

REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY COMMITTEE

TRANSPORT ASSET HOLDING ENTITY

CORRECTED

At Jubilee Room, Parliament House, Sydney, on Thursday 16 December 2021

The Committee met at 10:50.

PRESENT

Ms Abigail Boyd (Acting Chair)

The Hon. Scott Farlow
The Hon. John Graham
The Hon. Shayne Mallard
The Hon. Daniel Mookhey
The Hon. Peter Poulos

PRESENT VIA VIDEOCONFERENCE

Mr David Shoebridge

* Please note:

[inaudible] is used when audio words cannot be deciphered.

[audio malfunction] is used when words are lost due to a technical malfunction.

[disorder] is used when members or witnesses speak over one another.

The ACTING CHAIR: Good morning. I thank witnesses for their patience as we have sorted out our technology issues this morning. We are running a little bit late but we will try to make up as much time as we can. Welcome to the fourth hearing of the Public Accountability Committee inquiry into the Transport Asset Holding Entity, otherwise known as TAHE. Before I commence I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respects to Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginals present. Today we will be hearing from NSW Treasury, Transport for NSW and TAHE. I thank everyone for making the time to give evidence to this important inquiry today.

Before we commence I would like to 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 hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded to take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I, therefore, urge witnesses to be careful about comments they may make to the media or to others after they complete their evidence.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and would like more time to respond, they may take a question on notice. Written answers to questions taken on notice are to be provided by 24 January 2022. If witnesses wish to hand up documents, they should do so through the Committee staff. In terms of the audibility today, I remind Committee members and witnesses to please speak into the microphone. Finally, everyone should turn their mobile phones to silent for the duration of the hearing.

MICHAEL PRATT, Secretary, NSW Treasury, sworn and examined

STEWART WALTERS, Chief Finance and Operations Officer, NSW Treasury, sworn and examined

ROB SHARP, Secretary, Transport for NSW, sworn and examined

SAN MIDHA, Deputy Secretary Policy and Budget, NSW Treasury, on former affirmation

CASSANDRA WILKINSON, Executive Director Transport and Planning/Industry, NSW Treasury, on former oath

BRUCE MORGAN, Chair, Transport Asset Holding Entity, before the Committee via videoconference, on former oath

The ACTING CHAIR: I welcome our first and only witnesses for today. I remind Mr Midha, Ms Wilkinson and Mr Morgan that they do not have to be sworn as they have been sworn at an earlier hearing of this inquiry.

The Hon. DANIEL MOOKHEY: Point of order: Chair, as I understand it, it is still uncertain as to whether the hearing is being broadcast. I just ask for clarity.

The ACTING CHAIR: My understanding is that we are being broadcast within the building but we are not being broadcast outside. However, that is in the process of being fixed. Is that helpful?

The Hon. DANIEL MOOKHEY: Thank you, yes.

The ACTING CHAIR: I ask the witnesses if you would like to begin by making a short opening statement today.

Mr PRATT: Thank you, Chair. I have an opening statement, as do Mr Sharp and Mr Morgan.

The ACTING CHAIR: Please go ahead.

Mr PRATT: I would like to thank the Committee for the opportunity to appear here today. Firstly, let me state that there is no budget black hole. The State's economy is in an enviable position despite the pandemic. This morning the Treasurer announced the budget is forecast to return to surplus by 2024-25. New South Wales is the only State with two triple-A ratings, and I note the rating agencies are on the record as not being concerned about New South Wales. New South Wales has come through Delta with elevated business confidence and positive consumer sentiment. It is bouncing back from one of the biggest economic shocks the State has faced in generations. Growth in jobs has resumed, vacancies are higher than pre-pandemic levels, and economic activity and employment are projected to return above pre-Delta outbreak levels in the March quarter.

I will now turn my attention to TAHE. A lot has been written and reported about TAHE. Today I intend to address a raft of unfounded, erroneous and ill-informed allegations and provide the Public Accountability Committee [PAC] with the truth, because truth matters for us as individuals, for the integrity of the public service, for the integrity of this Committee and as a society. Public statements that imply public servants have been engaged in trickery are insulting and unjustifiably undermine public faith in the entire public service.

There has been a false narrative that TAHE was created to perpetuate an accounting trickery. That is wrong. The truth is TAHE was created to pursue Government policy of micro-economic reform to bring about the most optimum structure for the management of Transport assets. This reform will deliver demonstrable and measurable benefits to the people of New South Wales. The Secretary of Transport is here with us today and can further opine on the current and future strategy for Transport, and how TAHE fits in. There has been a false narrative that TAHE will compromise safety. That, too, is wrong. The truth is TAHE does not compromise on safety, as the recent independent Office of Transport Safety Investigations [OTSI] report submitted by TAHE shows. The Chair of TAHE is with us today and he can explain the relevant safeguards.

There has been a false narrative also about Treasury versus the Auditor-General. That is wrong. The truth is that Treasury and the Auditor-General have important but very different roles in ensuring that the State accounts are prepared in accordance with complex national and relevant international accounting standards, several of which have recently changed. Treasury is the preparer of the accounts and does so based on its expertise and supporting evidence. The Auditor-General is the reviewer of the accounts and provides her opinions based on a review of the supporting evidence. Each year Treasury and the Auditor-General put many hours of work into aligning our understanding. This is the normal and annual process that preparers and reviewers undertake to ensure the Government can have confidence that the accounts are robust. It has taken longer than usual for us to align our understanding in relation to TAHE, but I am pleased to say good progress has been made.

There has been a false narrative made under parliamentary privilege about my behaviour and the behaviour of two Treasury executives who are present here today. That is wrong. The truth is Treasury executives have behaved with professionalism and integrity, and I fully support them. I am frankly appalled that select emails and phone conversations were omitted to create a false narrative when Mr Lyon appeared here at the PAC on 8 November. Only after the unjustified attacks and unbalanced media articles, when they were written, was the complete set of evidence showing a much different version of events uploaded to PAC by this Committee.

In my 10 years of public service I have never seen such behaviour. If there has been any trickery, that is the trickery that has occurred through this inquiry process. There has been a false narrative that TAHE will lead to a \$10 billion or more worse-off result. These are figures that have been put forward by Mr Lyon, who under oath conceded that he is not an accountant, selectively chose to omit evidence, adjusted time lines to fit his narrative, made statements which are false—such as the current CEO of KPMG has previously worked for me; I have only met him twice to my knowledge—and referred to female public servants behind their backs as ranting and emotional. I must say I find this misogyny disgusting, unprofessional and highly offensive. Mr Lyon was highly derogatory towards his own colleagues at KPMG in internal emails and was, in fact, investigated by KPMG for his own behaviours. The truth is that TAHE as a commercial entity will deliver benefits to the citizens of New South Wales.

The accounting work for TAHE and all the government agencies, including State-owned corporations [SOCs], are prepared not only by those here today but are the result of countless hours of work done by teams of accounting professionals within Treasury, public servants, chief financial officer [CFO] teams from across the sector and external accounting specialists. The false narrative that TAHE is a conspiracy concocted by all these public servants and external accounting specialists to cook the State's books, as suggested by Lyon and others, is as insulting as it is beyond belief. The truth is that Treasury and the public sector in good faith were implementing complex, micro-economic reform to provide significant benefits for the New South Wales public. I look forward today to demonstrating what TAHE truly represents for the people of New South Wales, alongside representatives here from Transport for NSW and TAHE. Thank you, Chair. I will hand to Mr Sharp now.

The Hon. DANIEL MOOKHEY: Point of order: As I understand it, we are not broadcasting and, to be fair to the witnesses as well, given the matters and the witnesses' right to procedural fairness, they should be heard. I would just suggest perhaps that we take a short adjournment.

The ACTING CHAIR: Yes. I was about to suggest the same myself. Apologies to all of you. I think, out of fairness, we should wait for that broadcast to be made available. I am sorry, Mr Shoebridge. Were you trying to say something?

Mr DAVID SHOEBRIDGE: No. I was going to suggest that we maybe should have a quick chat with the witnesses if we do have an adjournment about whether or not the witness wants to give the opening statement again when it is being broadcast.

The ACTING CHAIR: Okay. What I am going to suggest we do then is have a short five-minute break where we go off air. We will sort this out and then come back. Thank you.

(Short adjournment)

The ACTING CHAIR: Thank you all and thank you again for your patience while we work through these technology issues. Before we adjourned it to fix those issues, Mr Pratt, you had delivered your opening statement. It was not broadcast; it was captured but it was not broadcast. If you would like to repeat it, this is your opportunity to do so.

Mr PRATT: Thank you, Chair. I would like to thank the Committee for the opportunity to appear here today. First, let me state that there is no budget black hole. The State's economy is in an enviable position despite the pandemic. This morning the Treasurer announced that the budget is forecast to return to surplus by 2024-25. New South Wales is the only State with two triple-A ratings, and I note that the ratings agencies are on the record as not being concerned about New South Wales. New South Wales has come through Delta with elevated business confidence and positive consumer sentiment, and is bouncing back from one of the biggest economic shocks the State has faced in generations. Growth in jobs has resumed, vacancies are higher than pre-pandemic levels, and economic activity and employment are projected to return to above pre-Delta outbreak levels in the March quarter.

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The ACTING CHAIR: Mr Sharp, was it you who had an opening statement as well?

Mr SHARP: Yes, Chair. I welcome the opportunity to appear before the parliamentary Committee in my capacity as Transport Secretary and to answer questions in respect to safety assurance and licensing arrangements, which are embedded in the TAHE model. I believe TAHE does offer Transport for NSW a strong and sustainable model—a model that is, in fact, fit for purpose. A lot remains the same. Under this operating model TAHE's assets are safely operated and maintained by Transport for NSW, Sydney Trains and NSW Trains. As the accredited rail transport operators, Sydney Trains and NSW Trains will continue to play the lead safety role, regardless of asset ownership. Sydney Trains and NSW TrainLink remain the operators of public passenger services and continue to operate services pursuant to the rail operations agreement, in alignment with the Passenger Transport Act 2014.

Public transport fares will continue to be regulated by the Independent Pricing and Regulatory Tribunal [IPART] and set by government. Transport for NSW will remain accountable for the long-term transport strategy across all modes, including heavy rail, and day-to-day operations remain the clear accountability of Sydney Trains, NSW TrainLink and Transport for NSW. The Transport Asset Holding Entity is actually on the legacy of RailCorp. As the custodian of this State's rail infrastructure, rolling stock, station and facilities, plant and equipment, and property, it is one of a number of State-owned corporations in New South Wales.

The establishment of public non-financial corporations as heavy rail asset owners is not a new or novel concept, nor is it unusual for these public non-financial corporations to provide access to rail networks on a commercial basis to government-owned and private rail operators. This is in fact true of the Victorian model where VicTrack owns rail and tram assets and leases them to Public Transport Victoria for a commercial fee. It is also true of the Queensland model where Queensland Rail Limited owns the rail assets and drive a commercial return back to Government by charging Queensland Rail and other rail operators that deliver the rail services. It is also true for the Australian Government's Australian Rail Track Corporation. It is also important to note that TAHE operates under the same safety regulation and obligations as RailCorp. There has been no reduction in safety regulation or standards.

From a personal perspective, I am satisfied that the TAHE model is robust and will deliver fit-for-purpose safety, operational governance and commercial outcomes. I am satisfied because three key elements are clearly articulated and remain under the appropriate level of control for Transport for NSW, Sydney Trains and NSW Trains, these three being safety, escalation processes and cost. Safety is always number one. It remains the number one priority for all transport operations, and we are committed to delivering safe rail services to customers. In relation to TAHE, I am confident that safety remains the central focus, as it is enshrined in the Act, it is supported by the Rail Safety National Law, it is mandated by an operating licence that TAHE is required to comply with, it is underscored by a statement of ministerial expectation, and it is maintained by the requirement for rail operators like Sydney Trains and NSW TrainLink to remain the accredited safety managers.

Let me be clear: Decisions about assets, including maintenance and delivery, are subject to the same rigorous safety assurance regimes that existed prior to the establishment of TAHE. TAHE will not impact on our operations and maintenance activities, including those related to safety, as safety still rests with Transport for NSW. In respect of escalation processes, a suite of legal and commercial agreements effective between TAHE, Transport for NSW, Sydney Trains and NSW TrainLink on 1 July 2021 contain dispute resolution processes and nominated contract managers who will facilitate the solution of these issues on behalf of their respective entities. I have also reviewed the access and licence fee approach and I am satisfied that the fees are reasonable and have been developed on a commercial basis, including alignment with the NSW Rail Access Undertaking.

The NSW Rail Access Undertaking specifies a number of pricing principles that TAHE must apply in negotiating access fees for Transport for NSW, and this is to balance the market power of rail infrastructure owners against the need to ensure efficient access. Access and licence fees will be reviewed regularly, with a clear process included in the suite of recently executed commercial and legal agreements, and this is to reflect rail operator access and asset requirements and to align our forward infrastructure delivery program. I thank you for the opportunity to speak and articulate how we are working with Treasury and TAHE to deliver improved public transport outcomes. Thank you, chair.

The ACTING CHAIR: Thank you. Was it Mr Morgan who had an opening statement as well?

Mr PRATT: That is correct, Chair, yes.

Mr MORGAN: Good morning, Committee members, and thank you, Chair. As you will recall, I appeared before the Committee on 8 November so today I will keep my opening statement brief. I would like to reiterate my confidence in the significant value that TAHE will deliver to the State. The team at TAHE remains focused on delivering the substantial benefits our independent organisation offers to the people of New South Wales. I note that, subsequent to my previous appearance, TAHE has made a brief supplementary submission on safety matters to the Committee.

The safety of rail transport in New South Wales remains the central priority for all participants in the rail system, including TAHE. The creation of TAHE, as you have heard from the Transport Secretary, does not alter the robust structure that has governed rail safety since the responses to the inquiries into the tragedies at Glenbrook and at Waterfall. Day-to-day operational management, safety and maintenance remain the primary responsibility of the rail operators, including Sydney Trains and NSW Trains. TAHE's operating licence specifically precludes us from carrying out railway operations or maintenance. The overall safety framework remains under the oversight of the Office of the National Rail Safety Regulator.

What TAHE does do is provide an additional layer of assurance given that the asset owner is required to ensure itself that the assets are safe, reliable and fit for purpose. This is an important message, and I want to strongly re-emphasise that today. I also want to note that TAHE's operating licence is in the process of being operationalised and we continue to work constructively with Transport for NSW, Sydney Trains and NSW Trains. I am pleased with the strong working relations we have formed with these organisations over the past few months. I thank you for the opportunity to further assist the Committee.

The Hon. DANIEL MOOKHEY: Thank you to the witnesses and to you, Mr Pratt and Mr Sharp, for your attendance, Mr Morgan, for your appearance, as to you, Mr Midha and Ms Wilkinson, for your return appearances. It is good to see you, Mr Walters, again. Secretary, can I just start by saying that having listened now to your opening statement, the one that was not broadcast and the one that was broadcast, there is an important difference between the two. In the one that was not broadcast, you concluded by saying that you were implementing Government policy, but in the one that was broadcast you said you were implementing micro-economic reform. Can I ask you, firstly, why did your statement change? Secondly, can you table both statements for us please? And thirdly, can you explain what you think turns on the distinction between you implementing Government policy and you pursuing micro-economic reform?

Mr PRATT: Mr Mookhey, I read the statement exactly as written on both occasions.

The Hon. DANIEL MOOKHEY: Fair enough. I will leave that then to Hansard and we can check the differences.

Mr PRATT: If it is incorrect in *Hansard*, I will correct it, but I did read the statement as recorded.

The Hon. DANIEL MOOKHEY: Secretary, last time you and I had the opportunity to discuss the status of the State accounts at budget estimates, which was in early November, you said to us then that you expected the State accounts to be finalised by the Auditor-General within two weeks.

Mr PRATT: That is correct.

The Hon. DANIEL MOOKHEY: And equally, to be fair, the Auditor-General did say the next day that that was the intention but it was a matter for her. We still have not seen the State's accounts. We are the only Australian jurisdiction to not have its accounts tabled to Parliament. When can we expect to see the State accounts as audited by the Auditor-General tabled in Parliament, as is the legal duty of you, the Government and the Treasury?

Mr PRATT: As you would appreciate, Mr Mookhey, these are complex matters. You are well aware of that. We have been working very hard to get this resolved. I cannot speak for the Auditor-General. I do note though, the Auditor-General did pull out of the hearing today. On that basis, I am not able to talk about the detail of the work that has been done, only to say to you that we are a lot closer to final resolution than when I spoke about this previously.

Mr DAVID SHOEBRIDGE: Can I just take a point of order on that? The Auditor-General, I want to be clear, did not pull out of the hearing. The Auditor-General indicated in correspondence to the Committee that because the Auditor-General had not been able to complete the audit that the Auditor-General did not think that it could assist at this stage. I think it is wrong to characterise it as pulling out from the inquiry.

Mr PRATT: They are your words, Mr Shoebridge, but the reality is she is not appearing.

The Hon. DANIEL MOOKHEY: It is my questioning, Chair, so I might just—

The ACTING CHAIR: Okay, thank you, I think we have made the clarification. I understand Mr Pratt had used the words "pulled out". I think that is, depending on your interpretation, not necessarily the characterisation that the Committee would give, but I have heard the point and I uphold the point. Back to Mr Mookhey.

The Hon. DANIEL MOOKHEY: Mr Secretary, according to one of the laws that gives the Auditor-General power, she or he ought to be tabling the report circa 22 October to 26 October. Last year the report and State finances was late—it was 17 November—as a result of the Auditor-General making a high-risk finding about TAHE. We are now nearly at Christmas. Can you at least give us a sense of confidence that the Parliament will see audited State finance reports by Christmas?

Mr PRATT: Mr Mookhey, again, I cannot answer for the Auditor-General. You would appreciate that. All I can say to you is you have my strong commitment to get these issues resolved as quickly as possible.

The Hon. DANIEL MOOKHEY: I appreciate that.

Mr PRATT: We are close to final realisation of that, but I cannot speak for the Auditor-General. But I give you that commitment. We are working very hard to do that.

The Hon. DANIEL MOOKHEY: I appreciate that.

The Hon. JOHN GRAHAM: Mr Pratt, you say this has taken longer than usual. In your 10 years of public service, has it ever taken this long? It never has. That is correct, is it not?

Mr PRATT: I can only speak for my time as Secretary of Treasury, Mr Graham. So in the past five years, no, although, as Mr Mookhey quite rightly points out, last year was November. But what I would add to that—a lot of that had to do with COVID and the requirements of Finance and Treasury to be doing other things as well, so there was real pressure on the team.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Secretary, but nevertheless we find ourselves in a position where we are about to go into the Christmas recess, which, of course, as you already informed us, will result in staff going on leave, as is their right, particularly after such a difficult year. But we will be the only Australian jurisdiction—any colour State, Territory or Commonwealth—not to be in a position to produce State accounts, which is almost unprecedented. Are you not worried about what that means for the reputation of the New South Wales Government, the State of New South Wales and the Treasury?

Mr PRATT: I want them finalised, Mr Mookhey. I cannot add anything more to what I have said. That is a question also for the Auditor-General but, to your point, I am absolutely committed to getting them finalised. The team is working very hard on it.

The Hon. DANIEL MOOKHEY: Thank you. Mr Secretary, as you described in your opening statement, the way the Act works is it is your responsibility, I believe, to sign the State's accounts. Is that correct?

Mr PRATT: On the recommendation of my accounting team, that is correct, and then I put that to the Treasurer.

The Hon. DANIEL MOOKHEY: Have you signed the accounts yourself?

Mr PRATT: Not at this point, no.

The Hon. DANIEL MOOKHEY: Why have you personally not even signed the accounts to submit to the Auditor-General for her to trigger her review process?

Mr PRATT: There is a draft set of accounts that the Auditor-General has been working on. The process at the moment, as you have just described, is we are waiting on reconciliation of those matters. I will get the accounts back once that has occurred, and then I will sign and recommend.

The Hon. DANIEL MOOKHEY: Has the Auditor-General, having seen the draft accounts, indicated to you that she is considering qualifying them?

Mr PRATT: There have been discussions about what work we need to do to ensure that the accounts are not qualified. We have been working through that together.

The Hon. DANIEL MOOKHEY: Secretary, I am going to push you on this. I asked a very specific question. Has the Auditor-General indicated to you or to any other Treasury official that she is considering qualifying the State's accounts?

Mr PRATT: There are matters that we are working through. I am not going to answer that question because that is a question for her.

The Hon. DANIEL MOOKHEY: No, Secretary, it is a question that I am putting to you because you are the person who submits the accounts to her. So is the reason you have not signed the State's accounts because she has indicated to you that if they were to be submitted as they are, in their draft form, she will qualify the accounts?

Mr PRATT: What I will say is that she certainly indicated to me that there are matters in the accounts that she is not comfortable with, so that could lead to qualification—to your point. I am working through those with the team and with the Audit Office.

The Hon. DANIEL MOOKHEY: What specific matters has she indicated to you are causing her concern that could lead to her qualifying the accounts?

Mr PRATT: I cannot comment on specific matters.

The Hon. DANIEL MOOKHEY: We have already had established from last year high-risk findings—some of them—and equally through the course of this inquiry we have discovered others. So I just press you again, giving you the opportunity here: Do you wish to indicate what matters the Auditor-General has said to you or the Treasury could cause her to qualify the State's accounts?

Mr PRATT: Mr Mookhey, I am not able to comment because the Auditor-General is not commenting, and I am not going to compromise those discussions. We are in close discussion, as I have indicated to you to your earlier question. I am committed to getting this finalised ASAP, and I appreciate the point you make.

The Hon. JOHN GRAHAM: Mr Pratt, you are clearly uncomfortable with some of the coverage. But this is your opportunity to put on the record in your own words what are the issues that are causing this concern. This is your chance to state clearly what are the issues that are under discussion.

Mr PRATT: Mr Graham, I am being very open about what the current position is but, with the Auditor-General still reviewing, it is inappropriate for me to comment on specifics.

The Hon. DANIEL MOOKHEY: Treasury Secretary, in your opening statement you said one of the false narratives was Treasury versus the Auditor-General. I am giving you the opportunity to explain the nature of the discussions, which have been characterised as an intense dispute. I will give it to you again: Do you wish to explain to us what issues the Auditor-General has identified to you that would cause her to consider qualifying the accounts?

Mr PRATT: This is exactly why I made that comment in the opening statement. This is not about Treasury versus Auditor-General. This is about working together. Our teams have been doing that constructively. The items are complex, as you know, and we are looking to resolve them as quickly as possible. For me to talk about specific items would compromise the work that the Auditor-General is doing as well.

The Hon. DANIEL MOOKHEY: Okay, Mr Secretary, I appreciate that, but when did the Auditor-General inform you, having seen the draft accounts, that she was considering qualifying them? Was it last week?

The Hon. SCOTT FARLOW: Point of order: We have gone on long enough with this. The terms of reference of this inquiry relate to the Transport Asset Holding Entity—

The Hon. DANIEL MOOKHEY: Establishment and operation of.

The Hon. SCOTT FARLOW: —not just the broader budgetary impacts.

The Hon. DANIEL MOOKHEY: To the point of order: It is about the establishment and operation of the Transport Asset Holding Entity and related matters. I think it is not unreasonable that it would fall within all three of those terms of reference to ask the Secretary when the Auditor-General has taken the almost unprecedented step of indicating a potential qualification of the State accounts as it relates to TAHE.

The ACTING CHAIR: It is very clear from paragraph (1) (b) of the terms of reference—"any other related matter"—that the questions are in order. However, I will now throw—

The Hon. DANIEL MOOKHEY: I actually did ask the question.

The ACTING CHAIR: Sorry, I will allow the question to be answered, and then I will throw to Mr Shoebridge.

The Hon. DANIEL MOOKHEY: Do I need to repeat the question?

The ACTING CHAIR: Please do.

The Hon. DANIEL MOOKHEY: The question was, Mr Pratt, when did the Auditor-General indicate to you that she was considering qualifying the State's accounts on the basis of the draft you submitted to her? Was it last week?

Mr PRATT: There has been ongoing discussion for some time, Mr Mookhey, since you asked me this at the last inquiry, and I indicated that I had hoped for resolution within a few weeks. So these discussions go back—that would have been about eight weeks ago, I would imagine, when we had been discussing the detail and the complexity of these issues.

Mr DAVID SHOEBRIDGE: Thanks to the witnesses for your attendance. Mr Pratt, it is true, is it not, that the Auditor-General's office and your office are not of the same opinion as to how to treat TAHE in the State's accounts. That is the current state of play, is it not?

Mr PRATT: No, there is a range of views around certain accounting issues. Accounting, in terms of some of these issues, Mr Shoebridge, is complex. A lot of accounting is fairly basic but once you get into the complexity of what we are dealing with there are matters of judgement that come into play. Therefore, there have been intent discussions. What the Auditor-General and I are about is getting a robust outcome that all of us can have confidence in, and that is the objective that we share.

Mr DAVID SHOEBRIDGE: But right now the reason you have not put the signed accounts that you would like to the Auditor-General is because you know that they would be rejected, in part, by the Auditor-General. That is why you have not allowed the Auditor-General to actually complete the audit by giving the signed accounts. Is that not the case?

Mr PRATT: The Auditor-General has flagged a number of issues to me, and I think I have indicated that already. That is what we are working through.

Mr DAVID SHOEBRIDGE: In terms of "a number of issues", the fact of the matter is that you are not agreeing on some pretty fundamental aspects about how TAHE is treated. Can you give an indication of what the kind of financial impact of that difference of opinion is? Are you \$10 apart? Are you \$10 billion apart?

Mr PRATT: No, I have indicated earlier to Mr Mookhey's question I am not prepared to talk about specifics today, Mr Shoebridge, because that would compromise the integrity of the Auditor-General.

Mr DAVID SHOEBRIDGE: But you made a very bold assertion, Mr Pratt, that there is no budget black hole. So I am asking you to give some details about that and to put some detail about that very bold assertion. Are you \$10 apart or \$10 billion apart or more with the Auditor-General? Is that the size of the potential black hole?

Mr PRATT: Mr Shoebridge, there is no black hole. Let me be clear about that again. For you to infer that is the case is a huge indictment on many public servants—

Mr DAVID SHOEBRIDGE: Mr Pratt, I am asking you to provide an answer.

Mr PRATT: May I answer your question please?

Mr DAVID SHOEBRIDGE: Indeed.

Mr PRATT: It is a huge indictment on many public servants who work together to protect and produce the integrity of the accounts. That is completely wrong, that statement, and I totally reject it. I stand by the integrity of the accounts.

Mr DAVID SHOEBRIDGE: I am giving you the opportunity to inform the public how far apart you and the Auditor-General are, in terms of the accounts. I am asking you whether it is \$10 billion that you are apart, in terms of the final impact of TAHE.

Mr PRATT: Let us wait to see what the Auditor-General has to say, Mr Shoebridge. Maybe we are not far apart, if apart at all.

Mr DAVID SHOEBRIDGE: Right now I am asking you the difference between you and the Auditor-General. You boldly assert that there is no black hole. If you can put a figure on it and inform the Committee that you are \$10 apart or \$100 million apart, please tell us. Because otherwise, we have compelling evidence that there is a potential \$10 billion plus difference of opinion.

Mr PRATT: That is your opinion only. Where is the evidence for a \$10 billion black hole? Show me the evidence, please.

Mr DAVID SHOEBRIDGE: You would have seen the report that was provided by KPMG, the one that was actually not commissioned by you—

The Hon. SCOTT FARLOW: And not done by an accountant, yes.

Mr DAVID SHOEBRIDGE: —but commissioned by Transport, which made it very clear that there is a compelling argument to be made—it may not be your preferred argument, Mr Pratt—that the accounts are out by some \$10 billion or more because of the treatment—

Mr PRATT: Mr Shoebridge, you would take the word of a non-qualified accountant producing a document against the word of Treasury, that has many qualified accountants, external expertise by one of the most recognised partners in accounting in the country? You would take the word of this person to say there is a \$10 billion hole, is that what you are saying?

Mr DAVID SHOEBRIDGE: Mr Pratt, what raises my real concerns about your line of expertise is the fact that you cannot get a set of signed accounts out of the Auditor-General—

Mr PRATT: But, Mr Shoebridge, you have not answered my question.

Mr DAVID SHOEBRIDGE: —and you make these bold assertions—

Mr PRATT: You are making the assertion. You are making the assertion about a black hole.

The Hon. DANIEL MOOKHEY: I just take a point of order.

Mr PRATT: You are not answering my question.

The ACTING CHAIR: Order!

Mr DAVID SHOEBRIDGE: Let me finish, Mr Pratt.

The Hon. DANIEL MOOKHEY: I will just take a point of order.

The ACTING CHAIR: Mr Shoebridge, just one moment. Mr Mookhey has a point of order.

The Hon. DANIEL MOOKHEY: I understand that the hearing has high stakes, but the ordinary practice in hearings is that members ask witnesses questions and no witness is able to ask members questions in return. They are, of course, able to answer the question however they see fit.

The ACTING CHAIR: I do uphold that point of order. If we could keep to answering the questions.

Mr PRATT: Chair, I have every right when assertions like—

Mr DAVID SHOEBRIDGE: To address your inquiry, Mr Pratt, I will give you the chance to answer a question if you will give me the chance to ask you a question.

Mr PRATT: You have been asking me questions, Mr Shoebridge. I am attempting to answer them.

Mr DAVID SHOEBRIDGE: Allow me to ask you the question. You assert that we should accept the opinion of you and your office over the opinion of Mr Lyon. I put to you that that assertion would be far more comfortably accepted by me and others if you had been able to persuade the Auditor-General and you had been in a position to actually give signed accounts to the Auditor-General by 16 December. That is not the case. It casts real doubt over your assertions, does it not, Mr Pratt?

Mr PRATT: Mr Shoebridge, you completely discredit your own credibility by putting your confidence of a \$10 billion black hole on one person, who is not an accountant. Anyone looking at this would laugh that out of court, Mr Shoebridge.

The ACTING CHAIR: Could I just—

Mr PRATT: I totally reject that assertion.

The ACTING CHAIR: —ask a question on the back of that. We keep referring to Mr Lyon as not being an accountant, which is correct, but he was heading up a team of people. Is it your assertion that Treasury, by appointing Mr Lyon to do that advice—

The Hon. SCOTT FARLOW: Treasury never appointed him.

The ACTING CHAIR: Sorry—Transport appointing Mr Lyon to do that advice, was somehow misguided?

Mr PRATT: Can I be really clear about this, because this is another piece of misinformation on the whole TAHE development? When TAHE was approved through Cabinet, the Premier at the time was abundantly clear to the Transport Secretary then and myself, that Transport were to address safety and operations—as they would—and Treasury was to address the modelling and accounting issues. We then employed KPMG, in fact we had engaged Ms Heather Watson earlier in the year around January/February, to already start that work. Unbeknownst to us Transport engaged another partner in KPMG also to do work. That was meant to be safety and operations. That work ventured into modelling, where there was no capability by that individual to do that. That is the point I am making. If Mr Shoebridge is basing his \$10 billion black hole comment on that work, then that is completely incorrect.

The ACTING CHAIR: Are you arguing that there is no interrelation between the safety issues and the accounting treatment?

Mr PRATT: All these issues are interrelated, Chair. This work came back together for Expenditure Review Committee [ERC] on submission with the support of myself and the Transport Secretary at the time—who, I might add, also signed off safety by that submission.

The ACTING CHAIR: Transport was within its rights to appoint Mr Lyon to do that work—

Mr PRATT: Of course it was.

The ACTING CHAIR: —and for that work to include accounting considerations, given as they were related to safety and maintenance.

Mr PRATT: If it had impact on that, of course. But not to do modelling, that was not their role.

The ACTING CHAIR: I will go back to Mr Shoebridge to check that he was done with his line of questions.

Mr DAVID SHOEBRIDGE: Mr Pratt, what is Treasury's forecast for inflation over the next financial year?

Mr PRATT: I would have to check that, Mr Shoebridge. It has changed recently. I will get that during the hearing, Mr Shoebridge, and get it back to you.

Mr DAVID SHOEBRIDGE: I just checked and it was 2¾ per cent. Does that jog your memory?

The Hon. PETER POULOS: Why did you ask?

Mr PRATT: No, I think we will check that number while we are in session, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Do you accept that TAHE needs to return a real rate of return?

Mr PRATT: It needs to return a rate of return that the shareholder is comfortable with, as with any other SOC.

Mr DAVID SHOEBRIDGE: It is your position that TAHE can be treated as an off-book entity, as a for-profit entity, if it has a rate of return that is less than inflation? Is that your position?

Mr PRATT: No, it is not my position. It will be determined ultimately by the shareholder. I am not going to comment about what the shareholder expectations are at this point, because I do not have them.

Mr DAVID SHOEBRIDGE: We heard from Mr Morgan that he had been told to get a rate of return of 1½ per cent, and in fact that that direction had largely come from Treasury. [Disorder].

Mr PRATT: That was in the initial work, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: [Disorder], Mr Pratt.

Mr PRATT: That was in the initial work. That is under review. The point being that, as you would appreciate, the shareholder Minister will ultimately determine what rate of return they are looking for. We have SOCs—

Mr DAVID SHOEBRIDGE: Not the independent report. [Inaudible].

Mr PRATT: Well, working with—

Mr DAVID SHOEBRIDGE: [Disorder].

Mr PRATT: —the board, yes. We have SOCs today that—

Mr DAVID SHOEBRIDGE: It is a political determination, not a determination [disorder].

The Hon. SCOTT FARLOW: Chair!

The Hon. DANIEL MOOKHEY: I take a point of order.

Mr PRATT: Mr Shoebridge, can I answer your question instead of being constantly interrupted. I am entitled—

The Hon. PETER POULOS: Chair, I think that is a fundamental point that I have noticed in the course of this hearing. I sense Mr Pratt does not have the opportunity—

The Hon. DANIEL MOOKHEY: I actually took a point of order before that happened.

The ACTING CHAIR: There have been two points of order.

The Hon. DANIEL MOOKHEY: The only point of order I took, Chair, first, was that Mr Shoebridge's time has expired and if Mr Pratt and Mr Shoebridge wish to continue that perhaps it should take place at the next opportunity for crossbench time.

The ACTING CHAIR: I have heard both points of order.

The Hon. PETER POULOS: You transfer your time all the time.

The ACTING CHAIR: I remind both members and witnesses to allow each other to speak, for the benefit of Hansard if nothing else. Mr Shoebridge, your time has expired, unfortunately. We will go to Mr Mookhey.

Mr DAVID SHOEBRIDGE: I will just indicate, if Mr Pratt feels that he has not been able to sufficiently answer his questions—

The Hon. PETER POULOS: Indeed.

The Hon. DANIEL MOOKHEY: Sure, that is fair.

Mr DAVID SHOEBRIDGE: [Disorder].

The Hon. DANIEL MOOKHEY: Yes, I will not object, if that is the case.

The ACTING CHAIR: Go ahead, Mr Pratt.

Mr PRATT: I think I have answered the question at this point. I am quite happy to take further questions, Mr Shoebridge.

The Hon. DANIEL MOOKHEY: Mr Pratt, I will resume where I was up to, which was: Did the Auditor-General indicate to you last week that it was her intention to potentially qualify the accounts on the basis of the draft that was submitted to her?

Mr PRATT: Mr Mookhey, I have answered that and I am not prepared to potentially compromise the role of the Auditor-General in these discussions.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Pratt.

Mr PRATT: All right.

The Hon. DANIEL MOOKHEY: You said in your opening statement that one of the things that you were here to do is to correct false media narratives. It was reported just earlier this week that the Auditor-General had indicated this to the Treasury last week, and as a result of that Treasury officials had to gather over the weekend and engage in what I describe as quite a scramble in order to respond to the Auditor-General's concerns. You have said you are here to correct the record. I am giving you the opportunity to shed light on any of the events which took place in the last two days, especially as you have said that you think that they are false.

Mr PRATT: Well, the first thing I would say, as you would appreciate, Mr Mookhey, is I have learnt you certainly do not believe everything you read in the newspaper. That is clear to all of us.

The Hon. DANIEL MOOKHEY: Just to be clear—

Mr PRATT: Having said that—I am sorry?

The Hon. DANIEL MOOKHEY: Just to be clear therefore, Mr Pratt, are you denying that there were Treasury officials gathered—

Mr PRATT: No, I am going to answer your question. Yes, there has been intense work. That has been the case for seven or eight weeks now; it has not just evolved. But I have put further pressure on the team because, to your earlier point, I am keen for the accounts to be signed off before Christmas. That is definitely my objective.

The Hon. DANIEL MOOKHEY: Have you been keeping the Treasurer apprised of the Auditor-General's concerns?

Mr PRATT: He is aware of the issues, yes, and the concerns. That is correct.

The Hon. DANIEL MOOKHEY: Have you been directly briefing him?

Mr PRATT: I talk to him about it as I would, yes.

The Hon. DANIEL MOOKHEY: Have you had any discussions with the Premier about the Auditor-General's concerns?

Mr PRATT: Not recently, no.

The Hon. DANIEL MOOKHEY: What do you mean by "not recently"?

Mr PRATT: Well, probably—look, I cannot give you exact events, times or dates, but I would have discussed it probably with the Treasurer and the Premier at least once in the past couple of months, together.

The Hon. DANIEL MOOKHEY: Let us just assume that that was after Mr Perrottet became Premier. We are talking about the same Premier, yes?

Mr PRATT: That would be the case—briefly.

The Hon. DANIEL MOOKHEY: To be fair, the last time we saw Mr Midha there was a bit of a change.

The Hon. JOHN GRAHAM: Perhaps on notice you could supply the date.

Mr PRATT: I cannot give you time and date, Mr Mookhey.

The Hon. DANIEL MOOKHEY: I appreciate that.

The Hon. JOHN GRAHAM: On notice, though, if you were able to.

The Hon. DANIEL MOOKHEY: Any ability to check would be appreciated.

Mr PRATT: Alright.

The Hon. DANIEL MOOKHEY: If you had these discussions with the Premier and the Treasurer collectively some time ago, at that point what did you tell them that you anticipated were the Auditor-General's concerns—or at least the factors that Treasury was working through to assuage any concerns she might have?

Mr PRATT: I have kept them across—particularly the Treasurer, as you would expect—the workings of what we are working through with the Auditor-General. He has been well briefed on that. That process has gone on, as I have said.

The Hon. DANIEL MOOKHEY: Are the Premier and the Treasurer aligned in how the Government should be handling this issue? Have you, in any of your conversations, heard anything which would cause you to conclude that perhaps there is a difference in view between the two?

Mr PRATT: There is nothing that I am aware of, Mr Mookhey. That would be a question obviously for both of them. But from my perspective, no.

The Hon. DANIEL MOOKHEY: Was the Treasurer apprised of concerns to do with TAHE on his incoming brief as Treasurer?

Mr PRATT: I will check with Mr Midha but I believe that, yes, he would have been.

Mr MIDHA: Yes, absolutely—

The Hon. DANIEL MOOKHEY: Sorry, Mr Midha, could you move the microphone?

Mr MIDHA: Yes, the incoming brief would have had all the work underway so it would have covered TAHE. I do not remember the specifics of what was in the brief.

The Hon. DANIEL MOOKHEY: Thank you. The Treasurer has been aware of these concerns we are talking about from the moment he became Treasurer, is that fair?

Mr PRATT: That is correct. Yes, that would have been the case.

The Hon. DANIEL MOOKHEY: Has the Treasurer issued you in the last week any instructions as to options that he wants Treasury to prepare for Government?

Mr PRATT: Around TAHE?

The Hon. DANIEL MOOKHEY: Yes.

Mr PRATT: No, other than that he is keen for me to have this finalised.

The Hon. DANIEL MOOKHEY: Has he asked Treasury to develop a policy position that would revert TAHE back to the general government sector, or any aspect of it?

Mr PRATT: No, he has not.

The Hon. DANIEL MOOKHEY: Is Treasury working on any option of its own volition that would see TAHE revert back to the government sector?

Mr PRATT: No, it is not.

The Hon. DANIEL MOOKHEY: Is Treasury considering adopting the Queensland approach, where TAHE is given community service obligation instruction and, therefore, the money that is currently characterised as an equity investment becomes a grant that is then reported in the general government sector?

Mr PRATT: Certainly not to my knowledge, although TAHE would have community service obligations, Mr Mookhey, regardless.

The Hon. DANIEL MOOKHEY: Sure. Is Treasury of its own volition either modelling or preparing any policy advice that would see the Victorian model operate, which would see NSW Trains and/or Sydney Trains either become franchised or privatised?

Mr PRATT: Certainly not from a Treasury perspective, but I might get Mr Sharp to comment on that.

The Hon. DANIEL MOOKHEY: No, I am asking whether Treasury is modelling that.

Mr PRATT: Well, the answer is no.

The Hon. DANIEL MOOKHEY: Is Treasury having any conversations with TAHE about reopening the rail access agreements?

Mr PRATT: No, not that I am aware of.

The Hon. DANIEL MOOKHEY: Mr Morgan?

Mr PRATT: Mr Morgan?

Mr MORGAN: Is that Mr Mookhey?

The Hon. DANIEL MOOKHEY: Yes.

Mr MORGAN: There are no discussions going on about the rail access undertaking agreement, other than that it is up for revision because it is, on a periodic basis, reviewed. That revision will be ongoing until such—

The Hon. DANIEL MOOKHEY: Can I just ask a quick follow-up, with crossbench permission?

The ACTING CHAIR: You have got three minutes.

The Hon. DANIEL MOOKHEY: Great! Sorry, Mr Morgan, but how is it possible that an agreement that went into operation on 1 July 2021 and which itself is late—how is that being opened for revision again? It is a 10-year agreement.

Mr MORGAN: I am sorry, Mr Mookhey, I think you are talking—the rail access undertaking agreement is the general agreement that has been in place for many years. It is a statutory agreement that provides users of rail with access to the rail owned formerly by RailCorp, now by TAHE. Is it something else you are referring to, or are you referring to the access—

The Hon. DANIEL MOOKHEY: I am talking about the agreement that determines what TAHE charges NSW Trains and Sydney Trains, however described.

Mr MORGAN: Okay.

The Hon. DANIEL MOOKHEY: Is that agreement currently open for revision?

Mr MORGAN: No, but it has a revision clause in it into the future, on an annual basis.

The Hon. DANIEL MOOKHEY: Has TAHE made—

Mr MORGAN: It is not reviewed at this point in time with a purpose of change in the 2021 year.

The Hon. DANIEL MOOKHEY: Thank you, Mr Morgan. I am sorry to interrupt. There is just a lag factor on the line; I thought you had concluded. Mr Pratt, is the Treasurer as the shareholding Minister considering giving any direction whatsoever to the Transport Asset Holding Entity?

Mr PRATT: Not that I am aware of, no. Certainly not through me.

The Hon. DANIEL MOOKHEY: Therefore, what exactly is Treasury doing to fix this?

Mr PRATT: We are working through the issues, Mr Mookhey, that have been raised by the Auditor-General—as I indicated earlier.

The Hon. DANIEL MOOKHEY: Are you making further submissions to her with the intent to get her to change her mind? Is that is what is going on here?

Mr PRATT: There is robust debate on both sides, as you can appreciate, in good intent and with the objective that is shared of finalising the accounts.

The Hon. DANIEL MOOKHEY: Has the Treasurer in this week said to you that it is a concern to him that the State is yet to have its reports published?

Mr PRATT: Not directly in those words, but I would expect as Treasurer that he is as keen as I am to have the accounts done.

The Hon. DANIEL MOOKHEY: Well, he is certainly keen. What precisely has he said to you this week, then, about this?

Mr PRATT: He would like it finalised.

The Hon. DANIEL MOOKHEY: When did you inform him that the Auditor-General, on the basis of having inspected the draft report, had concerns that led her to potentially indicate to you that she would be qualifying the State accounts?

Mr PRATT: As we have indicated earlier through Mr Midha, he was briefed on this when he took the role. It has been an ongoing discussion since that point.

The Hon. DANIEL MOOKHEY: Mr Pratt, you are leaving the impression that Ms Crawford had indicated to you months ago that she was intending to potentially qualify the accounts. If I was to believe what you just said—

Mr PRATT: No, that is not correct.

The Hon. DANIEL MOOKHEY: Sorry, I am going to ask you to clarify then. You have not yet been prepared to tell us when the Auditor-General told you that she was considering qualifying the State's accounts. My question is: When did you inform the Treasurer that the Auditor-General was considering qualifying the State's accounts?

Mr PRATT: Mr Mookhey, again, I am not going to compromise the integrity of the Auditor-General.

The Hon. DANIEL MOOKHEY: I am not asking you to, Mr Pratt.

Mr PRATT: No, you are, because you are asking me to get into a level of detail on your questions that then will lead to what are the issues we are working through.

The Hon. DANIEL MOOKHEY: No, I am not—

The Hon. JOHN GRAHAM: Mr Pratt, you have said it is a risk. It is not like—

The Hon. SCOTT FARLOW: Point of order—

The Hon. JOHN GRAHAM: —it is unreasonable to ask you when that risk arose.

The ACTING CHAIR: I will hear the point of order of the Hon. Scott Farlow.

The Hon. SCOTT FARLOW: Point of order: Mr Pratt was trying to answer the Hon. Daniel Mookhey's questions and he was interrupted by Mr Graham and Mr Mookhey at the same time.

The ACTING CHAIR: I do uphold the point of order. I ask that members allow the witness to answer the question before we leap in with another question. The Opposition's time is finished, but I will just allow Mr Pratt the chance to answer the question.

The Hon. DANIEL MOOKHEY: Do you want me to restate it?

The ACTING CHAIR: Please.

The Hon. DANIEL MOOKHEY: The question was not to do with the Auditor-General; it was to do with your conversation with the Treasurer. The question was: When did you indicate to the Treasurer that the Auditor-General was considering potentially qualifying the State's accounts?

Mr PRATT: I have indicated to the Treasurer a number of times through discussions, as I have mentioned earlier, that the Auditor-General and I were working through her concerns on a number of issues. He is aware of that and, as I said earlier, we are working to finalise that as soon as possible.

The ACTING CHAIR: Mr Midha, I am looking back at *Hansard* from August during budget estimates when I asked you a question. I said:

... presumably there needs to be a level of arms-length transactions between TAHE and other government entities, Sydney Trains et cetera, in order to maintain that independence from an accounting perspective. Is there not a risk that the way this entity that has been established will end up falling foul of those accounting rules despite this ...

And you responded:

The model that has been developed accords with the accounting standards. So we are comfortable that the work we have done in this space and the setting up of TAHE meets with the accounting requirement to meet its independence.

Do you stand by that statement today?

Mr MIDHA: Yes, from an independence perspective. Independence has a lot to do with more the Australian Bureau of Statistics [ABS] definition. The ABS determines the independence as a SOC. I believe that SOC has been stood up to be an independent entity.

The ACTING CHAIR: But then, when we come to those arm's-length transactions, and we are talking about the rail access agreements and all sorts of things, clearly that has become an important accounting consideration. Are you still comfortable that the entity has been set up in a way that meets those requirements?

Mr MIDHA: So that is not an accounting consideration. That is a commercial consideration, so it has commercial agreements. So the accounting treatment of those commercial agreements—we are comfortable that they are accounted for correctly.

The ACTING CHAIR: Right. That is not my question. My question was whether you believe that those arrangements satisfied the overall requirements for the entity to be independent from government.

Mr MIDHA: Yes. All the regimens that we have in place satisfy its requirement to be independent and the accounting treatments should reflect that.

The ACTING CHAIR: If that is the case, what is it exactly that the Auditor-General has an issue with?

Mr MIDHA: Again, I cannot go into those details.

The ACTING CHAIR: Okay.

The Hon. SHAYNE MALLARD: Good try.

Mr MIDHA: We are working through.

The ACTING CHAIR: No, I understand. It does seem quite clear from everything that we have heard and everything that we know through this inquiry that that is a major consideration. I understand you cannot tell me if that is something the Auditor-General is concerned about, but you are standing by your statement that you are not personally concerned with the independence requirements for this entity?

Mr MIDHA: No, I am not concerned about TAHE's independence as a SOC. No.

The ACTING CHAIR: Mr Pratt, this inquiry has heard that from the beginning we had a situation where a number of other accounting firms, particularly PwC and, we have heard anecdotally, others could not get comfortable that the TAHE structure would work from an accounting perspective, but that KPMG had advised that it could. Looking at the time line, it was not until Mr Lyon came along with his reports that we had any sort of indication that perhaps it could not work the way that KPMG had said. Then there was a change in accounting rules. You said right at the beginning accounting is complex. It is very complicated. I fully accept that. Is there a risk that TAHE in its current structure does not work from an accounting perspective?

Mr PRATT: No, there is not. I will get Mr Midha to comment as well, Chair, but I would simply say, as I indicated to Mr Shoebridge earlier, the work that was produced by Mr Lyon was requested by Transport and was not covering the areas that he specifically should have covered at the request of the ERC and Cabinet. He is not an accountant. He is totally discredited and the work that we have done has been with accounting professionals, both external and within government. So I stand by the findings that we have got. But, to your point, when you get into the complexity of what we are dealing with there are elements of judgement, and to Mr Mookhey's earlier question, they are the issues that we are debating with the Auditor-General, and they are not easily resolved issues but we are making excellent progress. So should I get Mr Midha to answer you as well on this, or not?

The ACTING CHAIR: I just want to ask a little bit more around that. So, we are back to your criticisms of Mr Lyon. I understand that there is a lot to uncover there and a lot to unpick, but if we just focus on the fact that Transport had engaged Mr Lyon. Treasury had engaged a different set of partners at KPMG—

The Hon. SCOTT FARLOW: Prior to Transport.

The ACTING CHAIR: Fine, prior to Transport. Mr Lyon was not working for your department, was he? He did not need to take instructions from you. Is that correct?

Mr PRATT: No. We employed Ms Heather Watson in January-February of 2020 to get this work underway. As I understand it—and I am looking at the record here with this comment, but Mr Lyon was, I believe, employed by Transport around April 20. Is that correct, Mr Sharp?

Mr SHARP: I believe so, yes.

Mr PRATT: So that was subsequent to the work that we already had underway with the accounting practice in KPMG. Mr Lyon worked for the consulting practice. That was not the accounting part of KPMG.

The ACTING CHAIR: We heard from KPMG, when they appeared, that they dealt with these two different pieces of work with two separate clients separately, and that they had, basically, procedures in place to prevent conflict. Is that your understanding as well?

Mr PRATT: That is what I was told but, I mean, that is really for KPMG to answer. We were dealing with Ms Watson.

The ACTING CHAIR: Given that, was it appropriate for you to intervene with the work that Mr Lyon was producing for Transport?

Mr PRATT: Yes, absolutely. I mean, as I indicated earlier, the Premier rightly held Treasury responsible for advice on the accounting and other matters relating to that, re modelling and so on. Mr Lyon's report, which went to my earlier point to Mr Shoebridge, was apparently indicating a \$10 billion hole. That was wrong. There was a whole set of assumptions et cetera that were wrong. I am responsible for advice to Cabinet and to ERC through Treasury and it is my responsibility to make sure they get the right advice, so I had every right to call that out.

The ACTING CHAIR: I understand that you have a difference of opinion with Mr Lyon and, potentially, with Transport also, and I understand you might want to have criticism of that, but was it appropriate for you to try to pressure Mr Lyon to change his advice for a client that was not Treasury?

Mr PRATT: Well, it all came together with Treasury. I mean, this was advice that was going back to Cabinet, so would you suggest that I leave it and do not approach it, and then let Cabinet get advice that is wrong?

The ACTING CHAIR: I would suggest that it is highly inappropriate for you to have contacted a partner who was working for a different client and attempt to have them change the advice they were giving their client.

Mr PRATT: The advice was using Treasury data and information incorrectly. I will get Ms Wilkinson to talk to the detail on this. But if you read my note carefully, I said, "You should withdraw any information coming from Treasury in your report", and he refused to do that.

The ACTING CHAIR: Again, he was not working for you. His client was Transport and he was taking instructions from Transport. Why did you not get Transport to ask Mr Lyon to do that?

Mr PRATT: We did that, but Ms Wilkinson can comment on that.

The ACTING CHAIR: Please do, Ms Wilkinson.

Ms WILKINSON: So I think it is important to keep in mind that Transport and Treasury were jointly requested by Cabinet to do this work together. There was a joint steering committee, which both departments were on, and all work that was undertaken by consultants on the TAHE project was reviewed by both departments through this steering committee. So it is absolutely appropriate for Treasury to review any products that were part of the work being done by Transport, just as it was available to Transport to look at the work that we were doing, which they did. So in the workshops—

The ACTING CHAIR: But did—

Ms WILKINSON: Sorry.

The ACTING CHAIR: Sorry. If I could just bring you back to the actual question, though. Yes, of course it is a joint project. It is a government project, but we have two very distinct departments who had very distinct contractual arrangements with these different parts of KPMG. Was Transport interfering with the advice that Treasury was getting from KPMG?

Ms WILKINSON: No. Transport acted properly. At the meetings that Transport and Treasury had jointly, Mr Lyon took advice in meetings, asked questions in meetings and brought content to meetings. We asked him to correct his misunderstandings and his misrepresentations in those meetings and he did not do that. This was not about a dispute between Transport and Treasury; this was about Mr Lyon misunderstanding material that he was working with and putting errors into it. So we did not ask him to change his opinions; we asked him to correct errors.

The ACTING CHAIR: It would have been inappropriate, as a professional working in KPMG, for Mr Lyon to have taken instructions or directions from Treasury.

Ms WILKINSON: These were not instructions or directions. I make that very plain: These were not instructions or directions to him. You would be familiar that consultants say on the front end of their report that the work can only be as good as the facts and materials that they are provided. We were asked to provide materials, which he misunderstood and misrepresented.

The ACTING CHAIR: I understand.

Ms WILKINSON: I did not instruct him. I simply pointed out his mistakes and he refused to correct them.

The ACTING CHAIR: We will come back to Mr Pratt's email to Mr Lyon, which is a bit contrary to that.

The Hon. JOHN GRAHAM: Mr Pratt, you issued quite a frank statement yesterday. You were clear that you had privately weighed up a return to the private sector under some circumstances, that that was known to a small group of people and that you were upset about the breach of confidentiality. I would like to give you the chance to put on the record anything else you would like to say on that matter today.

Mr PRATT: Mr Graham, thank you for the interest in my career and the future.

The Hon. JOHN GRAHAM: Very good.

Mr PRATT: I appreciate that. My statement was clear yesterday. I think you have probably read that by the sound of it. As you would expect, I am looking at future options and I am working, as you would expect, with certain people around what they might be. It is inappropriate for me to comment on that specifically, but I do not think that is a surprise to anyone. I have been in government for 10 years and these are natural things that happen. So I was disappointed to see the article in the newspaper, absolutely.

The Hon. JOHN GRAHAM: I think you were clear in that statement that your timing to resolve that was before the election.

The Hon. SCOTT FARLOW: Point of order: I think I can allow one question on this but this has no relevance at all to the terms of reference of the inquiry.

The Hon. PETER POULOS: Nothing to do with it.

The Hon. SHAYNE MALLARD: It is not a fishing expedition.

The Hon. PETER POULOS: Not even remotely.

The Hon. JOHN GRAHAM: Mr Pratt can answer in any way he chooses. I am then moving on.

Mr PRATT: I would simply say it is clear in my statement that I have said around the next election et cetera. I will not comment further on that, Mr Graham. I have been clear in the statement.

The Hon. JOHN GRAHAM: Can I ask you about the budget? In the budget appendix there is a revaluation line where there is a revaluation of \$22.5 billion. I take it that is the revaluation of the State's rail assets?

Mr PRATT: I do not have budget papers with me, unfortunately.

The Hon. JOHN GRAHAM: A1.14.

Mr PRATT: Could we check that while we are in session?

Mr MIDHA: I will ask the question and get an answer for you a little later.

The Hon. JOHN GRAHAM: I am referring to page A1.14 of the budget, where there is a \$22.443 billion revaluation, which I understand to be the revaluation of the State's rail assets.

The Hon. DANIEL MOOKHEY: Devaluation.

The Hon. JOHN GRAHAM: As of today, what is the value of the State's rail assets?

Mr PRATT: We are issuing that this afternoon, Mr Graham. I am actually going back to sign off the accounts this afternoon.

The Hon. JOHN GRAHAM: This is a TAHE inquiry. I do not think it is unreasonable for you to tell us at this inquiry what is Treasury's valuation of the State's rail assets as of today.

The Hon. SHAYNE MALLARD: Take it on notice.

The Hon. JOHN GRAHAM: You must have that figure here.

Mr PRATT: We will have that figure, yes. We will try and get it for you. But bear in mind I have not signed it off yet. The accounts are issuing this afternoon.

The Hon. JOHN GRAHAM: It is the immediate financial update. You must have that figure now. Does Mr Midha have it?

The Hon. SHAYNE MALLARD: Point of order: Mr Pratt is entitled to take it on notice. He has said he will get the figure and he has taken it on notice.

The Hon. DANIEL MOOKHEY: Mr Morgan has told this inquiry.

Mr DAVID SHOEBRIDGE: To the point of order: If Mr Pratt does not, Mr Morgan surely should.

The Hon. DANIEL MOOKHEY: Yes, Mr Morgan would have it.

The ACTING CHAIR: Mr Pratt, if it is something that you think one of the other officials may have, could you direct the question to them?

Mr PRATT: I am happy to take it on notice, Mr Graham.

The Hon. JOHN GRAHAM: It would be extraordinary not to have it.

Mr PRATT: We can answer the first part of your question, but the reason I am pushing back on the second part is I have not signed the accounts off yet.

The Hon. DANIEL MOOKHEY: That is okay, we will move on.

Mr PRATT: Some of you may be aware that we had a serious cyber attempt, which really closed down—

The Hon. JOHN GRAHAM: Yes. We are moving on.

The Hon. DANIEL MOOKHEY: I accept your answer, Mr Pratt.

The Hon. SHAYNE MALLARD: He does not need to be cross-examined about it.

The Hon. DANIEL MOOKHEY: We accept it, we do. Can I ask that Treasury tender 001 be provided to the witness, and probably Treasury tender 003 at the same time to make it more efficient? Mr Pratt, one of the reasons why in the media reporting of this matter there has been concern about a black hole in the budget arises out of this document that I am providing to you now, which is a Treasury document; it is not Mr Lyon's document. This is a document that was created by Treasury. Turn to the last page, it says "the impact of disillusion". If you look down at the bottom it says the budget impact if TAHE is reverted over 10 years is \$14.5 billion. If the Auditor-General decides, after all the conversations you have had with her in the last few months and in the conversations you are having with her now, that she disagrees with your accounting treatment and decides to revert the matter back to the general government sector, over 10 years—according to your documents and Treasury's modelling—this has a \$14.6 billion impact on the budget. I accept that you reject Mr Lyon's report. Are you now rejecting Treasury's own modelling on what the impact would be if this matter was to be reverted—if TAHE was to be reverted back to the general government sector?

Mr PRATT: Firstly, Mr Mookhey, I would make the observation that this is Cabinet-in-confidence document.

The Hon. DANIEL MOOKHEY: Indeed.

Mr PRATT: So I should not be talking to this document at all. In fact, I am prohibited from doing so.

The Hon. DANIEL MOOKHEY: I point out that there have been various documents that Treasury itself has produced that have been marked "Cabinet-in-confidence" in response to standing orders. To be fair, this is not one of them. I am going to be up-front about that. This document is not, it has been produced by me under my parliamentary privilege.

Mr PRATT: It is clearly marked "Cabinet-in-confidence".

The Hon. DANIEL MOOKHEY: I do not dispute that, Mr Pratt. It is Cabinet-in-confidence. My only point is that some documents have been provided which are marked "Cabinet-in-confidence" in response to standing orders and others have not. I accept that you might not wish to do it on the basis that it has been produced by me under parliamentary privilege, but you said you wanted to clear up this false narrative about a budget black hole. The narrative arises as a result of this document, which quotes a \$14 billion hole. That is why the former Auditor-General has in a submission to this inquiry expressed his severe concerns, as he has publicly. It is a serious matter of public dispute as to whether or not this is going to create a \$14.6 billion impact on the budget. I am giving you the opportunity to correct the false narrative, as you say, and assure us that Treasury is wrong and should not have produced this advice.

Mr PRATT: There has been a lot of different modelling done, but you are putting me in a very difficult position because, as a public servant, I cannot comment on Cabinet-in-confidence documents.

The Hon. DANIEL MOOKHEY: Sure. Has Treasury in the past—

Mr PRATT: You are well aware of that, Mr Mookhey. I am not trying to be difficult with you.

The Hon. DANIEL MOOKHEY: I appreciate you are not, Mr Pratt, I really do.

Mr PRATT: But I cannot comment.

The Hon. DANIEL MOOKHEY: I do appreciate that. To be fair to Mr Midha and Ms Wilkinson, when I put this document to them, they also took the same view. So I respect the constraints that you are under. But, again, you said that you are here to correct this view, which is why I am putting it to you. But I accept that is the case.

Mr MIDHA: Can I also add that TAHE is a SOC and is created by an Act of Parliament. It can only be reverted through an Act of Parliament.

The Hon. DANIEL MOOKHEY: I agree. From the last year's high-risk finding, the Auditor-General said that her concerns were about establishing an operating model in line with the original intent of a commercial return, finalising commercial agreements with public rail operators, confirming forecast financial information to assess valuation of TAHE infrastructure, and finalising asset and safety management plans. Are they the items that are still in dispute?

Mr PRATT: Ms Wilkinson or Mr Midha will be across this but, as I understand, Mr Mookhey, they were the four items that were previously flagged. I understand all four items have been closed to the satisfaction of us and the Auditor-General. Can I confirm that with the team?

Ms WILKINSON: I would say that Treasury, Transport and TAHE worked to close out all of those items to our own satisfaction. In the normal course of events we seek the counsel of our reviewers, and we will take their advice as we work through a number of issues. So I cannot say for sure whether any of those things might be treated slightly differently on reflection having sought their counsel, but at the moment we would not discuss our negotiations or discussions with them because that might indicate their opinions, which would not be customary for us to do.

The Hon. DANIEL MOOKHEY: I think that is helpful. Thank you for that, Ms Wilkinson. Let's return to the matter that my colleague was asking you about. Is it not the case that one of the key concerns of the Auditor-General is the decision to devalue the rail assets by \$27 billion?

Mr PRATT: Again, Mr Mookhey, we are going back over old ground. I cannot answer specifically around those issues.

The Hon. DANIEL MOOKHEY: Sure. Can I ask that the witness is provided with the first KPMG report?

This is a report that was produced by Treasury in response to the House's second call for papers that took place earlier this year. The report says in the appendix that the actual rate of return as required has to be at least inflation—real, rounded return. That is why my colleague was asking you about the questions earlier before. Treasury has been advised, has it not, that TAHE has to—this was a report to Treasury—earn at least inflation. Are you confident that TAHE will meet that requirement? First to Mr Pratt and then Mr Morgan, please.

Mr PRATT: I am not prepared to comment at the moment on the rate of return. To Mr Shoebridge's earlier question, just to clarify, I have that information as 2.5 per cent, Mr Shoebridge, is the number. But as I said earlier, Mr Mookhey, and you will appreciate, ultimately that is a shareholder decision. But I could point you to some SOCs today that are zero—forestry, for example, given the environment.

The Hon. DANIEL MOOKHEY: Careful; we will set up another inquiry here, Mr Pratt.

Mr PRATT: No, but my point being—a good example is, if you look back at Sydney Water when it was commenced in 1985, for the first five years of its life it was returning around 1 per cent and now it is the biggest earner in government at around 6 per cent. This is a new entity. It will take time to build and develop, and therefore from a shareholder perspective, one needs to weigh up all these issues in terms of return.

Mr DAVID SHOEBRIDGE: Mr Pratt, you have suggested in your response that we should not accept Mr Lyon's opinion because he is not an accountant, and you said we should be accepting the position you put forward and Treasury. You are not an accountant either, are you, Mr Pratt?

Mr PRATT: That is why I have a set of really qualified accountants around me, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: And you know now that not only is there Mr Lyon's review supported by his team in KPMG; there is the Treasury document that serves up, in fact, a larger black hole—the potential of some \$14 billion. And you would be aware as well, would you not, that the reason that Transport got Mr Lyon's report from KPMG was because they had already been told by PwC that the TAHE Light model, which is what you have adopted, would not work for accounts purposes. We now have three elements—the PwC report,

Mr Lyon's report and the Treasury report—all suggesting a very significant budget risk of up to \$14 billion. Why should we accept your word against that?

Mr PRATT: I will get Mr Midha to comment on that, thank you.

Mr MIDHA: The PwC report, the TAHE Light model, did not have TAHE as an independent SOC. When PwC was first looking at this, this was a while ago. It has nothing to do with the current model, which is an independent SOC. In those different scenarios it was how to minimise control. With account to the new accounting standards that were emerging, the service concession, it has no relevance to the current SOC model that is happening. That was then dismissed because that even included an opportunity to privatise all of transport. All those models were dismissed because they did not meet the standard that was set as a SOC.

Mr DAVID SHOEBRIDGE: Mr Morgan, in relation to an independent State-owned corporation, do you accept Mr Pratt's position that you will be told by the Treasurer what your rate of return will be?

Mr MORGAN: Thank you, Mr Shoebridge. Could I just add some clarity to my answer to Mr Mookhey's question earlier.

Mr DAVID SHOEBRIDGE: Provided you get around to my question, absolutely.

Mr MORGAN: I am looking forward to doing that, and I think it actually wraps up in that in the answer or the additional information it provides. Initially, Mr Mookhey talked about the Rail Access Undertaking, which is a broad piece of legislation that has been around for a while. We then got to talking about the rail access agreements with the various transport entities. They were the ones signed, effectively commencing on 1 July 2020. The rate of return that was sought in those over time was 1.5 per cent. The agreements offer the opportunity to renegotiate the access fee arrangements to take effect from 1 July each year. The Treasurer has asked us to consider a higher rate of return that averages 2.5 per cent over the next 10 years, and we will be renegotiating the access fees resulting from that with Transport to take effect from 1 July 2022. Does that address your question, Mr Shoebridge?

Mr DAVID SHOEBRIDGE: So it is the Treasurer who sets your rate of return.

Mr MORGAN: The Treasurer is—

Mr DAVID SHOEBRIDGE: It is not the [disorder] report; the Treasurer sets your rate of return. Is that right?

Mr MORGAN: Sorry for interrupting. Our shareholders are the Treasurer and the Finance Minister, and as shareholders they set an expectation of what the rate of return is. The board considers that rate of return and what actions it has to take to achieve that return, and I have just described one of those actions. The board is not unhappy about it.

Mr DAVID SHOEBRIDGE: Are you doing this because the Auditor-General has told you that unless you get a rate of return at least commensurate with Treasury's inflation expectations, the Auditor-General will not sign off on your accounts? Is that why you are doing this?

Mr MORGAN: We are doing this because the shareholder has asked for an increase in the rate of return. As far as the Auditor-General is concerned, I have been an auditor for 37 years and run audit committees for nine, so I am fairly familiar with the profession. What I would say is that I view the audit process as an iterative process of professionals coming together to debate points around this sort of stuff—

The Hon. SCOTT FARLOW: It is healthy.

Mr MORGAN: —or these issues, and we have been doing so with the Auditor-General over recent months and we are working towards landing a position that both the board and the Auditor-General is comfortable with. That is our objective.

Mr DAVID SHOEBRIDGE: Unless you can land at least a return on assets of at least inflation, you know you cannot get the accounts signed off. That is the position, is it, Mr Morgan?

Mr MORGAN: Mr Shoebridge, as I said, it is an iterative process. It is not a combative process. It is a process where we listen to each other's views, we take them on board and we will work through to end up with a position that the Auditor-General is satisfied with and we are.

Mr DAVID SHOEBRIDGE: For the Transport secretary, you are just a passive recipient of this, are you? Whatever the final outcome is, you will just have to cop the payment for the rail access. Is that what is happening at the moment? You are just going to have to suck it up somehow.

Mr SHARP: There is a commercial agreement in place where negotiations occur each year in regards to the access and licence fees. What I pay for is to access regulated assets, and that pricing is effectively benchmarked and aligned against IPART. This is a standard building block model approach in terms of how that access fee is arrived at. There is a negotiation, it is referenced to IPART and it is captured within that process. There is a methodology that is articulated. That IPART review happens every year as well. We will review the IPART boundaries and we will negotiate within those boundaries. There is clear process for me to be comfortable with that. If I am not comfortable with it, there are escalation processes.

Mr DAVID SHOEBRIDGE: But you have just been told by Mr Morgan that the Treasurer has directed that the rail access fees you have to pay are going to increase by 66⅔ per cent come 1 July next year. You have just heard it.

Mr SHARP: Yes, and as I said, there is a process and a methodology.

Mr DAVID SHOEBRIDGE: That is not [disorder] the Productivity Commission; it has just been thrown at you. How does that fit with your productivity model? You have just heard you are going to get a two-thirds increase in the access fee.

Mr SHARP: The access fee will be negotiated at the end of the year with a reference to IPART. If it is within the IPART framework, that is something that is going to have to be looked at. At the moment I have an agreed access fee for this year and a process and a methodology that is well documented that we will go through at the end of the year. If there is an increase, which they are flagging, that process has to deliver on that.

Mr DAVID SHOEBRIDGE: Where will the funds to pay for that increase come from? Will they come out of the maintenance budget? Where will the funds come from out of the transport agency in order to pay a 66⅔ per cent increase to TAHE to make them a notionally profitable entity?

Mr SHARP: We go through an annual budget process. That process includes increases and decreases in all costs, including the fare bucket as well, which has been impacted by COVID. We are in the process of doing that right now.

Mr DAVID SHOEBRIDGE: There are going to be increased fares?

Mr SHARP: We are in the process of doing that right now.

Mr DAVID SHOEBRIDGE: So, increased fares?

Mr SHARP: I didn't say that. Sorry?

Mr DAVID SHOEBRIDGE: So the travelling public are likely to face increased fares to pay for this massive increase in access fees for TAHE? Is that the solution?

Mr SHARP: No, not at all.

Mr DAVID SHOEBRIDGE: The travelling public are going to cop it?

Mr SHARP: The fares that are set publicly are also through an independent price-setting body, which is called IPART, and is a decision of government. So that is quite separate to the budgetary process, which is an annual process where I review all the costs. We look at efficiencies, we look at what the actual economy is throwing at us, and we prepare a budget off the back of that. There is an outcome budget process where we have to justify the expenses we pay to the outcomes we are delivering to the public.

Mr DAVID SHOEBRIDGE: You see, Mr Morgan, you are in a bit of a pickle here, are you not? Because, on the one hand, you have the Treasurer telling you to jack up the access fees to 2.5 per cent to satisfy the Auditor-General but, on the other hand, you have your major client here—in fact, your one and only potential client—saying that that is all going to be subject to a negotiation through the Productivity Commission. You are in a bit of a mess at TAHE, are you not?

Mr MORGAN: Not at all. You have just heard from the Transport Secretary about the process we will go through, and I am confident that we will achieve an outcome.

Mr DAVID SHOEBRIDGE: So you are telling the Auditor-General now that the accounts should be signed off because you will get your 66⅔ per cent increase in rail access fees out of Transport. That is what you are telling the Auditor-General, is that right?

Mr MORGAN: We have not concluded our discussions or our work with the Auditor-General yet, so it would be wrong of me to try to predict where that might end up, but I am suggesting that I am confident that when it comes to renegotiating the access fees with the Transport Secretary we will have a favourable outcome on that.

Mr DAVID SHOEBRIDGE: What is the increase in terms of the dollar increase?

The Hon. SCOTT FARLOW: Point of order: I think the time has now expired.

The Hon. SHAYNE MALLARD: Indeed, we all have to go.

The ACTING CHAIR: The time has expired but I will let Mr Shoebridge ask his final question, and then we will wrap up.

The Hon. SHAYNE MALLARD: You did not let Mr Mookhey.

Mr DAVID SHOEBRIDGE: What is the dollar increase you will be taking from Transport if you have a two-thirds increase in the rail access fee?

Mr MORGAN: I mentioned, Mr Shoebridge, that that has not been settled yet, so I am unable to give you a number on that.

Mr DAVID SHOEBRIDGE: Why don't we start with what the current fee is?

Mr MORGAN: The current fees in trains are just under \$700 million—about 680 million.

Mr DAVID SHOEBRIDGE: We can do the numbers from there, thanks, Mr Morgan.

The ACTING CHAIR: Unfortunately, that is all we have time for. It is a much shorter hearing than we had hoped for, but technology was not our friend today. Thank you very much for making the time to come here. As we noted earlier, there is an extended time line for the answers to be returned—24 January—but the Committee secretariat will be in touch.

(The witnesses withdrew.)

The Committee adjourned at 13:02.