronouncing my name.

Ms MARES: Have I got it right, Mr Mookhey?

The Hon. DANIEL MOOKHEY: You have done very well, Ms Mares. I believe you are the first Transport deputy secretary I have ever questioned who has got it right in the first instance. Congratulations. We will make a finding about that. Mr Longland, prior to the establishment of TAHE, did Sydney Trains and/or NSW Trains pay anything to use RailCorp's assets?

Mr LONGLAND: Thank you for the question, Mr Mookhey. No offence taken on the pronunciation of my name. My understanding—whilst I was not part of Sydney Trains prior to the establishment of TAHE—was that there were not any access fees paid.

The Hon. DANIEL MOOKHEY: Prior to the establishment of Sydney Trains, no access fee had to be budgeted for in the Sydney Trains budget in order to access the rail network?

Mr LONGLAND: Sorry, just to clarify your question—you said "prior to the establishment of Sydney Trains". Did you mean prior to the establishment of TAHE?

The Hon. DANIEL MOOKHEY: Sorry, I meant prior to the establishment of TAHE.

Mr LONGLAND: That is correct.

The Hon. DANIEL MOOKHEY: Was it the case that in order to allow your organisation and NSW Trains to pay a commercial rate of return to TAHE, the budget needed to provide your organisation and your counterparty an additional \$800 million per year?

Mr LONGLAND: Thank you for the question. In terms of the details about payments that are made, they are matters that I would need to take on notice if you were after individual figures in terms of annual access fees. What I can say is that Sydney Trains payments to TAHE for access and licence fees are managed through our existing and normal budget processes with Transport for NSW each year.

The Hon. DANIEL MOOKHEY: This year did you receive an additional \$800 million in the budget to pay TAHE? Sorry, I should reclassify it: Did you receive up to \$800 million to pay TAHE, shared with NSW Trains?

Mr LONGLAND: Thank you for the question, Mr Mookhey. Sydney Trains did receive an allocation within our annual budget for the payment of access fees for TAHE, yes.

The Hon. DANIEL MOOKHEY: How much was that?

Mr LONGLAND: Thank you for the follow-up. As I stated earlier, I would need to take that question on notice if you are after a specific figure.

The Hon. DANIEL MOOKHEY: Do you have an estimate range?

Mr LONGLAND: I would not want to speculate.

The Hon. DANIEL MOOKHEY: To be fair, I am not asking you to speculate, Mr Longland. Because you are the CEO, I believe you would know. It is a pretty large part of budget.

The Hon. TREVOR KHAN: Point of order—

The Hon. DANIEL MOOKHEY: Okay, I will [disorder].

The Hon. TREVOR KHAN: [Disorder] take on notice.

The CHAIR: I will hear the point of order taken by the Hon. Trevor Khan. If we are talking about a potential budget item in the order of \$800 million, I think it is fair to assume that the CEO would have some understanding of the nature of that and it is fair to explore, but to allow the exploration to be limited.

The Hon. TREVOR KHAN: You said you would hear more from me.

The CHAIR: I will.

The Hon. TREVOR KHAN: It is the standard practice and, indeed, it is quite clear from the rules of procedural fairness adopted by this Committee that a witness is entitled to take a question on notice. What is now being embarked upon is an invitation to guess. The witness having said he would take it on notice, as provided in the rules of procedural fairness, which you say this Committee proceeds by, then that is the end of the matter.

The CHAIR: I agree with you so far as a witness is entitled to take a question on notice and, indeed, to persist on wishing to take a question on notice, but it is open to a Committee member to explore a matter. I will allow some leniency to the Hon. Daniel Mookhey to explore the matter. That is the position I will come to.

The Hon. DANIEL MOOKHEY: Mr Longland, as it is a significant amount of public money we are talking about, can you shed any light on the additional appropriation that was given to Sydney Trains this year in order to pay TAHE's rail access fee?

Mr LONGLAND: Thank you for the question, Mr Mookhey. I will go back to my previous response that in order to provide you with the answer on the access fee paid to TAHE in financial year in 2021-22, I would need to take that question on notice.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Longland. I will not push it any further. Can I refer you to Transport tender document 002? I will read the relevant section to you in the interests of speed. This is from the Cabinet submission. It says:

Sydney Trains and NSW Trains do not currently pay anything for use of the assets. To allow them to pay a commercial rate to TAHE, the Budget will need to provide an additional \$800 million per annum of funding to the public transport operators. In turn, it is intended that TAHE should return the majority of this \$800 million per annum to Government as dividends, producing no material effect on the Budget from this injection of money.

It goes on to say:

In addition, equity injections will be provided directly from the NSW Government to the TAHE for capital works. These monies will no longer appear in the Budget as capital expenses, improving the Budget position.

That, to the best of your knowledge, was reflected in this year's budget, was it not?

Mr LONGLAND: Mr Mookhey, to go back to Ms Mares' earlier response on the question of this very same Cabinet submission, my response is similar, that I am unable to comment on the detail of a Cabinet submission.

The Hon. DANIEL MOOKHEY: I will not press it, Mr Longland. I think I have put it to you reasonably fairly to allow you that opportunity, so I will move on. Do you budget over a two-year cycle, a three-year cycle, a four-year cycle, a five-year cycle?

Mr LONGLAND: We budget over a four-year forward estimate period.

The Hon. DANIEL MOOKHEY: So you would be currently in the process or have started to budget for 2023-24, correct?

Mr LONGLAND: That is correct.

The Hon. DANIEL MOOKHEY: Are you up to 2024-25?

Mr LONGLAND: The budget process is ongoing. We have a 10-year asset management plan. Given the long life of rail assets, we often plan quite a long way out—correct.

The Hon. DANIEL MOOKHEY: What do you expect to pay TAHE to access their assets in 2023-24?

Mr LONGLAND: I would need to take that question on notice. But what I can say in terms of the forward calculation of assets fees, they are really governed by the valuation of the asset and also by any new assets that are delivered over that period. So the numbers would change year on year depending on those variables.

Ms MARES: Mr Mookhey, would you mind if I add a point on that also?

The Hon. DANIEL MOOKHEY: No.

Ms MARES: Thank you. With regard to the setting of future fees, I have just a couple of pieces of information that I think are useful to the Committee. One is that in setting the fees, TAHE must align them to the Rail Access Undertaking. There is an annual true up, so there will be a true up of those fees and that will then affect the future fees and the re-forecasting. So there is that annual process that would happen in line with the budgeting process Mr Longland mentioned.

The Hon. DANIEL MOOKHEY: I appreciate that, Ms Mares, but I am asking these questions of Mr Longland because he is the principal customer of TAHE, it seems.

Ms MARES: Understood, thank you.

The Hon. DANIEL MOOKHEY: What happens in terms of your budget if the rail access fees you have to pay rise significantly above \$800 million?

Mr LONGLAND: Thank you for the question. In terms of the rail access fees and the future rail access fees that are payable and the impact on the Sydney Trains budget, as I said, those fees are incorporated in our annual budget build. We work closely with Transport for NSW and we manage the payment of those fees through our normal budget process.

The Hon. DANIEL MOOKHEY: Chair, I am going to pause to see if any other members have questions. Otherwise, I propose to start talking about another document.

The CHAIR: Ms Boyd, do you have anything on this? Mr Graham?

The Hon. JOHN GRAHAM: This follows on from the point the Hon. Daniel Mookhey was just making about the cost pressures. Ms Mares, in your opening statement you said the public fares are not within—

Ms MARES: Sorry, Mr Graham. Would you mind starting again? You are a bit muffled on my audio.

The Hon. JOHN GRAHAM: In your opening statement you said public transport fares are not within TAHE's remit, which is accurate. However, the cost base for the provision of public transport is. When TAHE appeared this morning, they were very clear about what their objectives were, and that is to maximise the value of the transport assets—that is, maximise their commercial returns. Aren't those two things going to come into conflict over time? Isn't that going to put pressure on the cost base of public transport and therefore on public transport fares over time?

Ms MARES: Thank you for that question, Mr Graham. As you would appreciate, the fare setting is highly regulated. It is a matter for Government, which is also managed through IPART. Really, any fare setting would be set at that level.

The Hon. JOHN GRAHAM: But the cost will be relevant to those considerations, won't they?

Ms MARES: I reiterate my opening statement, that fares are not a part of TAHE's mandate at all and nor will they be. That fare setting is a highly regulated part of a government decision.

The CHAIR: I have one question that flows from that. Ms Mares, you understand that TAHE will be an independent board, correct?

Ms MARES: Yes.

The CHAIR: You understand that their primary objective is to maximise the return on their assets?

Ms MARES: That is one of the objectives that is set out to them.

The CHAIR: If they wish to maximise their return on their assets, there is a very real risk to Transport and for Sydney Trains that they will substantially increase the access fee. That would be one of the obvious ways to increase the return on their assets, correct?

Ms MARES: As I said, there are certain financial principles and pricing principles that must be set in setting their access fees. They are a matter for TAHE but they do need to align to the Rail Access Undertaking. I do not know if they reference the building blocks but there is pretty standard practice put in place, is my

understanding, around the setting of access fees. They would set the access fees and then there are obviously ongoing negotiations that we would have with them.

The CHAIR: Ms Mares, TAHE told us this morning that they are in the middle of reviewing their access fees. They have got consultants in the field; they are doing this. There is no set of standard procedures in place. They are in the process of working it out right now, aren't they?

Ms MARES: I cannot comment on what TAHE is undertaking at the moment. But I can say that under agreements with them they must align to the Rail Access Undertaking. I can also share with the Committee that the Rail Access Undertaking is currently with IPART for review.

The CHAIR: Ultimately it is a simple proposition, Ms Mares, and I wonder if you will accept it or reject it. There is a very substantial risk that to maximise their return they will increase the fees. Those fees have to be paid from somewhere, and the likelihood is that if the fees go up, they will end up being paid, in part, by increased ticket prices from the general public. You would agree with that basic proposition, wouldn't you, Ms Mares?

Ms MARES: Thanks for that proposition, Mr Shoebridge. What I would say is that TAHE do have an approach for the setting of fees. I reiterate my earlier comments that they have to be in line with agreements that we have made with them, that they are reviewable and that we would be negotiating those with them.

The CHAIR: They have got the whip hand though, don't they? Because they have got the only set of tracks for you to use. They have got the whip hand. It is not like you can go somewhere else.

Ms MARES: I guess the comment I would make on that is that ultimately a SOC [State-owned corporation] is a government-controlled entity.

The Hon. DANIEL MOOKHEY: Ms Mares, Transport collaborated with Treasury, did it not, to model what the access fees would be?

Ms MARES: Sorry, can you repeat that? Transport—

The Hon. DANIEL MOOKHEY: —collaborated with Treasury to jointly determine the operating model that would set the access fees, correct?

Ms MARES: Oh right, the operating model. Yes, I believe there was a lot of collaboration between Treasury and Transport.

The Hon. DANIEL MOOKHEY: And Transport and Treasury began to conflict about certain assumptions of that model. Is that correct?

Ms MARES: I am unaware of conflict between Treasury and Transport. I know that they worked together on it.

The Hon. DANIEL MOOKHEY: In order to develop its own position, did Transport approach KPMG to assist them with creating a long-term operating model assessment?

Ms MARES: Thank you for that question, Mr Mookhey. Yes, Transport commissioned KPMG to support the development of the operating model and make sure it met statutory requirements. Just of note, safety was not in the remit of KPMG for that particular report but it did help define how TAHE, Transport and the operators would perform their functions and duties, and it was a really important input to the Government in assessment of risks across the operating model.

The Hon. DANIEL MOOKHEY: Thank you, Ms Mares. That is really helpful. To be fair, I am not inferring that KPMG did have remit over safety, just to be clear. So I appreciate that. In the process of creating that report, would you agree that there was extensive collaboration between Treasury and Transport?

Ms MARES: That is my understanding, although you can appreciate I was not involved in it personally.

The Hon. DANIEL MOOKHEY: Sure. That included multiple interviews with Transport for NSW staff, correct?

Ms MARES: I could not answer that one way or another, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Mr Hardwick, I think, might be in a position. You were consulted extensively, weren't you, in the production of this report?

Mr HARDWICK: Thank you for the question, Mr Mookhey. Yes, I was involved in an advisory capacity, and the work that myself and a small team were doing on the safety and asset management pieces were inputs to multiple pieces of work at that time that were going on.

The Hon. DANIEL MOOKHEY: At least 15 to 20 to 25 Transport staff were involved. Is that correct?

Mr HARDWICK: Thank you for the question. I could not comment on exactly what the number was, Mr Mookhey, but there were a few people involved from Transport.

The Hon. DANIEL MOOKHEY: That is not unreasonable for us to infer. The consultation was extensive, correct?

Mr HARDWICK: To answer your question, there were consultation and advisory groups set up to give input to some of the questions we were asked.

The Hon. DANIEL MOOKHEY: Ms Mares, Treasury was extensively involved in this as well, wasn't it, with Transport's blessing?

Ms MARES: I am unsure if Treasury were extensively involved in the advisory groups. I do not know if Mr Hardwick has got a comment on that, but I know that we collaborated with Treasury.

Mr HARDWICK: Thank you, Ms Mares. In the areas that I was involved in, Treasury were not a key player in the safety and asset management advisory areas. So I cannot comment on the other areas.

The Hon. DANIEL MOOKHEY: To be fair, Mr Hardwick, as Ms Mares just said, this had nothing to do with safety, so I will put that aside. I will ask you to take this on notice, Ms Mares, if you can. Did Transport consent to upwards of 10 to 20 specific document changes by Treasury to this document? If you could take that on notice, that would be helpful.

Ms MARES: Thanks, Mr Mookhey. I am happy to take that question on notice and see what we can provide to you.

The Hon. DANIEL MOOKHEY: Thank you. By the way, I could not see where Transport had disclosed its decision to hire KPMG on the contract database. On notice, could you provide us where you publicly disclosed this?

Ms MARES: Yes. My understanding is it is disclosed, so we will definitely take that on notice and follow up.

The Hon. DANIEL MOOKHEY: Thank you. How much did you pay them?

Ms MARES: Let me just grab that for you. I do have that available. The KPMG report, which I have run through, the implementation of TAHE—the KPMG cost was around \$1 million.

The Hon. DANIEL MOOKHEY: On notice as well, can you tell us how they were selected?

Ms MARES: I understand it was in line with procurement procedures.

The Hon. DANIEL MOOKHEY: Ms Mares, I would be shocked if you said it was not in line with procurement procedures. If you do not mind telling me what specific procurement method was followed, that would be most helpful, given it is \$1 million.

Ms MARES: Thank you for the clarification. We will take that on notice and see what we can provide.

The Hon. DANIEL MOOKHEY: Indeed. Didn't this report find that the fees that were payable, according to the IPART determination, were circa \$700 million to \$3.5 billion more than what Treasury expected?

Ms MARES: Thank you for that question, Mr Mookhey. I have to say that I have not read the report, so I could not comment on what is within it.

The Hon. DANIEL MOOKHEY: Can I now take you to Transport tender document 003, which is the report?

Ms MARES: Yes.

The Hon. DANIEL MOOKHEY: I am going to read to you the same section that I read to TAHE. I am reading from page v. It says:

Access fees will be negotiated between TAHE and the operators, in future years. In the interim, KPMG have calculated a floor and a ceiling and NSW Treasury have recommended an assumption that will commence at \$700m pa for FY21/22 to FY23/24, then increase onwards. Notably, KPMG estimates show that TAHE is non-compliant with the floor test in FY21, subject to IPART determination.

They then go on to say that the minimum that TAHE should be charging NSW Trains and Sydney Trains is about \$1.4 billion and the maximum is \$4.34 billion. They then say:

The introduction of access charges to the public operators is the key reason for the deterioration of estimated budget performance under both TAHE scenarios.

I put to you that when Transport saw that Transport was alarmed. Is that correct?

Ms MARES: Thanks, Mr Mookhey. I cannot comment. No-one has said to me they were alarmed.

The Hon. DANIEL MOOKHEY: Did this create massive consternation inside the Transport cluster?

Ms MARES: Not that I am aware of, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Did this cause a conflict between Transport and Treasury?

Ms MARES: Again, difficult for me to respond considering my tenure in this role. However, not that I am aware of.

The Hon. DANIEL MOOKHEY: Did Treasury strongly object to this report?

Ms MARES: That is a matter for Treasury, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Did Treasury ever communicate to Transport that they would withdraw their cooperation with this process as a result of the vehemence of their disagreement with its findings?

Ms MARES: I am unaware of any such correspondence.

The Hon. DANIEL MOOKHEY: Yes, I accept that you are unaware, Ms Mares. Can Mr Hardwick or anyone else shed any light on this?

Ms MARES: I also think if you are asking what Treasury have sent, that is a matter for Treasury, Mr Mookhey.

The Hon. DANIEL MOOKHEY: No, I am asking what Transport received.

Ms MARES: I am unaware.

The Hon. DANIEL MOOKHEY: Can you take it on notice?

Ms MARES: I will take on notice if Transport—can you just clarify what we are taking on notice, Mr Mookhey?

The Hon. DANIEL MOOKHEY: Did Treasury ever communicate, in either writing or verbally, to anyone from Transport that they would withdraw their cooperation from this process as a result of the vehemence of their disagreement with its findings?

Ms MARES: Thank you for the clarification. I will take that on notice.

The Hon. DANIEL MOOKHEY: Thank you. Did Treasury then indicate to Transport that as a result of what they considered to be Transport exceeding its authority, they would be producing separate advice for Cabinet?

Ms MARES: Again, I am unaware of any such engagement or interaction.

The Hon. DANIEL MOOKHEY: Did Treasury ever ask Transport to participate in any report that they were producing with KPMG that would contradict this report?

Ms MARES: I do not know offhand if that has happened either, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Did Treasury ever provide Transport a copy of a report produced by Ms Heather Watson of KPMG?

Ms MARES: I would have to take that on notice.

The Hon. DANIEL MOOKHEY: Did anybody from the Transport cluster ever make contact with anybody from KPMG to ask why that firm was providing competing advice?

Ms MARES: Thanks, Mr Mookhey. I am unaware of whether that occurred. I would have to take that on notice.

The Hon. DANIEL MOOKHEY: We have established through estimates—I do not want to breach the Hon. Trevor Khan's approbation, so I will reference what I am talking to you about and put a proposition to you, so it is not my inference. The Treasury secretary has accepted that there was a dispute with the Transport secretary. Are you aware of that?

Ms MARES: No, I am not it was accepted that there was a dispute.

The Hon. DANIEL MOOKHEY: It has been publicly reported multiple times as well. The Treasury secretary and the secretary of Premier and Cabinet [DPC] have both separately confirmed that a meeting was held

between the then secretary of Transport, Treasury and the secretary of DPC to resolve the differences between Treasury and Transport. Can you shed any particular light on what Transport's objections were that led to such a meeting?

Ms MARES: Mr Mookhey, what I would comment—which is probably aligned with the secretary of Transport's comments in estimates—is that we were not party to those conversations but we are aware there were ongoing discussions between those parties to come to the final model.

The Hon. DANIEL MOOKHEY: When you say "we", are you specifically referring to yourself and Mr Sharp?

Ms MARES: Transport generally and Mr Sharp's comments in estimates also, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Ms Mares, can I invite you to clarify that? Are you saying that Transport had no involvement in a meeting that was attended by the Transport secretary at the time?

Ms MARES: Thank you for your clarification. No, I am obviously saying I am not aware of that meeting but I am acknowledging that there would have been interactions between those parties.

The Hon. DANIEL MOOKHEY: Can you take on notice and provide us whatever information Transport has within its possession as to what the agenda of that meeting was, when that meeting took place and what the outcome was?

Ms MARES: Noted. I will take that on notice, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Thank you. I want to ask you finally on this matter—after Transport received a warning that the Treasury assumptions that led to the decision to commence with a \$700 million rail access fee was wrong to the tune of what could be \$700 million or \$3.5 billion, what did Transport do?

Ms MARES: Mr Mookhey, are you referring to the KPMG document that you referenced earlier in that statement?

The Hon. DANIEL MOOKHEY: Yes. What did you do after you received this document?

Ms MARES: I cannot comment on financial treatments. What I can say is that it did inform significantly the agreements that we have now put in place with TAHE, including the track access agreements. So it was a useful document in determining how we might move forward with the operating model, how the agreements would be set up and put in place, it was a key input.

The Hon. DANIEL MOOKHEY: Mr Longland, has anyone ever told you that you might be undercharged to the tune of \$700 million to \$3.5 billion in order to access TAHE's assets?

Mr LONGLAND: Thank you for the question, Mr Mookhey. No, that has not been a part of any briefing that I have received since arriving at Sydney Trains.

The Hon. DANIEL MOOKHEY: Has your organisation ever undertaken its own assessment of what the result of the IPART methodology would be independently of Transport and Treasury?

Mr LONGLAND: No. Those assessments were undertaken within Transport for NSW.

The Hon. DANIEL MOOKHEY: Why not?

Mr LONGLAND: Transport for NSW are our funder. Each year we work on a budget cycle with Transport and we manage access fees as part of that budget.

The Hon. DANIEL MOOKHEY: IPART will complete their first assessment of this in October 2022. Is that correct?

Mr LONGLAND: I am not aware of that date.

The Hon. DANIEL MOOKHEY: Ms Mares, are you aware of that date?

Ms MARES: Are you talking about the TAHE methodology or the Rail Access Undertaking, Mr Mookhey?

The Hon. DANIEL MOOKHEY: I am specifically referring to the first compliance undertaking by IPART into the Rail Access Undertaking.

Ms MARES: My understanding—and I perhaps will take this on notice to make sure that I am giving you the right factual information—is that that review commenced in April 2021. So I would expect it to be finalised in April 2022. But I will take it on notice to clarify that.

The Hon. DANIEL MOOKHEY: Could you, because Treasury in response to budget estimates—and, again, I do not want to breach the Hon. Trevor Khan's rule here, but I want to give you the factual information that I am aware of—said it will be completed in October 2022. That is the answer they gave us on notice.

Ms MARES: Let me clarify that, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Thank you. Chair, I will invite any questions on this matter from any other Committee members before I go to the last matter that I have.

The CHAIR: I have not seen any other member indicate at this stage, so I will leave the call with you.

The Hon. DANIEL MOOKHEY: Ms Mares, was Transport late in establishing TAHE?

Ms MARES: Apologies, could you repeat that?

The Hon. DANIEL MOOKHEY: Was Transport late in establishing TAHE?

Ms MARES: Transport did not establish TAHE. TAHE as a SOC was established by Treasury and Government.

The Hon. DANIEL MOOKHEY: Given that Mr Hardwick made clear that Transport was involved in the establishment of Asset Co, I think as you put it, did the establishment of TAHE meet the time frame that was set out by Transport and Treasury in the advice that they provided for Cabinet?

Ms MARES: My understanding is that there was agreement to move the establishment date.

The Hon. DANIEL MOOKHEY: Can I take you back to tender document 002, page 13, which says:

Transport Asset Holding Entity (TAHE) Transition Plan—

I could take you through it all but I will get to the key point, which is point 5. It states:

By 1 July 2019 have transferred remaining public transport assets, i.e., buses, PTAHC—

I do not know what that means—

tranche three and fully operational from this date.

Meaning TAHE was meant to be fully operational from 2019, correct?

Ms MARES: That is my understanding, yes.

The Hon. DANIEL MOOKHEY: And that was in order to satisfy the undertakings that were provided by someone in the Government to the Australian Bureau of Statistics [ABS], correct?

Ms MARES: I cannot comment on whether it was to satisfy anything for the ABS. I can say that in working with implementing the model, key stakeholders were consulted and the relevant approvals given to extend that time line.

The Hon. DANIEL MOOKHEY: When was the decision made to extend the time line?

Ms MARES: I do not have that at hand. I would have to take that on notice, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Who made the decision to extend the time line?

Ms MARES: I will also take that on notice.

The Hon. DANIEL MOOKHEY: Did that follow advice by Transport?

Ms MARES: I believe—let me see if I have got any information for you on that, if you could give me a moment. Sorry, I do not have that information. I will take that on notice.

The Hon. DANIEL MOOKHEY: Was it your understanding that it was Treasury's responsibility to communicate this to the ABS?

Ms MARES: As previously stated, I will take that on notice.

The Hon. DANIEL MOOKHEY: Did Treasury ever express at any point alarm to anyone in Transport that the establishment of TAHE was running late and, as a result, there was a risk of breaching the undertakings to the ABS?

Ms MARES: I am not aware of that.

The Hon. DANIEL MOOKHEY: Will you take that on notice?

Ms MARES: I will take it on notice, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Did anyone from Treasury at any point ever say to anyone from Transport that if TAHE was failed to establish on time, in accordance with the undertakings provided to the ABS, that there was a real risk of reclassification of TAHE and it is returned to the general government sector, which would cost the budget billions?

Ms MARES: Again, I could not answer that. I can say that matters of classification of TAHE are obviously for Treasury and the ABS. In response to that question in particular, I can take that on notice and see if I can find if anyone has got any information on that that would be relevant.

The Hon. DANIEL MOOKHEY: Can I put this to you so I can be a bit more direct, which might assist. Was there ever a Mr Peter Perdikos involved in the establishment of TAHE?

Ms MARES: Yes.

The Hon. DANIEL MOOKHEY: Was he liaising with Treasury?

Ms MARES: There was collaboration across Transport and Treasury with multiple people and Mr Perdikos was, no doubt, in discussions with them.

The Hon. DANIEL MOOKHEY: Did he ever create any internal warnings inside Transport that there was a risk of a breach of the ABS undertakings?

Ms MARES: I am not aware of that and I could not comment for Mr Perdikos.

The Hon. DANIEL MOOKHEY: Sure, but I am asking you to comment more from a leadership perspective. Did the leadership team of Transport ever receive a warning from Mr Perdikos or anyone else that Treasury had raised alarms that as a result of Transport's failures, there was likely risk of breaching undertakings made to ABS?

Ms MARES: Thank you for that clarification. I believe I have taken that on notice to see what I can find for the Committee.

The Hon. DANIEL MOOKHEY: You have, but I am asking you very specifically now. Was the leadership team ever warned by anyone inside Transport that Treasury had raised a concern that as a result of Transport's failures, there was a risk of breaching ABS undertakings?

Ms MARES: I do not know the answer to that question, Mr Mookhey. I do not know if that occurred.

The Hon. DANIEL MOOKHEY: Chair, I am conscious that we have one minute left. I will stop there to allow any other Committee members to ask questions, because I am very eager to keep to the Hon. Trevor Khan's time frames.

The Hon. TREVOR KHAN: That is kind.

The CHAIR: It is probably timely that we finish at this point. I thank the witnesses for their attendance. That concludes the questions that have been directed to you. I thank you for your assistance and I note that a number of questions have been taken on notice. You have a maximum of 21 days to provide those answers. I point out that it is a maximum. I have never yet seen any government agency produce them in less than 21 days, but I note it is available to you.

(The witnesses withdrew.)

(Luncheon adjournment)

SAN MIDHA, Deputy Secretary Policy and Budget, NSW Treasury, affirmed and examined

CASSANDRA WILKINSON, Executive Director Transport and Planning/Industry, NSW Treasury, sworn and examined

The Hon. COURTNEY HOUSSOS: Unfortunately, the Chair is unable to make this afternoon's session and I had previously been elected the permanent acting deputy chair, so I will assume the role for this afternoon's session. I thank the witnesses. I understand this session has been delayed by 30 minutes, which will mean that we will go until 2.50 this afternoon, instead of 2.20. I neglected to note that it is the afternoon hearing of the Public Accountability Committee inquiry into what is known as the Transport Asset Holding Entity [TAHE], and we will be hearing this afternoon from Treasury officials. Thank you very much for your time. I will now pass to Mr Mookhey to begin the questioning.

The Hon. DANIEL MOOKHEY: Acting Chair, witnesses might be invited to make an opening statement if they so wish.

The Hon. COURTNEY HOUSSOS: Thank you, Mr Mookhey. Mr Midha and Ms Wilkinson, would you like to make an opening statement?

Mr MIDHA: We do not have an opening statement, thank you.

The Hon. COURTNEY HOUSSOS: Then we will pass straight to the Hon. Daniel Mookhey for questions.

The Hon. DANIEL MOOKHEY: Thank you, Mr Midha and Ms Wilkinson, for joining us this afternoon. I want to ask some very basic questions. Mr Midha, what is your responsibility as it relates to TAHE?

Mr MIDHA: I oversee policy and budget. So it is a scenario that looks after policies developed across the sector and advises the Treasurer on those policies, and part of that remit obviously covers the Transport Cluster and, therefore, as TAHE is part of the Transport Cluster, I am involved in it in my responsibility.

The Hon. DANIEL MOOKHEY: But you are not the deputy secretary who supervises State-owned corporations [SOCs], are you?

Mr MIDHA: No, I am not.

The Hon. DANIEL MOOKHEY: That is Mr Gardner, is it not?

Mr MIDHA: That is correct.

The Hon. DANIEL MOOKHEY: That is okay. Thank you. I just wanted to make sure we were clear on that delineation. Ms Wilkinson, I ask you the same question. What is your involvement?

Ms WILKINSON: [Disorder]. Sorry. Yes, of course. My role is over on the division of Treasury which includes the Transport branch. I have been the customer relationship partner for Transport and have worked collaboratively with them throughout the implementation.

The Hon. DANIEL MOOKHEY: Are you part of Mr Midha's group? Sorry, you have to answer affirmatively.

Ms WILKINSON: Yes, that is correct.

The Hon. DANIEL MOOKHEY: Thank you very much. Ms Wilkinson, how long have you had that responsibility over the Transport Cluster?

Ms WILKINSON: I believe I took over being the director of Transport in 2017, and I have had my current role since 2020.

The Hon. DANIEL MOOKHEY: Is that when you first got exposure to the establishment of TAHE?

Ms WILKINSON: Yes, that is correct.

The Hon. DANIEL MOOKHEY: Thank you. Mr Midha, how long have you been in your role for?

Mr MIDHA: I have been in my role since the middle of 2016, and I have been involved with TAHE since 2017.

The Hon. DANIEL MOOKHEY: Thank you, Mr Midha. It is just helpful to understand people's knowledge in time, if that is okay. Mr Midha, before we get into the real substance of questioning I thank you and

your team for the answers that you provided to budget estimates on notice. They were very helpful and they were clear. I appreciate that a lot. Mr Midha, I ask you the first question: What is TAHE's impact on the budget?

Mr MIDHA: TAHE, as a SOC, is reported outside the general government sector [GGS]. It is accounted for in the total State accounts, and the first impacts will come through in this year as the total State accounts are finalised.

The Hon. DANIEL MOOKHEY: Just to unpack that, TAHE has a classification in the budget, does it not, of being a public non-financial corporation [PNFC]?

Mr MIDHA: That is right.

The Hon. DANIEL MOOKHEY: It is equally also a State-owned corporation?

Mr MIDHA: That is right.

The Hon. DANIEL MOOKHEY: In order for it to obtain its status as a public non-financial corporation, can you explain how an entity is classified as a public non-financial corporation?

Mr MIDHA: As a general PNFC or as TAHE? [Disorder].

The Hon. DANIEL MOOKHEY: I invite you to explain both in that context. If you could give us a distinction.

Mr MIDHA: If the control and the operations are outside the general government sector, that is a SOC. A public non-financial corporation also has its operations outside government, which is not a SOC, but can get direction and operations from the secretary of the cluster. I will let Ms Wilkinson answer that.

Ms WILKINSON: Essentially, a SOC is just one kind of PNFC. The question of whether an entity is a PNFC is a matter for the Australian Bureau of Statistics [ABS] to determine. It is a function of the legislative architecture within which the organisation sits and a function of the business that it does and the governance that it has. So RailCorp was a PNFC; TAHE maintains that classification.

The Hon. DANIEL MOOKHEY: Indeed. Is it the case that in order to maintain its status as a PNFC, as Mr Midha says, it has to be independent of control of government. Is that what you said, Mr Midha?

Mr MIDHA: As a SOC.

The Hon. DANIEL MOOKHEY: As a SOC it does?

Mr MIDHA: As a SOC, it needs to have—yes, that is what I said about it.

The Hon. DANIEL MOOKHEY: What are the tests for independence that apply?

Ms WILKINSON: The key tests for independence are that it has an independent board; that it is being regulated under the State Owned Corporations Act—that it acts with fidelity to the SOC Act; and that it is a market producer.

The Hon. DANIEL MOOKHEY: Are those the only criteria that are used?

Ms WILKINSON: It depends on whether you are talking about legal criteria, accounting criteria or classification criteria. So there are [disorder].

The Hon. DANIEL MOOKHEY: I am talking about the ABS criteria.

Ms WILKINSON: So the ABS criteria, there are several. I am happy to get you all of them, but they do include market producer and separate institutional entity.

The Hon. DANIEL MOOKHEY: Do the ABS criteria for independence require an entity like TAHE to have a majority independent board appointed by the Government who develops a strategy and operations of the organisation and operates within a commercial environment?

Ms WILKINSON: That is my understanding, yes.

The Hon. DANIEL MOOKHEY: Does it also include that it provides goods or services with customers, who are free to purchase and make that decision based on economically significant prices charged?

Ms WILKINSON: Yes, that is the market producer test.

The Hon. DANIEL MOOKHEY: Does it also include the criteria that it can distribute surpluses?

Ms WILKINSON: Yes, I believe that is correct but I am very happy to take on notice the specifics for you.

The Hon. DANIEL MOOKHEY: Please, Ms Wilkinson, that would be helpful. Can you tell me whether or not they are parts of the test and, equally, that it recovers a majority of its costs through sales revenue over a sustained multi-year period?

Ms WILKINSON: That is the sort of specific detail that I am not familiar with, so I will endeavour to get you the answer more fully on notice.

The Hon. DANIEL MOOKHEY: Is it the case, according to the ABS, that in order for a Transport entity like TAHE to maintain its status as a public non-financial corporation, its rail fares have to increase to a rate to have majority cost recovery?

Ms WILKINSON: Is that your question?

The Hon. DANIEL MOOKHEY: Yes.

Ms WILKINSON: Rail fares are a very different consideration. The costs and prices are always two different things in government. Obviously Treasury likes to have transparency around costs but, ultimately, the prices charged to the public are a matter for government.

The Hon. DANIEL MOOKHEY: I put it to you—and tell me if this is wrong—that you have nominated a majority independent board appointed by the Government as being the criteria, but is it not a fact that the key criteria for the ABS is that it can provide goods or services with customers who are free to purchase and make that decision based on economically significant prices charged?

Ms WILKINSON: I believe that is broadly correct, yes.

The Hon. DANIEL MOOKHEY: That, equally, is the core aspect that is applied in the Independent Pricing and Regulatory Tribunal [IPART] methodology, is it not, when it determines rail access undertakings?

Ms WILKINSON: Yes, that is broadly correct.

The Hon. DANIEL MOOKHEY: Thank you. That is very helpful. Mr Midha, I return to the question about TAHE's impact on the budget. Did the decision to create TAHE improve the State's budget position or cause a deterioration in the State's budget position?

Mr MIDHA: Within the GGS, it continued—well, it had no impact because RailCorp was in the PNFC and its relevant costs were outside the GGS. So when TAHE came into being, that treatment continued, so it had no impact on the GGS—on the government accounts.

The Hon. DANIEL MOOKHEY: Just to have a proper understanding of this, Mr Midha—are you saying that the decision to create TAHE had no impact on the State budget?

Mr MIDHA: In 2021 in our budget accounts, the majority cost of TAHE, which is the capital injection into TAHE, continued to be treated as equity and, therefore, had no—before, it was RailCorp and now it is TAHE, and that treatment continued, so I would say it had no significant impact to the budget.

The Hon. DANIEL MOOKHEY: When did TAHE or its predecessor entity—I think it was called Asset Co—get the classification of non-financial status from the ABS?

Mr MIDHA: Actually, RailCorp has been around since, I think, 2004.

The Hon. DANIEL MOOKHEY: No, that was not my question, Mr Midha. When did Treasury obtain interim classification from the ABS that TAHE was to be a part of the non-financial sector?

Mr MIDHA: So the process that was followed was that there were recommendations, or there was a review, from ABS in—in 2015 ABS confirmed that the TAHE would remain a public non-financial corporation. So this was the continuation of the classification given to RailCorp [disorder].

The Hon. DANIEL MOOKHEY: In 2015?

Mr MIDHA: In 2015, that is correct.

The Hon. DANIEL MOOKHEY: Did the ABS attach any conditions to its original decision?

Ms WILKINSON: The ABS does set conditions. We conduct our business, and the ABS from time to time observes the way we conduct business and forms its own opinions.

The Hon. DANIEL MOOKHEY: Did you inform the ABS in 2015 or 2016—when I say "you", I mean Treasury—that TAHE would have legislation in place by 1 July 2016, have an independent commercial board from 1 July 2018, and, on that basis, did the ABS allow the classification of non-PNFC status to proceed immediately even though the TAHE had not yet been established?

Mr MIDHA: I would have to take those dates on notice, but there were obviously discussions with the ABS on the timing. So the ABS was informed of progress in standing up TAHE as an independent entity. I will need to confirm when that was conveyed to them. I do not remember the exact process there, but there was ongoing conversation between Treasury and the ABS.

The Hon. DANIEL MOOKHEY: I appreciate you taking that on notice, Mr Midha. I will ask you one question before I pause to allow any colleagues, if they have any particular questions, to join in. I put this to you again: You said that TAHE's establishment had no impact on the 2020-21 budget, but what about the 2016-17 budget? Did the establishment of TAHE or the process of establishing TAHE lead to any budget saving from 2016-17 onwards?

Mr MIDHA: Because there has been no change and the financial treatment that had existed pre-TAHE with RailCorp continued, there was no additional impact, positive or negative.

The Hon. DANIEL MOOKHEY: You are saying that the decision to establish TAHE in 2015-16 had no impact on the budget in any year since?

Mr MIDHA: I would have to go back and check the 2015-16 numbers, but from what I understand, because it was already a PNFC and the capital injection was treated as equity and continued to have that treatment, there was no material change to the bottom line.

The Hon. DANIEL MOOKHEY: I pause there to allow any questions from other members, Chair, before I take the witnesses to the first tendered document I want to direct them to.

The Hon. COURTNEY HOUSSOS: Ms Boyd?

Ms ABIGAIL BOYD: Yes, if I may. Thank you both for attending this afternoon. Just on that point, I understand there is a distinction between what is seen to come out of the budget and recurrent expenses and what is considered to be a capital injection and, therefore, outside of the budget, if you like. If that ABS classification was revoked, what would be the impact on the budget?

Mr MIDHA: So if ABS decided that TAHE was not a PNFC or a SOC, and then what would be the fiscal impact to the GGS—can I confirm that is the question?

Ms ABIGAIL BOYD: Yes. Presumably, they would no longer be classified as a capital injection—is that correct?

Mr MIDHA: Yes, that is right. Well, it is an equity injection, so then we would have two choices. Government has a couple of choices about what it does—does it leave it still within the PNFC and then treat those injections as grants that would have one impact; or do we pull the assets into the general government sector and then treat the injection as capital expenditure [CAPEX], and that would have then a depreciating impact over the future? So there are a couple of options.

Ms ABIGAIL BOYD: In the first option, if it was treated as grants, presumably then that would impact on the budget bottom line because that would come straight out of the expenditure?

Mr MIDHA: Yes, and that is true for any equity injection. If that converts to a grant, then it would impact the operating expense [OPEX].

Ms ABIGAIL BOYD: Given how significant that impact would be on the budget, and whether or not we are talking about a difference in real money coming out from the way that the person on the street might see it, the money is still being spent regardless of how it is classified for accounting purposes. Given the impact that would have on the budget bottom line—at least the perception that would create with the public—that seems to be a significant risk. Do you see a risk of the ABS classification changing?

Mr MIDHA: I cannot speak for the ABS. I think what we have done through this process is ensure that we have met all of the ABS requirements and the accounting standards requirements. That is something that we have ensured along the way and it is now up and running as a SOC, and as it develops and builds its commercial activities, we expect it to continue to be a commercial enterprise running the same as a legal independent board. So we are comfortable that we have met the requirements of the ABS classification.

Ms ABIGAIL BOYD: You said at the beginning that the ABS could come in and review the operations to check that it is still compliant. The implication from that is that it could revoke that classification if it did not like what it saw in the operations—correct?

Mr MIDHA: If it is running as a SOC, that is correct.

Ms ABIGAIL BOYD: So is compliance with those criteria for the classification, I guess, a headline issue for TAHE? Is that something that Treasury and TAHE prioritise to make sure that you do comply and, if so, how is that done from an operational perspective?

Mr MIDHA: No, I take a step back and say our role is to ensure that it meets the legislative requirement. This is what we are implementing. So that is the number one priority—to make sure that it meets it and, in doing so, it meets the requirements of the ABS and accounting classifications. So those are, I would suggest, the three different things that we look at closely to ensure that TAHE—that is how we would measure success for TAHE: that it meets the legislative requirements, all the four or five objectives in there, plus it meets all the accounting requirements within its structure and also it meets the requirements of a SOC as an ABS classification. Then we also have a commercial policy; it needs to comply with the SOC commercial policy also.

Ms ABIGAIL BOYD: Just one last question before I hand back to the Hon. Daniel Mookhey. There was some reliance in budget estimates put on the idea that TAHE was significantly similar to the Victorian and Queensland models in the ABS classification, but in fact they are very different, are they not?

Mr MIDHA: Yes. Every State's model is a little bit different, absolutely, but they do something similar where one of the assets are held in a separate entity.

Ms ABIGAIL BOYD: Yes, but would—

Ms WILKINSON: It is the classification. But the point that I believe was made at estimates is not that the architecture and every element of business is the same but that the classification as a PNFC is the same. So that is true for Victoria and Queensland, and it is also true for the Australian Government's Australian Rail Track Corporation.

Ms ABIGAIL BOYD: Yes, but given how different those entities are, the fact that something similar is being done in other jurisdictions is not in itself comfort that the ABS classification is correct and will be maintained. Is that correct?

Ms WILKINSON: We would never speculate on what the ABS's opinion would be. We simply know that the PNFC classifications is the rail asset holding entities in three other jurisdictions.

Ms ABIGAIL BOYD: Thank you. I will leave it there for now.

The Hon. DANIEL MOOKHEY: Just on that, Mr Midha, are you responsible for liaising with the ABS on this?

Mr MIDHA: No, I am not. I think it is the accounting area, so it is not under my [audio malfunction].

The Hon. DANIEL MOOKHEY: On notice, can you nominate the group that does that and which deputy secretary is responsible?

Mr MIDHA: Okay. I will come back to you—yes, we will take that on notice.

The Hon. DANIEL MOOKHEY: Thank you very much. Mr Midha, I turn to the conversation we were having about the budget impact. So that I am understanding clearly, your evidence is that it had no impact on the budget at any point since its creation?

Mr MIDHA: I think that as a material impact or a deviation from what used to happen, which was as RailCorp—so the conversion from RailCorp to TAHE—there was no material change or impact to the bottom line.

The Hon. DANIEL MOOKHEY: And that had no impact on the budget?

Mr MIDHA: [Disorder] no material impact to the budget, that is correct.

The Hon. DANIEL MOOKHEY: Let me put this to you: Did the decision to create TAHE cause a positive budget impact of \$1.8 billion in 2015-16 and a forecast of \$6.8 billion over the forward estimates from that year?

Mr MIDHA: I will go back to the year before. From what I understand, the injections into RailCorp were treated as equity and when TAHE was announced, we had a transition period where ABS continued to treat those injections as equity. So there was no change to the impact to the bottom line. The change would have happened if we had decided—or if government at that time had made the decision—to either convert its status from a PNFC to a GGS or had committed to not taking forward independent governance and moving to a SOC model.

The Hon. DANIEL MOOKHEY: Chair, I now formally table the Treasury documents that I have tendered.

The Hon. COURTNEY HOUSSOS: The documents have been formally tabled.

The Hon. DANIEL MOOKHEY: Thank you. Turn to Treasury_Tender_003, if you don't mind. Do the witnesses have that document?

Mr MIDHA: Yes. Sorry, I am just trying to bringing that up—003. Yes.

The Hon. DANIEL MOOKHEY: If you can turn to page 9, that would be helpful. This is the Cabinet submission that was provided by then Treasurer Berejiklian and transport Minister Constance. I am going to read to you now directly from it at paragraph 6.1:

There is a positive Budget impact of \$1.8 billion in 2015-16 and forecast \$6.8 billion over the forward estimates.

Mr Midha, having seen that, would you like to revise your position where you said it had absolutely no impact on the budget?

Mr MIDHA: So, one, I cannot comment on a Cabinet-in-confidence document, so I cannot do that, but I still stand by my previous comment.

The Hon. DANIEL MOOKHEY: I want to be very fair to you, because I am going to suggest to the Committee—and the Committee might disagree—that we do make findings about this. I put it to you that when Cabinet agreed to this, they agreed to it because of the predominant reason that it will create a positive budget impact of \$1.8 billion from 2015-16 and a forecast \$6.8 billion over the forward estimates and that reflected Treasury advice.

The Hon. TREVOR KHAN: Point of order: What is being put to this witness is what Cabinet decided. This witness, for a whole series of reasons, cannot give evidence as to the reasoning process adopted by Cabinet—including, amongst other things, putting aside any legal restraint, the very fact that the witness was not present when Cabinet decided the matter.

The Hon. DANIEL MOOKHEY: To the point of order—

The Hon. TREVOR KHAN: You can put a proposition as to what this witness knows [disorder].

The Hon. COURTNEY HOUSSOS: I understand, Mr Khan. Mr Mookhey, did you have any comments in relation to the point of order?

The Hon. DANIEL MOOKHEY: I was eager to put the question again to the witness because it seems to contradict what he just said, and I want to be procedurally fair. But if the Hon. Trevor Khan does not want me to do it, I am happy to move on.

The Hon. TREVOR KHAN: No, that is an unreasonable response. The bottom line is witnesses can give evidence as to what they know. What the Hon. Daniel Mookhey is putting is an invitation for somebody to speculate on something which is outside their knowledge, and that is unreasonable and it does not deserve the riposte that the Hon. Daniel Mookhey gave.

The Hon. COURTNEY HOUSSOS: I take your point about the reasoning and the basis for the decision of Cabinet that the witness cannot be questioned about that, but it seems that the statement that the Hon. Daniel Mookhey is drawing to the witness's attention contradicts his earlier evidence. I think it is fair that witnesses at least be given the opportunity to reflect on whether they want to stand by their previous statement, given what we have seen.

Mr MIDHA: And my answer is, yes, I do.

The Hon. DANIEL MOOKHEY: Thank you. Mr Midha, turn to page 10 of that document. Again, I appreciate that you might be limited but I want to put this to you because you are the person who is responsible for the State budget. This document says that in 2015-16 that the creation of TAHE would create a positive benefit of \$1.8 billion. Given that that year the actual budget result was \$3.4 billion in surplus, is it the case that half of that surplus was owed to the creation of TAHE?

Mr MIDHA: I have to repeat my answer because the benefits of the equity injection existed with RailCorp and all TAHE was doing was continuing that equity injection and the treatment of the equity injection as if it was a PNFC transitioning into a SOC. So the benefit would have been in 2012-13, 2013-14, 2015-16, 2017-18.

The Hon. DANIEL MOOKHEY: Mr Midha, if we are to accept your position, then we have to infer that the submission that went to Cabinet was wrong because this clearly states in that year, "Total Financial Implications", positive budget impact of \$1.8 billion.

Mr MIDHA: I cannot comment on the Cabinet-in-confidence document, but it is all relative. I will put a hypothetical scenario to you that if the capital injection, or the equity injection, was treated as an expense and that was your starting point and then if you continued treating it as equity, then that would be a benefit. Again, I am not commenting on this document, but I am just suggesting that seeing things out of context is a little bit difficult.

The Hon. DANIEL MOOKHEY: Mr Midha, I appreciate the answer. I was intending to put each year to you, but I suspect it might be more efficient for everybody if I put them to you cumulatively and allow you to respond at large. This document says that in 2016-17 the decision to establish TAHE improved the budget result by \$1.9 billion, which was close to half—a little bit less than half—of the \$4.4 billion surplus that the State reported that year. In 2017-18 it says that TAHE contributed \$2.2 billion in positive budget impact and that year we reported a \$3.9 billion surplus, so it accounted for more than half of the surplus there. It says as well that in 2018-19 TAHE contributed \$1.6 billion. At the time that year we reported a surplus of \$802 million, which means without TAHE the State would have had a deficit in 2018-19; and it says that in 2019-20 it would have contributed \$1.1 billion of positive budget impact. That year we had a deficit of \$6.916 billion, which, to be fair, was because of COVID, but it should have been \$1 billion worse. Basically, the inference that I am getting is but for the decision to create TAHE, the surplus would have been lower almost by half in every year and we would have reported a deficit, not a surplus, in 2018-19. Would you like to respond?

Mr MIDHA: Well, I would be speculating. I stood by my answer and I explained how continuation of RailCorp into TAHE means that the treatment has continued so, therefore, it has been neutral as we move forward.

The Hon. DANIEL MOOKHEY: Mr Midha, I understand. I will not press that matter further. I direct you to page 4 of this document, which is the first page in the document of the proposal—that is not the executive summary—and this is the very first paragraph of the submission:

Grants currently paid to Railcorp and other agencies for investment in public transport infrastructure have in the past appeared on the Budget as an expense. By holding public transport assets in an independent, commercial entity, these expenses can be reclassified in the Budget as a capital investment.

That was the main reason why the Government established TAHE, was it not?

Mr MIDHA: Again, that is not my place to comment on any Cabinet-in-confidence document. From what I understand, I take the establishment of TAHE or the objective of TAHE that is in the bill, and those are the principles of establishing TAHE and, as I said, it is one of the three different criteria we follow when setting up TAHE and supporting Transport to set up TAHE.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Midha. I will read you the next paragraph now:

The NSW Government has worked with the Australian Bureau of Statistics to construct the proposed TAHE so that it may be classified as a public non-financial corporation. The effect of this classification is to create a positive Budget impact of \$1.8 billion in 2015-16 and is forecast to be \$6.8 billion over the forward estimates. There is no net change in underlying financial position, it is purely a reclassification of Budget expenses that, in effect, moves them to an off-Budget entity.

TAHE was created to shift costs from the budget to off-budget, was it not?

Mr MIDHA: Again, as I have said, my understanding is that setting up TAHE was to set up a commercial entity to better manage and deliver asset management for the rail portfolio, and that is what we have been working towards.

Ms ABIGAIL BOYD: Can I just clarify that? We were talking before about the difference between the money coming out as a grant versus the money coming out as an equity injection which, of course, is the whole point of this. Are you positive that prior to 2015-16 the money from the Government to RailCorp did not come out of grants but was in the form of an equity injection?

Mr MIDHA: That is my understanding, but I will take that on notice and reconfirm with the accounting team.

Ms ABIGAIL BOYD: Thank you.

The Hon. DANIEL MOOKHEY: I turn to—

Mr MIDHA: Sorry, can I just make another point to clarify my answer?

The Hon. DANIEL MOOKHEY: Please, Mr Midha.

Mr MIDHA: I will certainly do that, but if it was hitting the bottom line expense—no, I retract that. I will leave that as it is. I will check and come back to you—we will take it on notice and come back and clarify that.¹

The Hon. DANIEL MOOKHEY: Thank you, Mr Midha. Maybe I can direct these questions to Ms Wilkinson at first instance with your permission, Mr Midha, if that is all right. It is protocol that we ask the deputy secretary first. I do not want to be rude in that respect. Was it the case that Sydney Trains and NSW Trains did not pay to access rail assets prior to the establishment of TAHE?

Ms WILKINSON: They will not pay the amounts from the Consolidated Fund for covering their costs.

The Hon. DANIEL MOOKHEY: Sorry, Ms Wilkinson, I really apologise but your microphone—you are a bit distant. I do not want to breach any COVID protocols, but I just wonder whether you can speak louder or adjust the microphone.

Ms WILKINSON: We are in a large room. If you are comfortable with us taking them off we can—we are in a large room here—if it is difficult for you to hear me with this on.

The Hon. DANIEL MOOKHEY: We are hearing Mr Midha very clearly but, Ms Wilkinson, I have to confess that I am straining to hear you.

Ms WILKINSON: The operators received an amount of money to cover all of their costs. It was not characterised as access fees at that point in time.

The Hon. DANIEL MOOKHEY: Is it the case that in order to allow them to pay a commercial rate to TAHE, the budget will need to provide them an additional \$800 million per annum of funding to the public transport operators?

Ms WILKINSON: No, that is not correct.

The Hon. DANIEL MOOKHEY: Why do you say that?

Ms WILKINSON: From earlier questions—well, I will not try to infer where you have got your numbers from, but they are not ours and I do not agree that that is correct.

The Hon. DANIEL MOOKHEY: But why do you disagree?

Ms WILKINSON: Well, we have funded the operators as much money as they need to pay their bills, but we are confident that the amount of money that we have provided to them will be sufficient for them to pay their bills across the forward estimates.

The Hon. DANIEL MOOKHEY: How much money have you provided them to cover their bills insofar as rail access fees and charges go?

Ms WILKINSON: We have paid them an amount of money that they sought through the budget process, so it is probably a matter for Transport whether they would break that down but I can take on notice getting back to you with a specific breakdown, if you would like.

The Hon. DANIEL MOOKHEY: Was it circa \$700 million to \$800 million?

Ms WILKINSON: That number would make more sense, yes.

The Hon. DANIEL MOOKHEY: So it is not \$800 million; it is \$700 million?

Ms WILKINSON: But you have to keep in mind that it is on top of the 1.2.

The Hon. DANIEL MOOKHEY: Sure, but in terms of the—

Ms WILKINSON: [Disorder].

The Hon. DANIEL MOOKHEY: But I am talking specifically to allow them to pay a commercial rate to TAHE. How much extra money does the budget have to provide the public transport operators for them to pay TAHE the commercial rate?

Ms WILKINSON: Not a significant amount because they were already funded at a level that provided for the maintenance of the track.

¹ In [correspondence](#) to the committee dated 2 November 2021 Mr Michael Pratt AM, Secretary, NSW Treasury clarified the evidence.

The Hon. DANIEL MOOKHEY: Is it intended that TAHE should be returning the majority of either the \$800 million or the \$700 million per annum to the Government as dividends?

Ms WILKINSON: No. TAHE will spend some of its earnings from its customers maintaining its assets and it will determine what investments it wishes to make, and any dividend that will be paid in the future will be negotiated after they have completed their business plan.

The Hon. DANIEL MOOKHEY: Can I just take you to paragraph 2.6 of Treasury tender document 003, which is the same document that we were referring to before. It says this, and I will read it to you—this is the Cabinet submission that Treasurer Berejiklian and Minister Constance presented:

Sydney Trains and NSW Trains do not currently pay anything for use of the assets. To allow them to pay a commercial rate to TAHE, the Budget will need to provide an additional \$800 million per annum of funding to public transport operators. In turn, it is intended that TAHE should return the majority of this \$800 million per annum to Government as dividends, producing no material effect on the Budget from this injection of money.

I am struggling to reconcile that statement with the evidence that we have heard from these witnesses because I put each of those propositions to you and the only inference that I can get is either the submission is wrong or perhaps the evidence might need to be revised.

Ms WILKINSON: I would say that if you are referring to a document that appears to be from 2016, it would not be unexpected for circumstances to change and assumptions to change between the point when that was written and the point in time when we finalised arrangements.

The Hon. DANIEL MOOKHEY: I accept that, Ms Wilkinson; you are absolutely right. But the issue is what was the motive of the Government at the time? Let me just put it to you that the reason why this was created was that there was a positive budget impact at the time of inception that was thought to be \$6.8 billion over the forward estimates.

Ms WILKINSON: We would maintain that the objectives of TAHE are stated quite clearly in the legislation that was passed by Parliament.

The Hon. DANIEL MOOKHEY: Sure. I return to the questions that Ms Boyd was asking about what the impact of dissolution would be, if you do not mind—unless Ms Boyd or others want to ask any questions now before we get to that point?

Ms ABIGAIL BOYD: I will jump in with one question. Perhaps I am stealing your thunder—I hope not, Mr Mookhey—but I will ask this question: If TAHE was no longer a PNFC—so if it became an off-budget sheet entity, effectively, or off-budget entity—what would the impact be on the ratings?

The Hon. DANIEL MOOKHEY: The State's credit ratings, I think you mean, Ms Boyd.

Ms ABIGAIL BOYD: Correct.

Mr MIDHA: So you are saying what would be the impact if over—so there are a couple of assumptions there. You are assuming that at the moment it is treated as a PNFC and not as a SOC, so the equity injections into it will then have to change because there would be either a CAPEX or a grant. So the effect of that would be the budget result and would that impact the credit rating agencies' decision. The credit rating agencies look at a lot of things—certainly the operating result is one of them but much more closely the cash result, so this should not impact that. I cannot guess—I would be guessing here a little bit about how it would impact—but I can take that on notice and come back with a fuller answer. It might affect the metric; it may not. I do not have a clear answer on that.

Ms ABIGAIL BOYD: I find that surprising, to be honest. Are you saying that you don't know if it would actually have an impact on the State's credit rating? That is not something that is identified as a risk?

Mr MIDHA: The credit rating agencies look at a lot of different measures. It is not one measure that tells them whether to downgrade or upgrade us; there are a number of different measures. What I said is there could be a measure that could be impacted. Whether that results in a downgrade or an upgrade, I could not say, obviously because that is for them. We do look at that as a risk, but obviously the operating result impact would occur within the credit rating agency metrics for assessment.

Ms ABIGAIL BOYD: In my previous career I spent a lot of time with rating agency methodology, although, not in relation to governments. I am well aware of the very fine and fancy footwork that needs to occur whenever you are structuring any kind of transaction, whether it is treated in one bucket or another bucket for rating agencies' purposes when they are doing their calculations of ability to repay debt, effectively. It is incredibly fine. Perhaps you can take on notice whether the rating agencies provided advice at any time since the establishment or prior to the establishment of this structure. I would anticipate that they did and that you would

have sent it to them for their comment at some point. If you could take on notice any of those discussions between the rating agency and Treasury in relation to the methodology that they would apply here and what the impacts would be, that would be very much appreciated.

Mr MIDHA: Sure. I will make two points to clarify that. One, we have briefed them on TAHE and they are comfortable with TAHE, so that has been done and agreed. Yes, we have briefed them on TAHE. Two, the reason for my hesitancy around the impact is because there is no cash impact to government at that stage because the Government is still spending money either as an equity or as a grant, which is why the actual impact to the rating agencies' numbers is hard to quantify. I would have to ask the technical team to have a look at that, but the cash impact has not changed. Normally, if your budget result was impacted by a huge cash movement, then absolutely our ratings would be strongly impacted. I think there is some impact. Whether it is significant or material or small, I do not know at this stage. I could not tell you off hand. I can take that on notice.

The Hon. DANIEL MOOKHEY: Firstly, Mr Midha, I do understand. I think your point is very persuasive, that they actually do look at the cash position of both the Government and the public non-financial sector as well. That makes a lot of sense to me. When you said you briefed them, when did you brief them?

Mr MIDHA: I will have to check with the team. I did not personally go to the TAHE briefing, so I will have to come back to you. I will take that on notice and find the exact dates [disorder] rating agency very often—on a regular basis. I could not tell you which ones. It would have been during the process of setting up TAHE. I can check on that.

The Hon. DANIEL MOOKHEY: Did that briefing take place at the request of the rating agency?

Mr MIDHA: I will need to check again. I do not think there was a specific TAHE briefing. I think we have briefed them as part of our overall briefing. We keep them up to date on changes to government and progress on major government initiatives, so we would have briefed them on TAHE.

The Hon. DANIEL MOOKHEY: I presume that was, what, Moody's, S&P, Fitch?

Mr MIDHA: Yes. I think the last time it came up would have been sometime this year.

The Hon. DANIEL MOOKHEY: Do you mind providing on notice a date of every time the rating agency has been briefed and which one?

Mr MIDHA: Sure, I will take that on notice.

The Hon. DANIEL MOOKHEY: Can I return to the question of this budget impact. Is it the case that the forecasted savings of the budget in the Cabinet's submission—it was close to \$8.5 billion between 2015-16 and 2019-20—was in fact fully realised?

Mr MIDHA: Sorry, what was realised?

The Hon. DANIEL MOOKHEY: I will put it to you again. In what is called establishment phase one, which went from 2015 to 2020, the creation of TAHE preserved \$8.5 billion of expenses to date being recognised as equity.

Mr MIDHA: Off the top of my head, that is possibly the amount that was made—the equity injections. It sounds in the ballpark, yes.

The Hon. DANIEL MOOKHEY: So it did preserve \$8.5 billion of expenses to date being recognised as equity, correct?

Mr MIDHA: Yes. Again, the conversion of any equity, whether it is to any SOC, if you convert it back to a grant, will have a negative impact.

The Hon. DANIEL MOOKHEY: Is it the case that in what is called establishment phase two, which is ongoing from when TAHE went live as a for-profit, public non-financial State-owned corporation post 1 July 2020—I think this phase is meant to last from 2020-21 to 2024-25—TAHE is expected to save the budget a further \$7.1 billion to \$10 billion?

Mr MIDHA: It sounds like those phases that you are talking about are budget phases, so we would be under the current budget phase of 2020-21 to 2024-25. Those numbers would change every budget year depending on what the capital injections are, so I cannot confirm that.

The Hon. DANIEL MOOKHEY: That is fine. Can I then take you to Treasury tender document 001.

Mr MIDHA: Yes.

The Hon. DANIEL MOOKHEY: This is an update, which was from towards the end of last year or the start of this year is my recollection. If you go to the very first slide, it confirms what you confirmed, that in transition phase one—2015 to 2020—TAHE did preserve \$8.5 billion of expenses to date "being recognised as equity". Do you see that?

Mr MIDHA: I need to point out that it is a Cabinet-in-confidence document, so it could have been attached to a Cabinet submission. I cannot really [disorder].

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Midha. I will confess that I am a little confused. Certain documents have been produced that are marked Cabinet-in-confidence but they have been produced. I am just going to put it to you because there is an ambiguous status over all of them. If you feel like you cannot answer it, I accept that, but I feel like I should put it to you to be fair. It says here that it saved \$8.5 billion. You cannot comment?

Mr MIDHA: I do not want to comment, but I want to clarify it. Again, equity injections, if treated as grants, would impact the bottom line. The number that you mentioned before I went back and looked at this sounded in the ballpark of the kind of equity injections that were made into RailCorp or TAHE.

The Hon. DANIEL MOOKHEY: Sure. This document then goes on to confirm basically what you confirmed, which is that in phase two—which we are in now and I think lasts to financial year 2024—TAHE will deliver a further benefit of at least \$7 billion to the budget to support expenditure growth within the cap. The figure of the actual chart says it could be up to \$10 million. Do you see that?

Mr MIDHA: Again, one, I cannot comment directly on the document. But I will say that when you are looking at future projections, it will depend very much on what the capital program is and how that equity is injected and how much equity is injected into TAHE. Future projections will depend upon that [disorder].

The Hon. DANIEL MOOKHEY: Put aside the document then. What are your existing future projections saying about the budget saving that will be realised by TAHE between financial years 2021 and 2024?

Mr MIDHA: Sorry, could you repeat the question? I was talking, sorry.

The Hon. DANIEL MOOKHEY: Put aside the document. Your current projections, which you maintain, as you said—as a person who is responsible for the State's budget, what do you currently project will be the savings of TAHE between financial years 2021 and 2024?

Mr MIDHA: Can I just clarify: there are no savings. We are just continuing it is budget neutral. The existence of TAHE is budget neutral since the [disorder].

The Hon. DANIEL MOOKHEY: Sorry, I will rephrase it.

Mr MIDHA: [Disorder].

The Hon. DANIEL MOOKHEY: Sure. I am happy to rephrase it. What further benefit do you expect to the budget between financial years 2021 to 2024 as a result of the creation of TAHE?

Mr MIDHA: The benefit of the creation of TAHE will be the dividends that they eventually pay back to government. That will depend on their business plan and the dividend projection. I will take that on notice to see whether we have anything in the budget papers.

The Hon. DANIEL MOOKHEY: Just on that question about the cost of TAHE reverting to the general government sector, has Treasury ever costed what the impact of that would be?

Mr MIDHA: We do cost because we understand the impact of converting an equity into a grant. That is something that we do as a matter of course, so yes.

The Hon. DANIEL MOOKHEY: When you costed the impact of TAHE reverting to the public sector, what did your model say the impact was?

Mr MIDHA: I will take that on notice and try to understand what numbers are available. But for TAHE to be dissolved, that is a decision for Government. It is currently a SOC, so it would have to be an act of Parliament to dissolve that. That is not something that is current that we are looking at.

The Hon. DANIEL MOOKHEY: But you have budgeted it. You have modelled it. You just said you did.

Mr MIDHA: Yes, we did that early in the piece.

The Hon. DANIEL MOOKHEY: When was the last time you modelled it?

Mr MIDHA: Again, I will take that on notice.

The Hon. DANIEL MOOKHEY: Did you ever produce a model as to what the budget impact would be if TAHE is reverted between 2021 and 2024 and then a separate number for 2025 and 2030?

Mr MIDHA: All the modelling we would have done would have been on behalf of Cabinet work. Again, they would probably be Cabinet-in-confidence, but I will take that on notice and check.

The Hon. DANIEL MOOKHEY: Can you turn to the last page of Treasury_Tender_001, the one we were referring to before. Again, I will ask the question, Mr Midha, and I respect whichever way you wish to answer it. The last slide of this presentation states, "Impact of dissolution". The subheading of the slide is:

The largest gains are in the next two years. Dissolution puts pressure on funding and is high risk to deliver—

which is fair. But that actually does provide those figures, which I think you took on notice. It states here that if TAHE is reverted, the budget impact cumulatively across 2021 to 2024 is \$7.094 billion. It goes on to state that between 2025 and 2030, the impact, if it is reverted, is \$7.5 billion, which means the total for the next 10 years—if TAHE returns to the public sector—is \$14 billion. Does that align with your forecasts and the models that you were putting?

Mr MIDHA: I will take that on notice and I will check.

The Hon. DANIEL MOOKHEY: That would be a total disaster for the budget, wouldn't it?

Mr MIDHA: Unwinding any SOC would have a budget impact.

The Hon. DANIEL MOOKHEY: Yes, and unwinding this SOC specifically would be devastating, would it not?

Mr MIDHA: I cannot speculate on the options and the mitigation factors if Parliament were to decide on what would happen with a SOC. We would examine that situation at that time and [disorder].

The Hon. DANIEL MOOKHEY: No, there are two risks on this question. There is the risk that Parliament decides to reverse it, and the other risk is that the ABS withdraws its classification. Do you accept that?

Mr MIDHA: Yes.

The Hon. DANIEL MOOKHEY: If the ABS was to reverse its classification, \$14 billion worth of costs over the next 10 years would come back onto the State's budget, would it not?

Mr MIDHA: I do not know what that number is. It depends on what action we took.

The Hon. DANIEL MOOKHEY: If the ABS was to withdraw its classification, as Ms Boyd put to you, the actual impact on this for the State would be bigger than anything else—other than COVID or a pandemic—to hit the budget, right? To lose this classification will hurt the budget more than the cost of the pandemic. That is why I am asking you these questions, Mr Midha.

Mr MIDHA: I understand that and I want to be helpful. If there was a reason for the classification reversal—we are not meeting some different metric or some particular standard—then we would have to rectify that. It is not a given that it is a 100 per cent guaranteed outcome because we have lots of other tools and actions to take before something like that will eventuate. It is a risk, but we would have risk mitigation to overcome that, and we have done everything we can to ensure that does not happen.

The Hon. DANIEL MOOKHEY: To be fair to you, Mr Midha, I did not put to you that it was beyond the power of Treasury to mitigate the risk. To be honest with you, I accept that Treasury will have \$14 billion worth of reasons to mitigate the risk. That is my point. Treasury is heavily invested in this structure because if it falls over it will hit the budget by \$14 billion.

The Hon. TREVOR KHAN: Point of order: Firstly, that is an assertion, not a question. The second point is this: The question has been put to this witness on at least two occasions now and he has responded. Simply asking the same question again or indeed now getting into speechmaking does not advance it. I invite the member to move on.

The Hon. DANIEL MOOKHEY: To the point of order: The proposition that the witness advanced in response was that Treasury was capable of mitigating the risk. I am putting to the witness a separate question. I am happy to rephrase it as a clear question if perhaps I was not clear.

The Hon. TREVOR KHAN: You were not clear at all.

The Hon. DANIEL MOOKHEY: I am happy to put it again, Ms Deputy Chair, if you wish to rule.

The Hon. COURTNEY HOUSSOS: I will invite you to put it again. While I am sure Mr Mookhey appreciates the advice on his questioning from Mr Khan, he does have the ability to put the question how he chooses, even if that is multiple times—over and over again. We do have 20 minutes to go this afternoon. I am sure Mr Mookhey has other questions, so I will invite him to put this question again if he so chooses. I will hand back to him.

The Hon. TREVOR KHAN: Can I simply say that if he makes statements as opposed to asking questions, I will exercise my right and take a point of order [disorder].

The Hon. COURTNEY HOUSSOS: Absolutely.

The Hon. DANIEL MOOKHEY: I feel that perhaps the resolution to this is for me to obey the superior guidance of my senior colleague Mr Khan and move on. I will move on because, Deputy Chair, your time reminder is probably the more persuasive argument I heard there. Can we talk about the rail access fee that TAHE is expected to charge to NSW Trains and Sydney Trains. Both TAHE and those rail operators have established that it is circa \$700-ish million this year. That accords with Treasury's understanding, does it not?

Mr MIDHA: That is not something that is detailed in our budget at the moment.

Ms WILKINSON: I would not go into detail and specifics, but I can say that enough money is allocated to Transport in this year's budget to ensure that the operators can pay their bills to TAHE.

The Hon. DANIEL MOOKHEY: Moving on. Did you by any chance see any of the questions to Transport this morning, Mr Midha?

Mr MIDHA: Sorry, I missed that. Could you repeat the question again, please?

The Hon. DANIEL MOOKHEY: Did you by any chance witness any of the questioning to Transport this morning?

Mr MIDHA: Some of it, yes.

The Hon. DANIEL MOOKHEY: I raised with Transport the report that we have previously discussed in budget estimates, which at the time Treasury said was the product of Transport and that I should direct my questions there, which I did. I am talking about the KPMG report that is titled *TAHE: Long-term operating model assessment*, which is provided to you as Treasury_Tender_003. There might have been two of them. Do you know the report I am talking about, Mr Midha?

Mr MIDHA: Yes.

The Hon. DANIEL MOOKHEY: This is a report that Treasury had extensive involvement in, did it not?

The Hon. COURTNEY HOUSSOS: Sorry, Mr Midha, are you clear on the document?

Mr MIDHA: Sorry, I do not [disorder].

Ms WILKINSON: Mr Mookhey, are you referring to the KPMG document?

The Hon. DANIEL MOOKHEY: Yes, I am. I am referring to this one.

Ms WILKINSON: The TAHE long-term operating model document?

The Hon. DANIEL MOOKHEY: Excuse me?

Ms WILKINSON: That TAHE long-term operating model document [disorder].

The Hon. DANIEL MOOKHEY: The long-term operating model assessment. Yes, that is what I am referring to.

Mr MIDHA: I do not have that [disorder].

The Hon. DANIEL MOOKHEY: That is dated 8 November 2020. This is a report that had extensive Treasury involvement, did it not?

The Hon. COURTNEY HOUSSOS: Sorry, Mr Mookhey. Mr Midha, do you have access to that document?

Mr MIDHA: I do not. I am trying to bring that up now. Sorry, I have not had a chance to [inaudible].

Ms WILKINSON: I would like to [inaudible] if I may, Mr Mookhey. I heard the characterisation this morning that was put that Treasury had intense collaboration or some very detailed collaboration. That document is a Transport document. We were consulted on elements of it. That document provides extremely useful information on the operating model of TAHE and on the safety requirements of TAHE. We were consulted on some thinking that the consultants did about some scenarios that might affect finances. At the time, we shared a view with them that our assumptions and expectations were quite different from theirs.

The Hon. DANIEL MOOKHEY: Yes, that is fair. Ms Wilkinson, I accept that. To be fair, the term collaboration—I put it to Transport and I think they agreed that they had collaborated with you extensively on that, but I accept that you might disagree. My point is that it was not your document; I accept that. You did not pay for it; I accept that. It is their product; I accept that. But I am looking through the number of times Treasury officials were consulted. Ms Wilkinson, you are identified as attending four workshops in August last year, or at least four consultation opportunities. I count 10 to 20 separate forms of engagement between Treasury and KPMG in respect to this report, either individually or joint with Transport for NSW or TAHE. I also count more than 15 specific changes that were requested by Treasury that TAHE then made. So whilst I accept your point, do you agree with me that you were extensively consulted and had substantial input into this report?

Ms WILKINSON: I agree that I was extensively consulted. I do not agree that I had substantial input. If you have the documents that you seem to be referring to, you may be aware that I raised concerns with some of the assumptions that underpin scenarios that were put in there regarding fiscal and economic advice. [Disorder]. I made no comment on operational safety matters because Treasury has no business commenting on operational safety matters. But equally, we are entitled to be considered Cabinet's principal adviser in fiscal and economic matters, and I asserted our right to have that primacy in terms of our advice.

The Hon. DANIEL MOOKHEY: Indeed. To be fair to Transport, they told us that this report had no bearing on safety, that it was not a safety report and that was beyond its scope. As they were the authors and payers of the report, I will take their word for it. But I accept your point, Ms Wilkinson.

Ms WILKINSON: I think you will find, though, Mr Mookhey, that there is a report in there from Mr Hardwick, who gave evidence this morning. Contained in that document is a paper from Mr Hardwick that confirms that TAHE can operate safely. That was of great importance to us at the time.

The Hon. DANIEL MOOKHEY: I am sure. But the point is that there was a wide divergence in assumptions between KPMG and Treasury. Is that correct?

Ms WILKINSON: Only limited to fiscal and economic matters.

The Hon. DANIEL MOOKHEY: Yes. The difference in assumptions is listed on pages 63 and 64 of this report. I count 14 different variances in assumptions between KPMG and Treasury that are material to the fiscal matters that you describe as well. Do you agree that there is about that many?

Ms WILKINSON: I do not know how many it is, but I am certainly happy to answer if that is a question.

The Hon. DANIEL MOOKHEY: To get straight to the point, KPMG puts their preferred assumptions and it says that the actual net impact of TAHE over a 10-year forward estimate is minus \$5.3 billion. If TAHE is turned on, as is currently planned, it will lead to a \$5.3 billion deterioration in the budget. They then also used Treasury's assumptions and spat it out. If you model the cost of TAHE using Treasury's assumptions, this report states that TAHE will improve the budget by \$4.7 billion over 10 years, which means that the difference in assumptions—14 different assumptions—leads to a spread of \$9 billion. That is massive. Do you agree?

Ms WILKINSON: Yes, I do, and it is explicable.

The Hon. DANIEL MOOKHEY: Yes. Treasury sharply disagreed with the assumptions that KPMG were implying. That is correct?

Mr MIDHA: Yes.

The Hon. DANIEL MOOKHEY: That led to conflict with Transport, did it not?

Ms WILKINSON: It led to disagreement.

The Hon. DANIEL MOOKHEY: Conflict with Transport, did it not?

Ms WILKINSON: We are public servants. We do not have fights, but we do have disagreements.

The Hon. DANIEL MOOKHEY: What did Treasury do to pursue the disagreement?

Ms WILKINSON: We requested that they correct the errors in the report. We requested that they correctly reflect Treasury's input.

The Hon. DANIEL MOOKHEY: When you say "we", who?

Ms WILKINSON: I personally did in workshops with KPMG.

The Hon. DANIEL MOOKHEY: Did you ever pick up the phone, Mr Midha?

Mr MIDHA: Yes.

The Hon. DANIEL MOOKHEY: To whom?

Mr MIDHA: I think I put it in writing, and I have even spoken to the KPMG partner working on the project.

The Hon. DANIEL MOOKHEY: We asked for that document and any correspondence between Treasury and KPMG about this report and other reports and no such correspondence was produced, Mr Midha. Are you in a position to produce that correspondence on notice to us?

Mr MIDHA: I will take that on notice.

The Hon. DANIEL MOOKHEY: Mr Midha, you said that you contacted the partner in charge. Who was that?

Mr MIDHA: I think the partner in charge was Mr Brendan Lyon.

The Hon. DANIEL MOOKHEY: How many times did you speak to him?

Mr MIDHA: No idea.

The Hon. DANIEL MOOKHEY: Was it multiple times?

Mr MIDHA: A number of times, yes.

The Hon. DANIEL MOOKHEY: On notice, can you provide us any further detail?

Mr MIDHA: Yes.

The Hon. DANIEL MOOKHEY: Did Mr Pratt, the secretary of Treasury, ever pick up the phone to the partner in charge?

Mr MIDHA: I have no idea. I do not know.

The Hon. DANIEL MOOKHEY: Did Mr Pratt ever discuss that with you?

Mr MIDHA: Discuss what, sorry?

The Hon. DANIEL MOOKHEY: How about I rephrase it this way: Did you ever tell Mr Pratt that you had raised your concerns with Mr Lyon?

Mr MIDHA: Probably.

The Hon. DANIEL MOOKHEY: Did you ever ask Mr Pratt to call Mr Lyon himself?

Mr MIDHA: No—we have had so many conversations during the build-up of this. I cannot recollect what I did or did not say. There is a lot of detail that you are asking for.

The Hon. DANIEL MOOKHEY: No, there are not that many details. I am asking you if you recollect ever having a conversation with Mr Pratt in which you asked him to contact the partner in charge?

Mr MIDHA: Again, not to my recollection. I can check my diary or something else, but not to my recollection.

The Hon. DANIEL MOOKHEY: In any leadership meeting that was held by the Treasury executive, did Mr Pratt ever disclose that he made contact with Mr Lyon, to the best of your recollection?

Mr MIDHA: I think there was contact. But again, I would have to have a think about it and recollect those moments. That was a while ago.

The Hon. DANIEL MOOKHEY: Will you take that on notice?

Mr MIDHA: I will take that on notice.

The Hon. DANIEL MOOKHEY: Did you ever speak to anybody else in the KPMG leadership about your concerns with this report, Mr Midha?

Mr MIDHA: I will take that on notice. We had a fair bit of [disorder] so there is a fair—yes.

The Hon. DANIEL MOOKHEY: Sorry, I did not understand the answer.

Mr MIDHA: I will take that on notice.

The Hon. DANIEL MOOKHEY: To the best of your knowledge, did you ever ask Mr Pratt to contact anybody else at KPMG?

Mr MIDHA: Again, I will take that on notice. For this particular matter on the particular report, I will take that on notice.

The Hon. DANIEL MOOKHEY: Did Mr Pratt ever disclose to you that he had contacted other members of KPMG's leadership to raise concerns with this report?

Ms WILKINSON: Mr Mookhey, I think you are asking for details of private conversations and we may need to speak with our general counsel before sharing communications that are other people's emails or conversations. We are certainly happy to give you an answer, but some of it may be private and we will need to seek advice.

The Hon. DANIEL MOOKHEY: Ms Wilkinson I can appreciate why that might be your position, but to be fair it is well-established practice that privacy is not necessarily a reason to object to being asked a question here. To be clear, I am not asking you to comment on other people's conversations; I am actually asking Mr Midha to comment on his own conversations. The particular conversation I am asking Mr Midha about is, at any point has Mr Pratt disclosed to you that he made contact with any other members of KPMG's leadership to raise concerns about this report?

Mr MIDHA: Again, I will take that on notice.

The Hon. DANIEL MOOKHEY: Did Treasury withdraw its cooperation with Transport in the production of this report?

Ms WILKINSON: I do not think that is the right characterisation. We have always acknowledged that Transport and whomever they hire to work with them are entitled to produce advice on transport operations and safety, which the rest of us must have regard to. That their consultant offered some scenarios around things like pricing led us to observe that they are not the Government's principal adviser on those matters and we asserted our primacy in that regard. To that extent, we chose to give different advice that we felt was more accurate.

The Hon. DANIEL MOOKHEY: I appreciate that, Ms Wilkinson. When you say "we asserted our primacy", do you mean Mr Pratt asserted Treasury's primacy?

Ms WILKINSON: I think we, Treasury, institutionally was certainly—each of us in our various ways insisted on our right to advise Cabinet on fiscal impacts of their decisions.

The Hon. DANIEL MOOKHEY: Mr Midha, this question is going directly to you. Are you aware of any correspondence that the Treasury secretary sent to the Transport secretary in which he effectively withdrew Treasury's cooperation with Transport on the basis of what he alleged was persistent errors?

Mr MIDHA: No, I am not aware of that. We have never not cooperated or worked together with Transport, hence [disorder].

The Hon. DANIEL MOOKHEY: Do you wish to take that on notice and perhaps check your records?

Mr MIDHA: Yes, we can certainly take it on notice, but we have never not cooperated with Transport.

The Hon. TREVOR KHAN: Point of order: It is my standard what we can call the Mookhey point of order. We are getting back to the point where Mr Mookhey is talking over witnesses. Again, I ask him to go at 90 per cent rather than at 110.

The Hon. DANIEL MOOKHEY: Mr Khan is as persuasive as always. Deputy Chair, I apologise. As a result of Treasury's disagreement with the findings of this report, did Treasury then decide to forward a report that was produced by KPMG partner Heather Watson to the Cabinet as a substitute form of advice?

Mr MIDHA: So Heather had been with us for a while on a couple of different fronts, but particularly on TAHE. Heather was the finance and accounting partner, so we used Heather's expertise to assure the work that we had done to ensure that we had met the Australian Accounting Standards Board [AASB] requirements on the accounting for TAHE and the ABS classification. That is exactly how Heather's work was carried out.

The Hon. DANIEL MOOKHEY: We were exploring some of the matters that led to the commissioning of Ms Watson at budget estimates, if you recall, Mr Midha.

Mr MIDHA: Yes.

The Hon. DANIEL MOOKHEY: We did ask some questions on notice as to who precisely commissioned that. Do you recall that? I think the specific question that was asked was whether that was undertaken by the Treasury secretary. Do you recall?

Mr MIDHA: The commissioning of Ms Heather Watson? Yes.

The Hon. DANIEL MOOKHEY: Yes. The answer that came back was that the Treasury secretary did not commission Ms Watson. That was the answer we got back. Do you recall that?

Mr MIDHA: Again, I do not recollect that answer but I can check.

The Hon. DANIEL MOOKHEY: Ms Wilkinson, Ms Watson's report is addressed to you. Did you commission Ms Watson?

Ms WILKINSON: I was the official who signed the engagement letter, so she addressed her communications through me to Treasury.

The Hon. DANIEL MOOKHEY: But did you commission her? Was it your decision to engage her services?

Ms WILKINSON: I certainly recommended it on the paperwork. In terms of strictly who the authorising entity is, I think I will have to check internally to give you the correct answer.

The Hon. DANIEL MOOKHEY: I would appreciate knowing who the authorising entity was, but who told you to issue the commissioning letter?

Mr MIDHA: It would have been me, I think.

Ms WILKINSON: Just for a little context, Ms Watson was working with us at the time on a range of issues across the whole of sector. She is regarded as a leading expert in the application of accounting standards in the public sector. We were already receiving advice from her on another issue. She was working with colleagues in our accounting policy team. It was appropriate to consult her on some technical matters.

Mr MIDHA: [Disorder] budget estimates and budget estimates in 2019. I think we were looking at leasing standards and the service concession standards, and that included TAHE. Ms Watson was working on that project, and her expertise was on display. The advice that was being provided, we then extended that into TAHE to provide us with her expertise on the TAHE project and that became an additional subset to the work that she was doing.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Midha. To be fair, that is very similar to the answer you gave at estimates so I am not disputing that she brought expertise that Treasury found valuable. Mr Midha, at estimates you said that she was handpicked. I put it to you, "Was she handpicked?" You said, "Yes." Who handpicked her?

Mr MIDHA: I am happy to take responsibility for that because of the work that she had done, that was through this, and the advice that she was providing, the detailed knowledge that she had, we were comfortable to use that expertise. I was comfortable to use that expertise on TAHE.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Midha. That helps identify who the official was. I am going to pause there, Deputy Chair, and ask if my colleagues have any final questions in the remaining two minutes because I am eager not to breach Mr Khan's rule.

Ms ABIGAIL BOYD: A very quick one, if I may. We talked before about how there is no real difference in terms of the ultimate amount of money spent by government that is going to TAHE, whether it is in the form of an equity injection or a grant. Do you have the total costs involved so far in setting up the TAHE structure? Is that something you could take on notice? I would like it to include consultants' fees, the cost of recruiting board members, the board members' salaries—the whole additional cost of setting up this structure. Are you able to provide that for me on notice?

Mr MIDHA: Yes. We can take that on notice and provide those costs for you that have been included by Treasury, yes.

Ms ABIGAIL BOYD: Thank you. I have one final question. We had quite a discussion with previous witnesses about what the purpose of setting up TAHE was for and whether or not it really is just a massaging of figures to make the budget look better. From your perspective, is there any benefit to passengers and to the people of New South Wales from this structure?

Mr MIDHA: Better asset management means direct results in performance for the user. Getting better delivery of stations and land owned by TAHE absolutely has a direct benefit to passengers on our rail services

and others who use the assets that are being managed by TAHE. Having a dedicated asset manager has a great benefit to the people of New South Wales, including passengers of the rail network.

Ms ABIGAIL BOYD: It is aspirational.

The Hon. TREVOR KHAN: Chair, that seems to be a great point to end on, it now being 2.50 p.m..

The Hon. COURTNEY HOUSSOS: Thank you very much for the reminder, Mr Khan. I too was very closely watching the time. I thank our witnesses for their testimony this afternoon and for their time and flexibility given today's events in slightly delaying our hearing. I note that you have taken quite a number of questions on notice. The secretariat will be in contact with you about providing answers for those. That draws today's hearing to a close.

(The witnesses withdrew.)

The Committee adjourned at 14:55.